

ANNEX 9



SCHEDULE 2

AMENDED AND RESTATED WMSA



DATED

30 May

2002

(1) WESTERN RIVERSIDE WASTE AUTHORITY

- and -

(2) CORY ENVIRONMENTAL LIMITED

**AMENDED AND RESTATED
WASTE MANAGEMENT
SERVICES
AGREEMENT**
as at
[] 2018

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THIS AGREEMENT is made on 30 May 2002

BETWEEN

- (1) **WESTERN RIVERSIDE WASTE AUTHORITY** of Smugglers Way, Wandsworth, London SW18 1JS (the "**Authority**"); and
- (2) **CORY ENVIRONMENTAL LIMITED** (Company Registration Number 49722) whose registered office is at 2 Coldbath Square, London EC1R 5HL (the "**Contractor**").

RECITALS

- A The Authority is constituted under the Waste Regulation and Disposal (Authorities) Order 1985 as the waste disposal authority for the Constituent Councils.
- B The Authority requires the provision of waste management services that shall satisfy the Authority's obligations to make arrangements for the disposal of waste under the Environmental Protection Act 1990, the Refuse Disposal (Amenity) Act 1978 and the Waste Regulation and Disposal (Authorities) Order 1985.
- C The Authority invited bids from amongst those contractors which expressed an interest in providing the Services, and underwent a competitive process to ascertain which contractor offered the most economically advantageous solution to the requirements of the Authority.
- D The Authority assessed the bids taking account, inter alia, of the guidance offered by the Waste Strategy 2000 for England and Wales with regards to the importance of the principles of picking the best practicable environmental option, ensuring regional self-sufficiency, working within the proximity principle, and the use of the preferred waste hierarchy.
- E The solution proposed by the Contractor has been selected by the Authority as the best of those proposed.
- F In consideration of the Contractor performing the obligations contained in this Agreement the Authority appoints the Contractor to provide or procure the provision of the Services.
- G. The Agreement was amended and restated in accordance with an agreement entered into between the Contractor and the Authority dated 31 July 2008 (the "**First Amended Agreement Date**") to facilitate the financing of the EfW Facility, amongst other matters.

- H. On 3 April 2013, the Contractor entered into a variation agreement with the Authority to address the completion of certain Authority Site Works and the treatment of and payment for Co-Mingled Recyclables.
- I. In connection with the restructuring of the Cory group and simultaneously with the refinancing of the EfW Facility, the Agreement was amended and restated in accordance with an agreement entered into between the Authority and the Contractor dated 21 March 2017 (the "**Second Amended Agreement Date**").
- J. To facilitate a further refinancing of the EfW Facility, the Parties have agreed to amend and restate the Agreement on the terms set out herein.

PART I – INTERPRETATION OF THIS AGREEMENT

1. DEFINITIONS AND INTERPRETATION

In this Agreement, including the Recitals, the Schedules, and the Appendices, unless the context shall otherwise require:

- 1.1 Capitalised terms used in this Agreement shall have the meaning given to them in this Agreement;
- 1.2 Words importing:
 - 1.2.1 one gender only shall be construed as importing any other gender; and
 - 1.2.2 the singular shall be construed as importing the plural and vice versa.
- 1.3 References to any statute or statutory provision include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations or other subordinate legislation made under any relevant statute or statutory provision provided that the provisions of this clause shall be without prejudice to the operation of clause 21 (in relation to an ASS Change in Law) and paragraph 8 of Schedule 15 (in relation to an EfW Change in Law) on the basis set out in this Agreement.
- 1.4 Schedule, Appendix, clause and (where provided) sub-clause or paragraph headings and captions in this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 1.5 Except where expressly stated to the contrary, references to clauses, sub-clauses, paragraphs, Schedules and Appendices are to clauses, sub-clauses, paragraphs, Schedules and Appendices to or contained in this Agreement.
- 1.6 In the event of any inconsistency between the provisions of clauses 1 to 73 of this Agreement and the provisions of any of the Schedules or Appendices, the conflict will be resolved according to the following order of priority:
 - 1.6.1 clauses 1 to 73 and the Schedules and Appendices (other than the Output Specification and Method Statement) equally;
 - 1.6.2 the Output Specification;

- 1.6.3 the Method Statement.
- 1.7 Subject to clause 1.6, the Schedules and Appendices form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement.
- 1.8 The Parties have had the opportunity to take legal advice and no contract term shall be construed contra proferentem.
- 1.9 References in this Agreement to the Authority, Environment Agency, Health and Safety Executive, Port Health Authority and Port of London Authority shall include references to their successors in title from time to time.
- 1.10 References to a "**person**" shall include any individual, partnership, firm, trust, body corporate or incorporate, government or government body, authority or agency and a reference to a person includes a reference to that person's successors and assigns.
- 1.11 Words preceding "**include**", "**includes**", "**including**" and "**included**" shall be construed without limitation by the words which follow those words unless inconsistent with the context, and the rule of interpretation known as ejusdem generis shall not apply.
- 1.12 References in this Agreement to "**expense(s)**", "**cost(s)**" or any similar word or expression relating to sums recoverable by a Party shall include that Party's reasonable charges in establishing the amount of such expense(s) or costs(s) and in recovering any such expense(s) or cost(s).
- 1.13 Any calculations in respect of the first and/or final Contract Month, the first and/or final Contract Year, the first and/or final EfW Contract Months or the first and/or final EfW Contract Year shall be pro rated in the proportion that the number of calendar days in such Contract Month, Contract Year, EfW Contract Month or EfW Contract Year (as appropriate) bears to the number of calendar days:
- 1.13.1 in the case of a Contract Month or an EfW Contract Month, in the relevant calendar month; or
- 1.13.2 in the case of a Contract Year or an EfW Contract Year, that there would have been had the relevant Contract Year or EfW Contract Year continued to complete the relevant twelve (12) month period.

- 1.14 It is acknowledged by the Parties and agreed that none of Parts One, Two and Seven of the Method Statement are intended to be or are contractually binding.
- 1.15 Not used.
- 1.16 Save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment, or supplement to such document.
- 1.17 References in the Agreement to the "**Contractor**" shall, as the context requires, be deemed to be references to the Contractor in its capacities as either or both of ASS Contractor and EfW Contractor.

PART II – PRELIMINARY

2. DOCUMENTATION

- 2.1 The Contractor shall provide to the Authority in form and substance satisfactory to the Authority upon the signature of this Agreement:
- 2.1.1 a Director's Certificate duly executed and delivered by a director of the Contractor;
 - 2.1.2 the following documents, duly executed and delivered by the Contractor:
 - 2.1.2.1 the Feathers Wharf Agreement for Lease; and
 - 2.1.2.2 the Collateral Warranties; and
 - 2.1.3 a Director's Certificate duly executed and delivered by a director or the company secretary of the Guarantor.
- 2.2 The Authority shall provide to the Contractor in form and substance satisfactory to the Contractor upon signature of this Agreement the following:
- 2.2.1 a certificate in relation to this Agreement issued pursuant to the Local Government (Contracts) Act 1997;
 - 2.2.2 evidence of the identity and position held by the signatory of the certificate referred to in clause 2.2.1 and a copy of the relevant Authority resolution authorising the issue of the certificate, certified by an officer of the Authority;
 - 2.2.3 the following documents duly executed and delivered by the Authority:
 - 2.2.3.1 the Feathers Wharf Agreement for Lease; and
 - 2.2.3.2 the Collateral Warranties.
- 2.3 The Contractor confirms, subject to clause 2.7, receipt of the Collateral Warranties, executed and delivered by the relevant Constituent Council.
- 2.4 Prior to the Services Commencement Date, the Authority shall, in relation to each Collateral Warranty, either:

- 2.4.1 provide the Contractor with two (2) copies of such documentation (including applicable minutes and resolutions) as is publicly available and/or should as a matter of Law be publicly available from the relevant Constituent Council relating to the procedures followed and decisions taken by the relevant Constituent Council to authorise, execute and deliver the Collateral Warranty to the Contractor and the Authority; or
- 2.4.2 procure that the Constituent Council delivers to the Contractor a Constituent Council Officer's Certificate, or such other form of certificate as shall be reasonably acceptable to the Contractor.
- 2.5 If the Authority fails to provide the information referred to in clause 2.4.1 or the certificate referred to in clause 2.4.2 prior to the Services Commencement Date, then until such information or certificate is provided:
- 2.5.1 the Contractor shall continue to honour the terms of the Collateral Warranty as if it had been duly and properly executed and delivered as a binding contract; and
- 2.5.2 the Authority shall reimburse to the Contractor twenty per cent (20%) of any Diverted Tonnage Payments and/or Slow Tonnage Payments made by the Contractor under the Collateral Warranty.
- 2.6 The sole remedy of the Contractor in relation to a failure by the Authority to provide the information in clause 2.4.1, or the certificate referred to in clause 2.4.2, shall be the receipt of the reimbursement from the Authority under clause 2.5.2.
- 2.7 Following receipt of the information referred to in clause 2.4.1, or the certificate referred to in clause 2.4.2, or through its own enquiries and/or investigations, if the Contractor can establish, as far as reasonably practicable, that a Collateral Warranty has, on the balance of probabilities, not been duly and properly executed and/or not delivered as a binding contract by the Constituent Council, it shall notify the Authority in writing, whereupon:
- 2.7.1 it shall be entitled, without limitation and at its own risk, to assert its rights and declare the Collateral Warranty to be void ab initio;
- 2.7.2 if the Authority serves a notice on the Contractor agreeing with the Contractor, or fails to offer an opinion within twenty (20) Working Days of

receipt of the Contractor's notice pursuant to clause 2.7, it shall grant Relevant Relief to the Contractor on Slow Tonnage Payments and Diverted Tonnage Payments pending resolution of the issue between the relevant Constituent Council and the Contractor and/or pending the ratification and/or re-execution of the Collateral Warranty to the reasonable satisfaction of the Contractor;

2.7.3 if the Authority serves a notice on the Contractor disagreeing with the Contractor, the Contractor shall continue to make Slow Tonnage Payments and Diverted Tonnage Payments pending resolution of the issue between the relevant Constituent Council and the Contractor **PROVIDED THAT** the Contractor may challenge the Authority's position by referring the matter to the Dispute Resolution Procedure. If the Dispute Resolution Procedure Finally Determines that the Collateral Warranty has not, on the balance of probabilities, been duly and properly executed and/or not delivered as a binding contract by the Constituent Council, the Authority shall reimburse to the Contractor any Slow Tonnage Payments and Diverted Tonnage Payments made by the Contractor in accordance with this clause 2.7.3 and shall thereafter grant Relevant Relief to the Contractor on Slow Tonnage Payments and Diverted Tonnage Payments pending resolution of the issue between the relevant Constituent Council and the Contractor;

2.7.4 if it is determined that the Collateral Warranty was ultra vires, all payments made by the Contractor thereunder shall be reimbursed by the Authority with interest at the Default Interest Rate from the date upon which any relevant sum was paid by the Contractor and/or deducted from any Invoice; and

2.7.5 if it is determined that the Collateral Warranty was not ultra vires, all payments in respect of which the Authority gave Relevant Relief or which were withheld by the Contractor shall be paid to the Authority and/or deducted from an Invoice, together with interest at the Default Interest Rate from the date upon which any relevant sum became properly due and payable.

2.8 Upon the request of the Contractor, the Authority shall use reasonable endeavours to assist the Contractor in obtaining Planning Permissions in respect of the Works

and/or any works contemplated by the Contractor at the Feathers Wharf Site, including, without limitation:

- 2.8.1 providing historical information regarding the movement and disposal of Authority Waste at Authority Sites and the Feathers Wharf Site;
 - 2.8.2 providing written support for any application for Planning Permission and in respect of any such application as part of any public inquiry held to consider any application for Planning Permission;
 - 2.8.3 engaging in discussions with landowners or developers of sites neighbouring the Authority Sites and the Feathers Wharf Site, including without limitation the owners of Battersea Power Station in relation to the Cringle Dock Site and Berkeley Homes plc and/or any of its relevant Affiliates in relation to Smugglers Way; and
 - 2.8.4 engaging in discussions with any Relevant Authority for the purposes of agreeing the terms and conditions associated with any prospective Planning Permission for such of the Authority Sites and the Feathers Wharf Site in respect of which the Authority is the freeholder or leaseholder.
- 2.9 In giving the Contractor assistance under clause 2.8, the Authority shall provide the time of its officers and staff at no cost to the Contractor.
- 2.10 Subject to clause 2.9, the Contractor shall indemnify the Authority for such of the Authority's reasonable costs and expenses incurred in connection with the provision of any assistance under clause 2.8 as shall have been approved in writing by the Contractor prior to any such costs and expenses being incurred. Where the Authority anticipates that it will incur reasonable costs and expenses, it shall be entitled to withhold its assistance until the Contractor agrees to reimburse the Authority such reasonable costs and expenses in accordance with this clause 2.10.
- 2.11 Not used.
- 2.12 The Parties shall, within twenty (20) Working Days of the Agreement Date jointly apply for court orders under section 38(4) Landlord and Tenant Act 1954 in respect of the Smugglers Way Lease and the Cringle Dock Lease, and after such orders have been granted and in any event prior to the Services Commencement Date the Parties shall execute and deliver the Smugglers Way Lease and the Cringle Dock Lease. The

Parties acknowledge that the Smugglers Way Lease and the Cringle Dock Lease were entered into on 12 July 2002, and that on 26 January 2012 a "Licence to Use" part of the Smugglers Way Site on which a reuse workshop was constructed by the Contractor pursuant to this Agreement was granted by the Contractor to London Reuse Limited for a term of 8 years.

2.13 In support of its obligations under the ASS Contract only, the Contractor shall calculate the NAV of the Guarantor as at the final Working Day of each month (each a "NAV Review Date") and shall notify the Authority of the NAV by the fifteenth Working Day of the following month on each occasion it is below [REDACTED], and the manner in which the NAV was calculated. If the NAV of the Guarantor at any NAV Review Date during the Contract Period falls below [REDACTED], the Contractor shall, in addition to the maintenance of the Guarantee, deliver to the Authority within 10 Working Days a letter of credit from the Letter of Credit Issuing Bank in the form set out in Appendix M (the "Top-up Letter of Credit"), with such amendments as may be approved by the Authority (acting reasonably). Such Top-up Letter of Credit shall at all times other than during a 5 Working Day period immediately following a drawing have an undrawn value of the greater of [REDACTED] million and the amount necessary to ensure that the NAV of the Guarantor plus the value of the Top-up Letter of Credit equals at least [REDACTED], as shall be demonstrated to the reasonable satisfaction of the Authority at the point of time when the Top-up Letter of Credit is put in place and thereafter at each NAV Review Date. The Total L/C Amount (as defined in the Top-Up Letter of Credit) shall be reviewed on each NAV Review Date, adjusted to at least the level required by this clause 2.13 within 10 Working Days following each such NAV Review Date, and remain in place until the earlier of:

- (a) 6 months after the Expiry Date or Termination Date (as applicable) if the Authority fails to make any claims against the Contractor in such period, or, if any such claims are made (irrespective of whether the amount of the claim(s) have been quantified within such period), until all such claims are agreed or Finally Determined and any amounts owing to the Authority have been paid; and
- (b) the date on which the Contractor is able to demonstrate (to the reasonable satisfaction of the Authority) that the NAV of the Guarantor is equal to or greater than [REDACTED].

Where the Top-Up Letter of Credit is no longer required to remain in place as a result of the operation of paragraphs (a) or (b) of this clause 2.13, the Top-up Letter of Credit shall be returned to the Contractor by the Authority within 10 Working Days of being requested to do so in writing by the Contractor.

- 2.14 For the purposes of clause 2.13, a letter from the auditor of the Guarantor addressed to the Authority and in a form reasonably acceptable to the Authority confirming the NAV of the Guarantor shall, in the absence of manifest error, bad faith or fraud, be conclusive evidence of the NAV of the Guarantor. In order to enable the Contractor to procure that such a letter is issued to the Authority, the Authority agrees to enter into an engagement letter with the auditors of the Guarantor on reasonable market terms and conditions, upon request from and at the cost of the Contractor.

Notwithstanding any right that the Authority has to demand or request payment of any amount under the Top-up Letter of Credit provided pursuant to clause 2.13 of this Agreement, the Authority agrees that it shall not demand or request payment of any amount under the Top-up Letter of Credit unless and until:

- (a) the Contractor has agreed in writing that such amount is due and payable by the Contractor to the Authority pursuant to this Agreement; or
- (b) through the operation of the Dispute Resolution Procedure, the Adjudicator has determined in accordance with the Dispute Resolution Procedure that such amount is due and payable by the Contractor to the Authority;

and in either case:

- (c) the Authority has made a written demand on the Contractor for payment of such amount; and
- (d) the Contractor has failed to pay such amount in full to the Authority within 20 Working Days of service on the Contractor of such demand or, if later, the period specified for payment by the Adjudicator; and
- (e) the Authority has made written demand on the Guarantor under the Guarantee for payment of such amount (to the extent that the same has not been met by the Contractor) and the Guarantor has failed to pay such amount within 10 Working Days of service on the Guarantor of such demand.

- 2.15 For the avoidance of doubt, the Authority shall only make demands under the Guarantee, and calls under the Top-Up Letter of Credit, in relation to liabilities of the Contractor incurred under the ASS Contract and not in relation to any liability of the Contractor or any other party under the EfW Contract or the Finance Direct Agreement.

3. WARRANTIES

- 3.1 The Contractor warrants to the Authority, as at each of the Agreement Date, the First Amended Agreement Date, the Second Amended Agreement Date and the Third Amended Agreement Date, in the terms set out in Schedule 19. If, after the Agreement Date and before the Services Commencement Date, any event shall occur or arise which results in any of the warranties in Schedule 19 being untrue or incorrect in any respect, the Contractor shall promptly notify the Authority in writing thereof and provide such information concerning the event or matter as the Authority may reasonably require.
- 3.2 Save as expressly stated in this Agreement or otherwise confirmed in writing to the Contractor that such data, documents, information and other materials may be relied upon by the Contractor, the Authority gives no warranty and shall have no liability whatsoever to the Contractor under this Agreement in respect of any inaccuracy, unfitness for purpose, error, defect or inadequacy of any Disclosed Data supplied:
- 3.2.1 prior to or in accordance with the competitive tender for the right to provide the Services and to carry out the Works;
 - 3.2.2 in the negotiation of this Agreement;
 - 3.2.3 in relation to any latent defects or the physical condition and/or any environmental contamination of the Authority Assets and/or any conduits plant and equipment on under or over the Authority Sites and the state, physical condition, fitness for purpose of, and the presence of Hazardous Substances in, under or on, any of the Authority Assets,

nor shall the Authority have any such liability in relation to any failure or omission to provide any material or information in connection with any of the above and the Contractor shall not be relieved from liability in respect of any of its obligations in this Agreement as a result thereof.

- 3.3 The Authority does not give any warranty or undertaking that the Disclosed Data represents all of the information in its possession or power which may be relevant or material to the matters contemplated by this Agreement and neither the Authority nor any of its representatives, servants or agents shall have any liability whatsoever to the Contractor to make available any further information, materials, documents or data or to keep the Disclosed Data up to date or to inform the Contractor (whether before or after execution of this Agreement) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.
- 3.4 The Contractor acknowledges and confirms that it shall not be entitled to make any claim (other than any claim which may arise under clause 25) against any Authority Party whether in damages or for any other remedy or for any additional payment on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or the matters referred to in clauses 3.2 and 3.3 or on the grounds that incorrect or insufficient information relating thereto or to the Authority Assets was given to it by any person whether or not in the employ of the Authority.
- 3.5 The Authority warrants as at the Third Amended Agreement Date that its obligations under the Finance Direct Agreement constitute valid, binding and enforceable obligations of the Authority.
- 3.6 The Parties acknowledge that indemnity given by the Contractor in the Intercreditor Agreement in relation to the Authority's *vires* was provided on the basis of and in reliance on the warranty given in clause 3.5 above.

PART III – CONSTRUCTION

4. PLANNING, DESIGN AND CONSTRUCTION OF AUTHORITY SITE WORKS

- 4.1 From the Agreement Date the Contractor shall develop the design of the Authority Site Works in accordance with the Design Development Procedure set out in Schedule 4. The Contractor and the Authority each agrees to comply with its respective obligations under the Design Development Procedure.
- 4.2 In preparing the Design Proposals for the Authority Site Works, the Contractor shall take into account the MRF Outline Design or the CA Site Outline Design (as appropriate), but shall not be obliged to comply with either the MRF Outline Design or the CA Site Outline Design.
- 4.3 The Parties acknowledge that the Agreed Design Proposals may need to be made subject to a Variation as a result of the recommendations of a Relevant Authority during the planning process and/or the implementation of the applicable Planning Permission and that such Variation may in appropriate circumstances require an adjustment to the Transfer Value afforded to the Reverting Assets affected by the relevant Variation and/or a variation of the Contract Rates in accordance with clause 6.2.
- 4.4 The Contractor shall, prior to submission to the relevant planning authority, submit all Planning Permission applications and/or modifications to such applications relating to the Authority Site Works to the Authority for its prior written approval, such approval not to be unreasonably withheld or delayed.
- 4.5 The Authority agrees that it shall not object to any application for Planning Permission in respect of the EfW Facility.
- 4.6 All liability attaching to the design of the Authority Site Works (whether pursuant to statute, the provisions of this Agreement or otherwise) shall remain with the Contractor and shall not in any way be affected by:
- 4.6.1 any design carried out by or on behalf of the Contractor at the request of the Authority; or
- 4.6.2 the involvement of the Authority in any element of the design development in accordance with the Design Development Procedure.

- 4.7 The Contractor shall, subject to obtaining all Necessary Consents for the Authority Site Works and to agreeing any Variations pursuant to the terms of such Necessary Consents, design, construct, commission and maintain the Authority Site Works in accordance with the requirements of this Agreement. The Contractor shall apply for, and diligently pursue, all Necessary Consents for the Authority Site Works as soon as reasonably practicable in accordance with a timeline agreed by both Parties (acting reasonably).
- 4.8 The Contractor undertakes that:
- 4.8.1 the Authority Site Works shall be designed with all the skill and care to be expected of a professionally qualified and competent designer experienced in the design of facilities of a similar nature, scope and complexity to those comprised in the Authority Site Works;
 - 4.8.2 as a minimum, the MRF Works will include the provision of the plant and equipment set out in Appendix 6 of Part Six of the ASS Method Statement, or such alternative plant and equipment as the Authority may approve, such approval not to be unreasonably withheld or delayed;
 - 4.8.3 as a minimum, the CA Site Works will include the provision of the plant and equipment set out in Appendix 6 of Part Six of the ASS Method Statement, or such alternative plant and equipment as the Authority may approve, such approval not to be unreasonably withheld or delayed;
 - 4.8.4 the Authority Site Works shall be constructed using good quality materials and equipment which are new save where Good Industry Practice does not require the use of new materials or equipment; and
 - 4.8.5 the Authority Site Works shall be designed and constructed in accordance with Good Industry Practice, all Necessary Consents, the applicable Appendices in Part Six of the ASS Method Statement and so as to comply with all relevant Laws.
- 4.9 The Contractor shall, in its carrying out of the Authority Site Works, use no goods, materials, substances or products which, in accordance with Good Industry Practice, are known to be or are reasonably suspected at the time that such construction is undertaken to be:

- 4.9.1 deleterious, either by themselves or becoming deleterious when used in conjunction with any other materials or in any particular situation or location;
 - 4.9.2 deleterious with the passage of time;
 - 4.9.3 damaged by or harmful to the structure in which they are to be incorporated or affixed;
 - 4.9.4 a potential hazard to health or safety which would be a potential hazard if not handled, stored, installed or treated in accordance with Good Industry Practice;
 - 4.9.5 capable of posing a threat to the stability, integrity or performance of the Authority Site Works or any part of the Authority Site Works; or
 - 4.9.6 capable of reducing the normal life expectancy of any Authority Site Facilities or any part of any Authority Site Facilities.
- 4.10 In relation to the MRF Works, the Contractor hereby elects to be treated as the only "Client".

In relation to the MRF Works, the Contractor shall, as soon as is practicable after initial design work or other preparation for construction work relating to the MRF Works has begun and in accordance with the CDM Regulations 2007, appoint the Project Manager to be the CDM Co-ordinator.

After appointing the CDM Co-ordinator and as soon as is practicable after the Contractor has sufficient knowledge of the MRF Works to be able to select a suitable person for such appointment, the Contractor shall appoint the Principal Contractor in relation to the MRF Works. For the avoidance of doubt, the Contractor may appoint different parties to take on, in turn, the role of the Principal Contractor.

In relation to the MRF Works, the Contractor shall procure (and the Authority agrees that the Contractor may procure) that the CDM Co-ordinator serves, as soon as is practicable after his appointment, a notice on the Health and Safety Executive in the form required by the CDM Regulations 2007 which contains the particulars specified in Schedule 1 to the CDM Regulations 2007 (or such particulars as are then available) and confirming, inter alia, that the Contractor will be the only Client in

respect of the MRF Works. The Contractor shall provide a copy of such notice to the Authority as soon as reasonably practicable thereafter.

- 4.10A In relation to all Authority Site Works other than the MRF Works, the Contractor hereby elects to be treated as the only Client for the purposes of the CDM Regulations.

In relation to all Authority Site Works other than the MRF Works, the Contractor shall appoint a person to be the CDM Co-ordinator (where the CDM Regulations 1998 or CDM Regulations 2007 apply) or Principal Designer (where the CDM Regulations 2015 apply). The Contractor shall, by no later than 5 April 2008, take reasonable steps to ensure that any CDM Co-ordinator or Principal Contractor already appointed on 6 April 2007 is competent within the meaning of the CDM Regulations 2007.

- 4.10B The Contractor shall:

4.10B.1 on or within five (5) days of the First Amended Agreement Date, deliver to the Authority the RPS Contractor Collateral Warranty duly executed by the Contractor and the Project Manager;

4.10B.2 not enter into the Civil Works Contract or the Plant Supply and Installation Contractor without the Authority's prior written approval to its terms (such approval not to be unreasonably withheld or delayed);

4.10B.3 deliver to the Authority the Civil Works Contract and the Plant Supply and Installation Contract within five (5) days of the execution of the same by the parties thereto;

4.10B.3 on or within five (5) days after the date upon which the Civil Works Contract comes into full force and effect, deliver to the Authority a Construction Contractor Collateral Warranty duly executed by the Contractor and the Civil Works Contractor;

4.10B.4 on or within five (5) days after the date upon which the Plant Supply and Installation Contract comes into full force and effect, deliver to the Authority a Construction Contractor Collateral Warranty duly executed by the Contractor and the Plant Supply Contractor.

- 4.10C In the event that the Contractor recovers damages from RPS (or any other party) in relation to the MRF Works and/or the CA Site Works, the Contractor shall pay to the Authority an amount equal to [REDACTED] of the damages received net of the external costs and expenses reasonably and properly incurred by the Contractor, including the Contractor's reasonably and properly incurred external legal, expert and other consultancy costs.
- 4.11 The Contractor shall comply with its obligations under the CDM Regulations and the CDM Regulations 2015 in relation to the Authority Site Works (including the MRF Works) and shall procure compliance with the CDM Regulations and CDM Regulations 2015 by such of its Sub-Contractors and members of its Professional Team as may be appointed in relation to the Authority Site Works.
- 4.12 As soon as reasonably practicable after the issue of the Commissioning Certificate in respect of any Authority Site Works, the Contractor shall provide a certified copy of the full and complete Health and Safety File relating to such Authority Site Works to the Authority.
- 4.13 Following provision of the relevant Health and Safety File pursuant to clause 4.12, the Contractor shall, for the remainder of the Contract Period maintain and update the Health and Safety File in respect of the Authority Site Works and ensure availability of the relevant Health and Safety File for use in connection with such Variations as may be carried out to the Completed Authority Site Works.
- 4.14 The Contractor shall, in respect of Sites on which Authority Site Works are to be undertaken:
- 4.14.1 procure the connection of the Authority Site Works to all Utilities so as to comply with all applicable requirements and shall comply or procure compliance with all its obligations and those of its Sub-Contractors (where appropriate) under any associated agreements with the suppliers of Utilities;
- 4.14.2 be responsible for determining the location of Utilities at each Authority Site and for the maintenance of Utilities to the Authority Site Works, except to the extent that such maintenance is the responsibility of the relevant statutory undertaker, utility company, local authority or other like body;

- 4.14.3 make and take account of all necessary investigations and surveys as to drainage and Utilities at each Authority Site as is in accordance with Good Industry Practice;
- 4.14.4 enter into, or procure that its Sub-Contractors enter into, such agreements as may be necessary with the suppliers of Utilities for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any Utilities not within an Authority Site;
- 4.14.5 pay to all statutory undertakers, utility companies, local authorities (other than the Authority) or other like bodies all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of Utilities within each Authority Site:
- 4.14.5.1 required as a result of the carrying out of the Authority Site Works; and
 - 4.14.5.2 to enable the Contractor to connect to Utilities outside that Authority Site; and
- 4.14.6 use reasonable endeavours to carry out the Authority Site Works in such a way as to minimise disruption to any Utilities already connected to such Authority Site. If and to the extent that disruption to the Services cannot be reasonably avoided by virtue of the Authority Site Works, the Contractor shall (at no cost to the Authority) be entitled to submit a Variation Notice pursuant to clause 21.1 requesting a temporary Variation to the Services for the period of such disruption, the Authority's consent to such Variation not to be unreasonably withheld or delayed. Any such temporary Variation shall:
- 4.14.6.1 in no circumstances attempt to relieve the Contractor from its obligation to accept delivery of all Authority Waste in accordance with the Output Specification and the ASS Method Statement;
 - 4.14.6.2 not require the Authority to incur additional expenditure; and
 - 4.14.6.3 so far as reasonably practicable endeavour to minimise the disruption to the Services, the Authority and the Constituent Councils.

- 4.15 Any Authority Waste used for the commissioning of the MRF purposes shall be charged to the Authority at the Contract Rate set out in the Payment Mechanism.

5. GROUND CONDITIONS

- 5.1 Without prejudice to the provisions of clause 15, the Contractor has had the opportunity of inspecting the physical conditions (including the sub-surface conditions) and other conditions of or affecting the Authority Sites and shall be deemed to have fully acquainted itself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the Authority Site Works.
- 5.2 Save to the extent that the same comprises a Compensation Event or is legislated for under the provisions of clause 15, no failure on the part of any Contractor Party to discover or foresee any condition, risk, contingency or circumstance referred to in clause 5.1, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Contractor to any payment.
- 5.3 The Contractor shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Authority regarding any such matter as is referred to in this clause 5 and the Authority makes no representation or warranty as to the accuracy or completeness of any such survey, report or document or for any representation or statement, whether negligently or otherwise made, therein contained.
- 5.4 Subject to the rights of the Contractor under this Agreement, and save as otherwise expressly provided for in this Agreement, the Contractor, in respect of the Sites, accepts entire responsibility for ascertainment of the ground conditions, the ground to be excavated and built upon and its loadbearing and other relevant properties.
- 5.5 Nothing in this Agreement or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Authority Sites or any part thereof for the Authority Site Works or any other purpose required by the Contractor to satisfy its liabilities and obligations under this Agreement.

6. CONSTRUCTION COMPLETION

- 6.1 Subject to the provisions of clauses 8, 9 and 10 the Contractor shall Complete the MRF Works and the CA Site Works by the relevant Target Completion Date.

6.1.1 The MRF Works are deemed to have been completed at 23:59 on 31 December 2012 and the Contractor shall not be liable for any liquidated damages under clause 7.3.

6.1.2 The CA Site Works and the reuse workshop works at the Smugglers Way Site shall be deemed Complete on 3 April 2013.

6.2 The Contractor and the Authority agree to bear the MRF Contract Price in the manner set out in, and subject to, the provisions of clause 6A in the following proportions:

6.2.1 the Contractor shall bear:

6.2.1.1 [REDACTED] of the MRF Contract Price Excluded Elements;

6.2.1.2 [REDACTED] of the MRF Contract Price Specialist Elements; and

6.2.1.3 [REDACTED] of the MRF Contract Price Residual Elements;

up to the point at which the Authority's liability under clause 6.2.2 has reached the MRF Contract Price Authority Cap, and 100% of all such amounts thereafter (the "**MRF Contract Price Contractor Percentage**"); and

6.2.2 the Authority shall bear:

6.2.2.1 [REDACTED] in respect of the MRF Works (the "**MRF Contract Price Authority Percentage for the MRF Works**"); and

6.2.2.2 a maximum of [REDACTED] in respect of the Additional MRF Works (which shall be paid in accordance with clause 29) (the "**MRF Contract Price Authority Percentage for the Additional MRF Works**").

The Parties acknowledge that the MRF Contract Price Authority Percentage for the MRF Works is the final figure. Both Parties shall use reasonable endeavours to mitigate the costs for the Additional MRF Works.

6.3 The Contractor shall not propose or agree to enter into any MRF Contract, or any variation of a MRF Contract, without the prior written consent of the Authority, such

approval not to be unreasonably withheld or delayed provided that no such consent shall be required to any change or variation to a MRF Contract where such change or variation is not a material change or variation and does not result in any increase to the MRF Contract Price. No approval given by the Authority to any Building Contract or any variation thereto shall:

6.3.1 in any way relieve the Contractor from any of its obligations under the Agreement; or

6.3.2 imply that the MRF Contract or variation is feasible, suitable or appropriate; or

6.3.3 prejudice the right of the Authority to take action under the Agreement in connection with the MRF Contract or any variation thereto, or any action taken in accordance with such MRF Contract or variation; or

6.3.4 (save to the extent that the Authority thereby becomes liable to pay the MRF Contract Price Authority Percentage for the MRF Works of the MRF Contract Price and/or the MRF Contract Price Authority Percentage for the Additional MRF Works of the contract price of the Additional MRF Works) make the Authority liable for any acts or omissions of the Contractor or the counterparty to the MRF Contract undertaken pursuant to such MRF Contract or variation.

6.4 In relation to the MRF Works and the Additional MRF Works:

6.4.1 the Contractor shall give the Authority no less than ten (10) Working Days' prior notice of the dates and duration of the acceptance tests set out in the relevant Building Contract (the "**Acceptance Tests**"); and

6.4.2 the Authority shall be entitled (but not obliged) to attend the performance of the Acceptance Tests with such numbers of its technical advisers as are reasonably necessary in order to monitor the correct performance of the Acceptance Tests.

6.5 If the MRF Works and/or the MRF Additional Works fail to pass the Acceptance Tests, the Acceptance Tests shall be repeated as soon as reasonably practicable.

- 6.6 Within ten (10) Working Days of the MRF Works and/or the Additional MRF Works having passed the Acceptance Tests, the Contractor shall issue a Commissioning Certificate and the Authority shall, within ten (10) Working Days of receipt of such certificate, if satisfied that the MRF Works and/or the Additional MRF Works have so passed the Acceptance Tests, countersign and return it to the Contractor, or, if not so satisfied, shall state in writing why it is not prepared to do so. If in the event of a dispute it is subsequently determined that such MRF Works and/or the Additional MRF Works have passed the Acceptance Tests and that the Commissioning Certificate has therefore been correctly issued, or if the Authority has not responded within ten (10) Working Days of receipt of the relevant Commissioning Certificate, the Commissioning Certificate shall be deemed to have been countersigned on the date it was issued (and the Contractor shall accordingly incur no liability for the delay between the date of issue and the date upon which it was so determined).
- 6.7 Where a countersignature of the Commissioning Certificate is correctly refused, the Commissioning Certificate shall, subject to clause 6.6, be deemed not to have been issued and the Contractor shall be entitled to re-apply for the Authority's countersignature once the work required in order for the Acceptance Tests to be passed has been carried out.
- 6.8 The Contractor agrees with the Authority that any countersignature of the Commissioning Certificate in respect of the MRF Works and/or the Additional MRF Works by or on behalf of the Authority shall be for the sole purpose of establishing purported compliance with the relevant Target Completion Date, and that it does not in any way indicate or imply acceptance by the Authority that the MRF Works and/or the Additional MRF Works comply with the Output Specification or the ASS Method Statement, or otherwise relieve the Contractor of any of its obligations under this Agreement other than its liability to pay liquidated damages for delay pursuant to clause 7.3.
- 6.9 In relation to the CA Site Works and/or the Additional CA Site Works, the Contractor shall give the Authority no less than ten (10) Working Days' notice of the date or dates on which the Contractor considers that practical completion (as defined in the Building Contract for the relevant CA Site Works or the Additional CA Site Works) of the CA Site Works and/or the Additional CA Site Works or that part of the CA Site Works and/or the Additional CA Site Works relating to the Smugglers Way CA Site or the Cringle Dock CA Site will be achieved.

- 6.10 Within ten (10) Working Days of receiving the Commissioning Certificate for each of the CA Site Works and/or the Additional CA Site Works, the Contractor shall provide the Authority with a certified copy of such Commissioning Certificate. The Authority shall, within ten (10) Working Days of receipt of any such Commissioning Certificate, if satisfied that the Commissioning Certificate has been correctly issued, countersign and return it to the Contractor, or, if not so satisfied, shall state in writing why it is not prepared to do so. If in the event of a dispute it is subsequently determined that the Commissioning Certificate has been correctly issued, or if the Authority has not responded within ten (10) Working Days of receipt of the relevant Commissioning Certificate, the Commissioning Certificate shall be deemed to have been countersigned on the date it was issued (and the Contractor shall accordingly incur no liability for the delay between the date of issue and the date upon which it was so determined).
- 6.11 Where a countersignature of the Commissioning Certificate is correctly refused, the Commissioning Certificate shall, subject to clause 6.10, be deemed not to have been issued and the Contractor shall be entitled to re-apply for the Authority's countersignature once the work required in order for the Commissioning Certificate to be correctly issued has been carried out.
- 6.12 The Contractor agrees with the Authority that any countersignature of the Commissioning Certificate in respect of the relevant CA Site Works and/or the Additional CA Site Works by or on behalf of the Authority shall be for the sole purpose of establishing purported compliance with the relevant Target Completion Date, and that it does not in any way indicate or imply acceptance by the Authority that the relevant CA Site Works and/or the Additional CA Site Works comply with the Output Specification or the ASS Method Statement, or otherwise relieve the Contractor of any of its obligations under this Agreement other than its liability to pay liquidated damages for delay pursuant to clause 7.4.
- 6.13 Within five (5) Working Days of the EfW Commissioning Date, the Contractor shall deliver to the Authority a certified copy of the Take Over Certificate.
- 6.14 Any dispute arising under this clause may be referred to the Dispute Resolution Procedure.

6A MRF CONTRACT PRICE

6A.1 The Authority shall, as required by clause 6.2.2, pay to the Contractor the MRF Contract Price Authority Percentage for the MRF Works and the the MRF Contract Price Authority Percentage for the Additional MRF Works by making payments to the Contractor in the following manner:

6A.1.1 the Authority shall be liable to pay to the Contractor the MRF Contract Price Authority Percentage for the MRF Works and the MRF Contract Price Authority Percentage for the Additional MRF Works against VAT invoices prepared and rendered by the Contractor (the "**MRF Contract Price Invoices**").

6A.1.2 Each MRF Contract Price Invoice shall:

6A.1.2.1 include details of the costs and expenses comprising the MRF Contract Price or Additional MRF Contract Price which are the subject of the MRF Contract Price Invoice;

6A.1.2.2 specify the share of the MRF Contract Price or Additional MRF Contract Price payable by each of the Contractor (the "**Contractor's Share**") and the Authority (the "**Authority's Share**");

6A.1.2.3 include reasonable supporting information and documentation evidencing the costs and expenses paid or payable by the Contractor toward the MRF Contract Price or Additional MRF Contract Price as supplied to and approved by the Project Manager;

6A.1.2.4 specify any VAT payable by the Authority in respect of the Authority's Share;

6A.1.2.4 (in relation to the Additional MRF Contract Price only) be accompanied by such other information as the Authority may reasonably require; and

6A.1.2.5 include only costs and expenses already paid by the Contractor.

6A.1.3 Each MRF Contract Price Invoice shall be submitted and paid in accordance with clauses 29.3 to 29.7 inclusive.

6A.1.4 Where the Project Manager has approved in writing for payment any invoice provided to the Contractor pursuant to any MRF Contract, then the parties agree that such amount shall be deemed for the purposes of this Agreement to be properly payable by the Contractor pursuant to such MRF Contract.

6A.2 The Contractor agrees that the Authority has paid the MRF Contract Price Authority Percentage for the MRF Works and the MRF Contract Price Authority Percentage for the Additional MRF Works and shall have no further responsibility in relation to payment for the MRF Works or Additional MRF Works.

6B DEVELOPMENT OF SMUGGLERS WAY CA SITE

6B.1 The Contractor shall produce, for review by the Authority, an outline programme for upgrading the Smugglers Way CA Site, which shall include the submission of a planning permission within 6 months of the commencement of the MRF Works at the Smugglers Way Site. The parties will co-operate in good faith to agree such programme for upgrading the Smugglers Way CA Site, and shall jointly submit to the Director of Technical Services (as defined in the s106 Agreement) (within 14 days of the commencement of the MRF Works at the Smugglers Way Site) such programme.

6B.2 Within six (6) months of the commencement of the MRF Works at the Smugglers Way Site, the Contractor shall submit to the relevant planning authority a planning application (the "**Smugglers Way CA Site Application**") for the CA Site Works to be carried out at the Smugglers Way CA Site (the "**Smugglers Way CA Site Works**") and such planning application shall reflect the design solution set out in the CA Site Outline Design.

6B.3 The Contractor shall apply for and diligently pursue all Necessary Consents needed to carry out the Smugglers Way CA Site Works in accordance with the programme referred to in clause 6B.1 above, to the extent needed to meet the CA Site Outline Design, and shall act reasonably in responding to any questions raised or requests made by the relevant planning authority in respect of the planning permission for the Smugglers Way CA Site (the "**Smugglers Way CA Site Permission**"), provided that such requests do not result in any changes to the design of the Smugglers Way CA Site which are inconsistent in any way with the CA Site Outline Design. The Contractor shall not be required to make any changes to the Smugglers Way CA Site Application by the Authority except to the extent that such changes may be required

to ensure that the Smugglers Way CA Site Application is based upon the CA Site Outline Design.

6B.4 Notwithstanding the provisions of clause 6B.3, the Contractor shall not be obliged under this Agreement to pursue at its own cost any Proceedings in relation to the Smugglers Way CA Site Application. Where the Authority (acting in its absolute discretion) requires the Contractor to pursue any such Proceeding, the Authority shall reimburse to the Contractor all such costs, expenses, fees and charges associated with such Proceedings (within 20 Working Days of the Contractor notifying the Authority of such costs, expenses, fees and charges having being incurred) for so long as the Authority requires the Contractor to pursue any such Proceedings. For the purposes of this clause 6B.4, references to any Proceedings shall include, without limitation:

- (a) a calling in or determination by the Secretary of State or any inspector appointed by him of the Planning Application under Section 77 of the Planning Act;
- (b) an appeal against refusal (including deemed refusal) of the Smugglers Way CA Site Application;
- (c) an application seeking to remove or modify any conditions imposed by the Smugglers Way CA Site Permission;
- (d) an appeal against refusal including deemed refusal of any application seeking to remove or modify any conditions imposed by the Smugglers Way CA Site Permission; and
- (e) an application to the Court pursuant to Section 288 of the Planning Act in respect of the Smugglers Way CA Site Application.

If and from the date upon which the Smugglers Way CA Site Application is refused, there shall be an adjustment to the General Waste Handling Payment as set out in paragraph 12.1(b) of the Payment Mechanism.

6B.5 Save to the extent necessary to ensure that the Smugglers Way CA Site Application is based upon the CA Site Outline Design, where the Authority wishes to raise any objection to the Smugglers Way CA Site Application or requires any changes to be

made to the Smugglers Way CA Site Works, the Authority shall do so pursuant to the procedure in clause 21 (Variations).

- 6B.6 The Contractor shall notify the Authority within ten (10) Working Days of any Smugglers Way CA Site Permission being granted and provide to the Authority a copy of the Smugglers Way CA Site Permission within ten (10) Working Days of publication of such Smugglers Way CA Site Permission.
- 6B.7 The Contractor shall not be required to commence the Smugglers Way CA Site Works until such date as the Smugglers Way CA Site Permission has been granted (provided it has been granted without any conditions compliance with which would mean that the CA Site Planning Condition Budget would be exceeded and the Judicial Review Period has expired in respect of the Smugglers Way CA Site Permission).
- 6B.8 Where, during the Judicial Review Period, a challenge is instituted in respect of the Smugglers Way CA Site Permission, the Authority shall indemnify and keep indemnified the Contractor for all costs, losses, expenses and liabilities reasonably and properly incurred as a result of any requirement of the Authority to defend such a challenge or resubmit any Smugglers Way CA Site Application and the Contractor shall mitigate such costs, losses, expenses and liabilities.
- 6B.9 The Contractor shall, when it provides to the Authority a copy of the Smugglers Way CA Site Permission, confirm to the Authority whether such permission includes any conditions compliance with which would mean that the CA Site Planning Condition Budget would be exceeded. If the Contractor does not confirm to the Authority within a further ten (10) Working Day period that such permission includes any such conditions, then the Contractor shall be deemed to have accepted that no such conditions exist. Where the parties do not agree whether the Smugglers Way CA Site Permission includes any such conditions, either party may refer such matter to the Dispute Resolution Procedure.
- 6B.10 Where it is agreed or determined that a Smugglers Way CA Site Permission is granted subject to any conditions compliance with which would mean that the CA Site Planning Condition Budget would be exceeded, then, within forty (40) Working Days (or such longer period agreed between the parties) the Authority shall (subject to clause 6B.13) either:

- (a) issue a Variation Notice pursuant to clause 21 indicating in what way it wishes the Contractor to carry out the Smugglers Way CA Site Works so as to ensure that the Contractor is in no better and no worse position than if the Smugglers Way CA Site Permission did not contain any such conditions; or
- (b) confirm to the Contractor that it does not wish the Contractor to carry out any CA Site Works at the Smugglers Way CA Site (in which event an adjustment to the General Waste Handling Payment shall be made as set out in paragraph 12.1(b) of the Payment Mechanism),

whereupon the Contractor shall not be required under this Agreement to implement the Smugglers Way CA Site Works unless and until a Variation Notice has been received pursuant to this clause 6B.9 and is required to be implemented pursuant to clause 21.21 (Variations).

6B.11 If the Authority does not reply to the Contractor within such forty (40) Working Day period with a Variation Notice in the terms set out above, then (subject to clause 6B.13) the Authority shall be deemed to have confirm to the Contractor that it does not wish the Contractor to carry out any CA Site Works at the Smugglers Way CA Site and the Contractor shall not be obliged to carry out the Smugglers Way CA Site Works under this Agreement.

6B.12 Notwithstanding any other provisions of this Agreement, upon Completion of the Smugglers Way CA Site Works pursuant to this Agreement (including, without limitation, this clause 6B), the Contractor shall be deemed to have fulfilled its obligations in full under this Agreement to carry out and Complete all of the CA Site Works and shall thereafter be irrevocably relieved of its obligations under this Agreement to carry out any further CA Site Works on the Smugglers Way CA Site or any other CA Site.

6B.13 Notwithstanding the provisions of clauses 6B.10 and 6B.11, where it is agreed or determined that a Smugglers Way CA Site Permission is granted subject to any conditions compliance with which would mean that the CA Site Planning Condition Budget would be exceeded, in circumstances where the Contractor and the Authority are obliged pursuant to the terms of clause 13.4 of the s106 Agreement to carry out the Smugglers Way CA Site Works, then:

- (a) the provisions of clauses 6B.10 and 6B.11 shall not apply;

- (b) the Contractor shall carry out the Smugglers Way CA Site Works in accordance with such Smugglers Way CA Site Permission; and
- (c) the Authority shall bear all costs reasonably incurred and any losses suffered by the Contractor in complying with any such conditions.

6B.14 The Contractor agrees to undertake an open competitive tender process for the Smugglers Way CA Site Works pursuant to the procedure set out in clause 21.11, and to agree the identity of the sub-contractor with the Authority (such agreement by the Authority not to be unreasonably withheld or delayed).

6B.15 The Authority shall bear [REDACTED] of the Smugglers Way CA Site Works Cost (the "**Authority Smugglers Way CA Site Works Cost Share**") and the remaining [REDACTED] shall be borne by the Contractor, **PROVIDED THAT:**

- (a) 100% of the cost of compliance with Planning Agreement conditions which in aggregate exceed [REDACTED] (not Indexed) shall be for the account of the Authority; and
- (b) if all the tenders for the Smugglers Way CA Site Works exceed [REDACTED] (not Indexed) (the "**Cost Limit**"), the Parties (acting reasonably) shall agree within 20 Working Days of receipt of final tenders a change in scope to the works to bring it back within the Cost Limit, with (in the event of a failure to agree within 20 Working Days) the requirements of the Authority taking priority over the wishes of the Contractor.

6B.16 The Authority shall pay the Authority Smugglers Way CA Site Works Cost Share by making payments to the Contractor in the following manner:

- (a) The Authority shall be liable to pay to the Contractor the Authority Smugglers Way CA Site Works Cost Share against VAT invoices prepared and rendered by the Contractor (each a "**Smugglers Way CA Site Works Invoice**").
- (b) Each Smugglers Way CA Site Works Invoice shall:
 - (i) include details of the costs and expenses comprising the Smugglers Way CA Site Works Costs including those to be borne by the

Contractor and those which are the subject of the Smugglers Way CA Site Works Invoice;

- (ii) identify the share of the Smugglers Way CA Site Works Cost payable by each of the Contractor and the Authority;
 - (iii) include reasonable supporting information and documentation evidencing the costs and expenses paid or payable by the Contractor toward the Smugglers Way CA Site Works Cost;
 - (iv) specify any VAT payable by the Authority; and
 - (v) include only costs and expenses already paid by the Contractor.
- (c) Each Smugglers Way CA Site Works Invoice shall be submitted and paid in accordance with clauses 29.3 to 29.7 inclusive.

6C ADDITIONAL CA SITE WORKS

6C.1 As at 3 April 2013, the Additional CA Site Works remain to be completed at the Smugglers Way Site. It is agreed that the provisions of clauses 6.9 to 6.13 inclusive and 6.14 of the Agreement shall apply in relation to the Additional CA Site Works (applied mutatis mutandis, insofar as the context allows, both Parties acting reasonably), and for the purposes of clause 6.9 to 6.13 and 6.14 all references to MRF Works and Additional MRF Works shall mean the Additional CA Site Works.

6D AUTHORITY COST REIMBURSEMENT CAP

6D.1 The Authority's liability in relation to the CA Site Works, the Additional CA Site Works and the construction of the reuse workshop not already reimbursed to the Contractor by the Authority prior to 3 April 2013 shall be capped at [REDACTED] (not Indexed) which, subject to clause 34.11 shall be paid in accordance with clause 29 of this Agreement upon the presentation by the Contractor to the Authority of one or more Invoices and such other information as the Authority may reasonably require.

6D.2 The Contractor shall only invoice the Authority once the Contractor has itself been invoiced for [REDACTED] of the cost which is the subject of an Invoice and may not invoice the Authority for more than [REDACTED] of such cost. Both Parties shall use reasonable endeavours to mitigate the costs for the Additional CA Site Works.

6D.3 It is agreed that the CA Site Works, the Additional CA Site Works and the reuse workshop have been Completed, and that the Authority has paid all outstanding amounts in relation to the CA Site Works, the Additional CA Site Works and the reuse workshop and shall have no further responsibility in relation to payment for the CA Site Works, the Additional CA Site Works and the reuse workshop.

6E. BULK BAY OPTION

6E.1 The Parties acknowledge and agree that the MRF Works to be carried out at the Smugglers Way Site shall not include the development of any bulk bays.

6E.2 The Authority may at any time require the Contractor to install bulk bays at the Cringle Dock Site by exercising an option to have the Contractor carry out the Bulk Bay Works, provided that the Contractor shall not be obliged to commence or carry out such Bulk Bay Works until after Completion of the MRF Works.

6E.3 Where the Authority exercises the Bulk Bay Option, the provisions of clauses 6.9 to 6.13 shall apply to the Bulk Bay Works (*mutatis mutandis*).

6E.4 Until such time as the Bulk Bay Works are Complete, the following provisions shall apply under this Agreement:

(a) during the carrying out of any MRF Works and the Bulk Bay Works, the Contractor shall be relieved from the obligation to provide the Bulk Bay Services (save for the obligation to provide Bulk Bays at the Feathers Wharf Site during the carrying out of the MRF Works) and the Contractor shall be relieved from any Deductions arising as a result of its failure to provide such Bulk Bays; and

(b) unless and until such time as the Authority has exercised its option to require the Contractor to install Bulk Bays at the Cringle Dock Site pursuant to clause 6E.2, the Contractor shall be relieved from all obligations under this Agreement to provide Bulk Bays at any of the Sites (save for the obligation to provide Bulk Bays at the Feathers Wharf Site during the carrying out of the MRF Works) and relieved from any Deductions arising as a result of the absence of any such Bulk Bays.

6E.5 Where the Bulk Bay Option is exercised, then, unless otherwise agreed between the Parties:

- (a) the Contractor shall be obliged to carry out and complete the Bulk Bay Works as soon as is reasonably practicable;
- (b) the Contractor shall bear all Bulk Bay Costs up to an amount equal to [REDACTED] and the Authority shall bear all Bulk Bay Excess Costs in accordance with clause 6E.6;
- (c) the Contractor shall, from the date on which the Bulk Bay Works commence at the Cringle Dock Site, be relieved from its obligation to provide the CA Site and any Authority Site Services associated with the Cringle Dock CA Site;
- (d) the Contractor shall:
 - (i) from the date on which the Bulk Bay Works commence, be relieved from any obligation under this Agreement to provide the CA Site and any related Authority Site Services at the Cringle Dock Site, but shall be required to continue to operate the Cringle Dock Site as a transfer station; and
 - (ii) for the duration of the Bulk Bay Works, be relieved from the obligation to provide Bulk Bays at the Cringle Dock Site;
- (e) the Contractor shall not thereafter be required to carry out any further CA Site Works under this Agreement other than those at the Smugglers Way CA Site; and
- (f) the Parties shall discuss in good faith any other amendments as are reasonably unavoidable to give effect to the provisions of this clause 6E (including where relevant relief from any of the Contractor's obligations or any Deductions under this Agreement) and to enable the Contractor to carry out the Bulk Bay Works.

6E.6 The Authority shall, as required by clause 6E.5, pay to the Contractor the Bulk Bay Costs by making payments to the Contractor in the following manner:

- (a) The Authority shall be liable to pay to the Contractor the Bulk Bay Excess Costs against VAT invoices prepared and rendered by the Contractor (the "**Bulk Bay Invoices**").

- (b) Each Bulk Bay Invoice shall:
 - (i) include details of the costs and expenses comprising the Bulk Bay Costs including those to be borne by the Contractor and those which are the subject of the Bulk Bay Cost Invoice;
 - (ii) identify the share of the Bulk Bay Cost payable by each of the Contractor and the Authority;
 - (iii) include reasonable supporting information and documentation evidencing the costs and expenses paid or payable by the Contractor toward the Bulk Bay Cost;
 - (iv) specify any VAT payable by the Authority in respect of the Bulk Bay Excess Costs; and
 - (v) include only costs and expenses already paid by the Contractor.
- (c) Each Bulk Bay Invoice shall be submitted and paid in accordance with clauses 29.3 to 29.7 inclusive.

6E.7 It is agreed that the Bulk Bay Option was exercised on 30 April 2010, the Bulk Bay Works have been Completed, and that Authority has paid all outstanding amounts in relation to the Bulk Bay Works and shall have no further responsibility in relation to payment for the Bulk Bay Works..

7. CONSTRUCTION DELAY

7.1 If and to the extent that Completion of the EfW Facility is delayed beyond the EfW Target Completion Date:

7.1.1 in circumstances where the EfW Operator is entitled to bring a claim against the EfW Construction Subcontractor for liquidated damages for delayed completion pursuant to the terms of clause 15 of the EfW Construction Subcontract (the "**EPC Liquidated Damages**"), and/or make a claim under the delay in start-up insurance (the "**DSU Insurance Proceeds**"):

7.1.1.1 the Contractor shall procure that the EfW Operator, to the extent that it is entitled to do so, claims the EPC Liquidated Damages in full

from the EfW Construction Subcontractor and the DSU Insurance Proceeds in full from the relevant insurer;

7.1.1.2 in the event the EfW Operator does not fully claim the EPC Liquidated Damages from the EfW Construction Subcontractor and the DSU Proceeds from the relevant insurer, the Contractor shall procure that the EfW Operator:

- (a) consults with the Authority prior to making such reduced claim; and
- (b) does not act in a manner that would be unreasonably prejudicial to the interests of the Authority;

7.1.1.3 the Authority shall be entitled to receive the EPC Liquidated Damages and DSU Insurance Proceeds actually received by the EfW Operator to the extent that such EPC Liquidated Damages and DSU Insurance Proceeds exceed the aggregate of:

- (a) all amounts owing by the EfW Operator under the Financing Agreements in respect of the Relevant Delay;
- (b) any amounts payable by the EfW Operator under any of the EfW Operator Subcontracts in respect of the Relevant Delay; and
- (c) any other operating costs reasonably incurred as a direct result of the Relevant Delay,


(the "**Construction Delay Recoveries Excess**");

7.1.1.4 the Construction Delay Recoveries Excess shall be due from the date of receipt by the EfW Operator of the EPC Liquidated Damages and DSU Insurance Proceeds and payable by the Contractor upon the date falling 5 Working Days following the date upon which monies are available in the Distributions Account (as defined in the Facility Agreement). Interest shall accrue at the Default Interest Rate from the date of receipt until the date of payment; and

7.1.1.5 the Contractor shall procure that the EfW Operator affords reasonable audit rights to the Authority to allow the Authority to monitor its entitlement to the Construction Delay Recoveries Excess and due payment;


PROVIDED THAT it is agreed with effect from the Third Amended Agreement Date that there is no Construction Delay Recoveries Excess to which this clause 7.1.1 applies; and

7.1.2 upon Completion of the EfW Facility, Additional EfW Annual Reserved Capacity (as defined below) shall be made available to the Authority as follows:

Additional EfW Annual Reserved Capacity = 

Where:

- N is the number of days to have elapsed from (and including) the EfW Target Completion Date to (but not including) the EfW Commissioning Date.
- Y is the number of years from the EfW Commissioning Date to the Expiry Date (to four decimal places, rounded to the nearest 0.0001 year).

It is agreed that the Completion of the EfW Facility was delayed beyond the EfW Target Completion Date and that the calculation results in an Additional EfW Annual Reserved Capacity of .

7.2 In the event that the Authority is entitled to Additional EfW Annual Reserved Capacity in accordance with clause 7.1, the Contractor agrees that the Authority may in any EfW Contract Year require the Contractor to make available (provided notification has been given pursuant to paragraph 27.4.1.2 of Schedule 15) any or all of the Additional EfW Annual Reserved Capacity through the EfW Facility at the applicable Contract Rate ("**Nominated Additional EfW Annual Reserved Capacity**"). To the extent that the Nominated Additional EfW Annual Reserved Capacity is less than the Additional EfW Annual Reserved Capacity in any EfW Contract Year, the excess Additional EfW Annual Reserved Capacity (the "**Unused**

Additional EfW Annual Reserved Capacity") shall (at the option of the Authority) either be:

7.2.1 carried forward and used by the Authority within the following EfW Contract Year. For the avoidance of doubt, this Unused Additional EfW Annual Reserved Capacity shall not be permitted to be carried forward to a second EfW Contract Year and if not utilised in accordance with this paragraph 7.2.1 the Authority shall not be entitled to payment by the Contractor in accordance with clause 7.2.2; or

7.2.2 sold back to the Contractor at a rate per tonne (the "**Liquidation Rate**") calculated as at the EfW Commissioning Date equal to the Landfilled General Waste Rate plus the prevailing landfill tax for General Waste less the EfW General Waste Payment due for one tonne of waste (calculated in accordance with paragraph 5.5 of Schedule 8 where A = 1 tonne) applicable to disposal through the EfW Facility. The Liquidation Rate shall be indexed in accordance with Appendix 2.3B of Schedule 8, and shall (where so elected by the Authority) be received in each EfW Contract Year by the Authority by way of monthly payments in equal instalments.

If the Authority shall fail to make its election by the end of each relevant EfW Contract Year, the Authority shall be conclusively deemed to have opted to have sold back the Additional EfW Annual Reserved Capacity pursuant to clause 7.2.2.

7.3 If, in relation to the MRF:

7.3.1 Planning Permission for the MRF Works is delayed beyond EfW Financial Close; and/or

7.3.2 completion of the MRF Works has not occurred by the Target Completion Date for the MRF,

then, without prejudice to the continuing obligations of the Contractor to Complete the MRF Works, the Contractor shall pay or allow to the Authority on a monthly basis liquidated and ascertained damages for delay in an amount equal to [REDACTED] per calendar day or part thereof which elapses between (and including):

7.3.3 EfW Financial Close and up to (but not including) the date on which Planning Permission for the MRF Works is obtained (in circumstances where clause 7.3.1 applies); and/or

7.3.4 the Target Completion Date and up to (but not including) the date of Completion of the MRF Works;

PROVIDED THAT the Contractor shall be entitled to relief from liquidated and ascertained damages for a period of up to eighteen (18) months if it recycles or procures the recycling of (at no additional cost to the Authority) all the Authority Waste identified for and delivered separately to the Contractor for recycling whether at the MRF or elsewhere.

7.4 If, in relation to each of the CA Site Works Completion of such CA Site Works has not occurred by the Target Completion Date for such CA Site Works then, without prejudice to the continuing obligations of the Contractor to Complete the CA Site Works, the Contractor shall pay or allow to the Authority on a monthly basis liquidated and ascertained damages for delay in an amount equal to:

7.4.1 [REDACTED] per calendar day or part thereof which elapses between (and including) the Target Completion Date and up to (but not including) the date upon which Completion of the CA Site Works relating to the Smugglers Way CA Site occurs; and

7.4.2 [REDACTED] per calendar day or part thereof which elapses between the Target Completion Date and up to (but not including) the date upon which Completion of the CA Site Works relating to the Cringle Dock CA Site occurs.

7.5 Without prejudice to any Deductions which may be owing by the Contractor to the Authority, save as set out above and subject to the provisions of clause 11, the Contractor shall have no liability to the Authority and the Authority shall have no right or remedy against the Contractor for any losses or liabilities resulting solely from any delay in the Completion of the EfW Facility, the MRF Works or the CA Site Works beyond the relevant Target Completion Date.

7.6 The Parties acknowledge that the liquidated and ascertained damages payable for delay as set out in clauses 7.3 and 7.4 are a genuine pre-estimate of the loss that will be suffered by the Authority on a daily basis as a consequence of the Contractor

failing to comply with the Target Completion Date for the EfW Facility, the MRF Works or the CA Site Works (as the case may be).

8. CONSTRUCTION DELAYS DUE TO A COMPENSATION EVENT

8.1 If, in respect of any Facility and prior to the Completion of such Facility, as a direct result of the occurrence of a Compensation Event:

8.1.1 the Contractor is unable to comply with its obligations under the ASS Contract in respect of the Authority Site Works relating to the relevant Facility including, without limitation, achieving Completion of the MRF Works and/or the CA Site Works by the relevant Target Completion Date; and/or

8.1.2 the Contractor incurs Direct Losses in respect of the Authority Site Works relating to such Facility,

then the Contractor shall be entitled to relief from its obligations and/or to claim compensation under the ASS Contract in respect of such Facility in accordance with the provisions of this clause 8.

8.2 To obtain relief and/or claim compensation under clause 8.1 the Contractor shall:

8.2.1 as soon as reasonably practicable, and in any event within thirty (30) Working Days after it became aware that the Compensation Event has caused or is likely to cause delay to any or all of the Relevant Construction Dates, breach of an obligation under the ASS Contract and/or the Contractor to incur costs or lose revenue, give to the Authority a notice of its claim for an extension of time for any or all of the Relevant Construction Dates, payment of compensation and/or relief from its obligations under the ASS Contract;

8.2.2 within thirty (30) Working Days of receipt by the Authority of the notice referred to in clause 8.2.1, give to the Authority full details (so far as available) of the Compensation Event and the extension of time and/or any Estimated Project Cost Variation claimed; and

8.2.3 demonstrate that:

- 8.2.3.1 the Compensation Event was the direct cause of the Estimated Project Cost Variation and/or any delay in the achievement of the Relevant Construction Dates; and
- 8.2.3.2 the Estimated Project Cost Variation, time lost, and/or relief from the obligations under the ASS Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.
- 8.3 In the event that the Contractor has complied with its obligations under clause 8.2, then:
- 8.3.1 any or all of the Relevant Construction Dates shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;
- 8.3.2 in the case of an additional capital cost being incurred by the Contractor the Authority shall compensate the Contractor for the relevant Estimated Project Cost Variation demonstrated as actually having been incurred within twenty (20) Working Days of its receipt of a written demand by the Contractor supported by all relevant information;
- 8.3.3 in the case of a payment of compensation for the relevant Estimated Project Cost Variation which reflects a change in the operating costs for the relevant Facility being incurred by the Contractor, there shall be an adjustment of the Contract Rates to leave the Contractor in a Neutral Position With Profit (to reflect the Estimated Project Cost Variation) by the Expiry Date; and/or
- 8.3.4 the Authority shall give the Contractor such relief from its obligations under the ASS Contract as is reasonable for such a Compensation Event
- 8.4 In the event that information required pursuant to clauses 8.2.1 and 8.2.2 is provided after the dates referred to in clause 8.2, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under the ASS Contract in respect of the period for which the information is delayed.
- 8.5 If the Parties cannot agree the extent of any compensation, delay incurred, or relief from the Contractor's obligations under the ASS Contract, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the

Contractor is entitled to any relief under this clause 8, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

- 8.6 At the request of the Authority through the issue of a Variation Notice, the Contractor agrees to use reasonable endeavours to fund the Authority's liability under clause 8.3.2 itself and recover such amount and any related funding cost (which shall include the Contractor's cost of capital where applicable) by increasing the Contract Rates.

9. CONSTRUCTION DELAYS DUE TO A RELIEF EVENT

- 9.1 If and to the extent that a Relief Event is the direct cause of a delay to meeting all or any of the Relevant Construction Dates then the Contractor is entitled to apply for relief from any rights of the Authority arising under clauses 7 and 11.1.

- 9.2 To obtain relief, the Contractor shall:

9.2.1 as soon as reasonably practicable, and in any event within thirty (30) Working Days after it became aware that the Relief Event has caused and/or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations, give to the Authority a notice of its claim for relief, including full details (so far as available) of the nature of the Relief Event, the date of occurrence and its likely duration;

9.2.2 within thirty (30) Working Days of receipt by the Authority of the notice referred to in clause 9.2.1 above, give full details (so far as available) of the relief claimed including any extension of time for any or all of the Relevant Construction Dates; and

- 9.2.3 demonstrate that:

9.2.3.1 the Contractor and its Sub-Contractors could not reasonably have foreseen the occurrence or consequences of the relevant Relief Event and could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

- 9.2.3.2 the Relief Event will directly cause delay to any or all of the Relevant Construction Dates;
 - 9.2.3.3 the time lost 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
 - 9.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under the ASS Contract.
- 9.3 Following receipt of the relevant information pursuant to clause 9.2 above, and subject to clause 9.7:
 - 9.3.1 the Relevant Construction Dates 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
 - 9.3.2 the Authority shall not be entitled to exercise its rights to terminate the ASS Contract under clause 11.1.
- 9.4 For the avoidance of doubt, any relief to which the Contractor is entitled under this clause 9.3 shall not, unless otherwise provided for elsewhere in this ASS Contract, extend to relief from Deductions or any other compensation.
- 9.5 In the event that information required pursuant to clause 9.2 above is provided after the dates referred to in clauses 9.2.1 or 9.2.2 then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.
- 9.6 The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted as materially inaccurate or misleading.
- 9.7 If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension of any or all of the Relevant Construction Dates, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

10. CONSTRUCTION FORCE MAJEURE

- 10.1 The provisions of this clause 10 shall apply to Force Majeure Events which occur on or before the latest of:
- 10.1.1 the Completion of the MRF Works; and
 - 10.1.2 the Completion of the CA Site Works.
- 10.2 On the occurrence of a Force Majeure Event in accordance with clause 10.1, the Affected Party shall be relieved from those obligations under the ASS Contract which the Affected Party is prevented from carrying out due to the Force Majeure Event for the duration of the Force Majeure Period.
- 10.3 Subject to clause 10.4, the Party not affected by the Force Majeure Event shall not be entitled to bring a claim for breach of the Affected Party's obligations under the ASS Contract nor shall the Affected Party incur any liability to the other Party for any Direct or Indirect Losses incurred by the other Party to the extent that the Affected Party is prevented from carrying out its obligations as a result of a Force Majeure Event.
- 10.4 Nothing in this clause 10 shall affect any entitlement of the Authority to make Deductions during the Force Majeure Period.
- 10.5 For the avoidance of doubt, where the Contractor is unable to dispose of Authority Waste in accordance with the ASS Method Statement due to a Force Majeure Event, the Authority shall, upon notification by the Contractor pursuant to clause 10.7, be entitled to divert such Authority Waste away from the Contractor until the Contractor is able to dispose of such Authority Waste in accordance with the ASS Method Statement and notifies the Authority to that effect pursuant to clause 10.9 provided that the Authority shall in these circumstances use reasonable endeavours to divert such Authority Waste to the EfW Facility after the EfW Commissioning Date. The cost of disposing of the Authority Waste by alternative means pursuant to this clause 10.5 shall (subject to clause 10.6.3) be for the sole account of the Authority **PROVIDED THAT** for the avoidance of doubt the Contractor shall have no right to claim any compensation from the Authority in relation to any costs which it, or any third party, may incur as a result of its inability to dispose of Authority Waste in accordance with the ASS Method Statement during the period of diversion.

- 10.6 During the Force Majeure Period:
- 10.6.1 the Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event and shall continue to comply with its obligations under the ASS Contract to the extent not affected by the Force Majeure Event;
 - 10.6.2 each Relevant Construction Date shall be extended by a period equal to the duration of the Force Majeure Period;
 - 10.6.3 the Authority shall only pay the Contractor for the Authority Site Services actually provided; and
 - 10.6.4 save as set out in clauses 10.6.3 and 47, the Contractor shall be entitled to no further payment or compensation whatsoever in connection with the Force Majeure Event.
- 10.7 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party of such occurrence 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.
- 10.8 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 effect of the Force Majeure Event and facilitate the continued performance of the ASS Contract.
- 10.9 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Period ceases. Following such notification the ASS Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 10.10 If as a result of a Force Majeure Event, the Affected Party is unable to comply with its obligations under the ASS Contract in all material respects for a period in excess of:
- 10.10.1 twelve (12) months where the Force Majeure Event delays or adversely affects the carrying out of part or all of the Authority Site Works and it has

not been agreed or Finally Determined that as a result the EfW Facility has ceased to be economically viable, or

10.10.2 six (6) months where the Force Majeure Event delays or adversely affects the carrying out of part or all of the Authority Site Works and it has been agreed or Finally Determined that as a result the EfW Facility has ceased to be economically viable,

either Party may by a single written notice (such notice not to be served earlier than eleven (11) months after the occurrence of the Force Majeure Event where clause 10.10.1 applies, or five (5) months where clause 10.10.2 applies) terminate the ASS Contract by three (3) years' notice (where clause 10.10.1 applies) or one month's notice (where clause 10.10.2 applies).

10.11 If the Force Majeure Period ceases to continue prior to the expiry of the twelve (12) month period (where clause 10.10.1 applies) or six (6) month period (where 10.10.2 applies), any notice of termination issued under clause 10.10 shall be void.

10.12 During the three (3) year notice period under clause 10.10 (if applicable):

10.12.1 the Contractor shall continue to construct those Authority Site Works not adversely affected by the Force Majeure Event;

10.12.2 should the Force Majeure Event cease to adversely affect any affected Authority Site Works, the Authority may reinstate or recommence such Authority Site Works through the issue of a Variation Notice, in respect of which the provisions of clause 21.13.8 shall not apply and the Contractor shall produce a Contractor's Quotation on a Neutral Position With Profit basis;

10.12.3 the Contractor shall (without prejudice to any pre-existing right of action of the Authority in respect of any breach by the Contractor of its obligations under the ASS Contract) be relieved of its obligation to provide those Authority Site Services which:

10.12.3.1 are and continue to be adversely affected by the Force Majeure Event; or

- 10.12.3.2 are conditional, in accordance with the ASS Method Statement, upon the Completion of the Authority Site Works adversely affected by the Force Majeure Event (as the case may be);
- 10.12.4 the Output Specification shall (to the extent necessary) be amended by agreement between the Parties (such agreement not to be unreasonably withheld or delayed) to reflect the obligation of the Contractor to continue with those Authority Site Works and Authority Site Services not affected by the Force Majeure Event;
- 10.12.5 the Contract Rates shall remain at the rates applicable to the provision of those Authority Site Services not affected by the Force Majeure Event; and
- 10.12.6 (for the avoidance of doubt) the remaining provisions of the ASS Contract (including without limitation clause 41) shall apply in relation to the Authority Site Services not affected by the Force Majeure Event.
- 10.13 Upon the expiry of the three (3) year period referred to in clause 10.10, and subject to any earlier termination of the ASS Contract, the ASS Contract shall terminate, and the provisions of clause 47 shall apply.

11. CONSTRUCTION TERMINATION

- 11.1 If the EfW Contract is terminated pursuant to paragraph 10 of Schedule 15 due to EfW Contractor Default (g) (a failure to achieve EfW Completion by the EfW Latest Works Completion Date), then, subject to the provisions of the Finance Direct Agreement, clause 11.4 and any earlier termination pursuant to the provisions of the ASS Contract, the provisions of clauses 11.2, 11.3, 11.5 and 46.4 shall apply.
- 11.2 Upon a failure to achieve EfW Completion by the EfW Latest Works Completion Date, the Parties shall meet to discuss in good faith whether the ASS Contract can be amended to facilitate the ongoing provision of waste management and disposal services to the Authority by the Contractor on a different basis to that set out herein which is mutually beneficial to the Parties. It is acknowledged that the solution may involve a different technology and/or different sites to those set out herein, and may require other variations to the ASS Contract, including without limitation a possible extension to or reduction of the Contract Period where necessary in order to make any such solution both financially viable to the Contractor and affordable to the

Authority. Any failure by the Parties to reach a mutually beneficial solution shall not result in any liability for either Party, nor shall it affect any rights of either Party accrued prior to termination of the EfW Contract. In addition, no dispute arising from any discussions between the Parties initiated pursuant to this clause shall be capable of being referred to the Dispute Resolution Procedure.

11.3 Subject to any earlier termination pursuant to the provisions of the ASS Contract, the Contractor shall continue to provide

(a) for a period of up to three (3) years from the EfW Latest Works Completion Date, the Interim Services and/or any of the services described in the options set out in clauses 11.3.4(a) to (c), **PROVIDED THAT** the Authority shall notify the Contractor not less than 60 Working Days prior to the EfW Latest Works Completion Date whether, in the event that the EfW Commissioning Date does not occur on or before the EfW Latest Works Completion Date:

(i) the Interim Services are to continue to be provided beyond the EfW Latest Works Completion Date (and if so, for how long); and/or

(ii) any of the services described in the options set out in clauses 11.3.4(a) to (c) are to be provided (and if so, for how long),

(the "**Wind Down Period**"); and

(b) save to the extent terminated pursuant to clause 46.4, in relation to the period following the Wind Down Period, the Authority Site Services other than the Authority Off-Site Services.

In default of the notification being given by the Authority under clause 11.3(a), the Authority shall be deemed to have notified the Contractor that no Interim Services, and none of the services described in the options set out in clauses 11.3.4(a) to (c), are required beyond the EfW Latest Works Completion Date. In circumstances where the Authority notifies the Contractor, or is deemed to have notified the Contractor, that no Interim Services, and none of the services described in the options set out in clauses 11.3.4(a) to (c), are required beyond the EfW Latest Works Completion Date, the Wind Down Period shall be deemed to be zero (0) days and the provisions of clause 11.3(b) shall commence immediately upon the EfW Termination Date. During the Wind Down Period:

- 11.3.1 the Contractor shall (without prejudice to any pre-existing right of action of the Authority in respect of any breach by the Contractor of its obligations under the ASS Contract) continue to carry out the Authority Site Works;
- 11.3.2 the Output Specification shall (to the extent necessary) be amended by agreement between the Parties (such agreement not to be unreasonably withheld or delayed) to reflect the obligation of the Contractor to continue with the Interim Services until the expiry of the Wind Down Period; and
- 11.3.3 Not used.
- 11.3.4 where the Wind Down Period consists of an Interim Non-Mucking Period, the Authority shall direct the Contractor to perform the Interim Services other than the landfill transportation and disposal Services and replace such landfill transportation and disposal Services with any combination of the options set out in clauses 11.3.4(a) to (c) below as nominated by the Authority from time to time (subject always to the relevant site(s) (including the Authority Sites) and/or operator(s) of those sites (including the Contractor and/or its Affiliates) having the Necessary Consents and to the Authority acting reasonably), **PROVIDED THAT** the Authority shall not be entitled to exercise any of the option(s) set out in clauses 11.3.4(a) to (c) until all relevant outstanding details relating to the chosen option(s) (including without limitation the costs associated with such options (in circumstances where clauses 11.3.4 to 11.3.4G leave such costs to be determined at the relevant time) and the relief (if any) that is to be granted to the Contractor by the Authority in relation to any Slow Tonnage Payments and/or Diverted Tonnage Payments under the Collateral Warranties pursuant to and in accordance with clause 11.3.5 as if such clause applied also during the Interim Non-Mucking Period) have been agreed between the Parties. In finalising such outstanding details and putting the agreed arrangements in place, the Parties shall act reasonably in order to avoid any interruption to the relevant Interim Services. The options available to the Authority shall be to direct the Contractor to:
- (a) subject to clauses 11.3.4B to 11.3.4D inclusive, dispose of Mucking Waste by loading it into open top articulated trailers at the Smugglers Way Site and/or the Cringle Dock Site and/or Pensbury Place

Transfer Station (in the latter case, subject always to there being sufficient capacity available to enable the requisite Mucking Waste to be transferred through the Pensbury Place Transfer Station, taking into account any other waste being transferred through it, as agreed by the Parties acting reasonably) and to dispose of it:

- (i) (in relation to a maximum 150,000 tonnes per annum, as nominated by the Authority) at the Bellhouse Landfill Site and (in relation to a maximum 50,000 tonnes per annum, as nominated by the Authority) at the Greatness Landfill Site (in each case pro rated where the Interim Non Mucking Period is greater or less than a full 12-month period) with the costs associated with such disposal in each case to include transportation by the Contractor or an Affiliate of the Contractor of the open top articulated trailers; and/or
 - (ii) in relation to tonnages in excess of 150,000 tonnes per annum at the Bellhouse Landfill Site and/or in relation to tonnages in excess of 50,000 tonnes per annum at Greatness Landfill Site as may be agreed by the Contractor, acting reasonably; and/or
- (b) subject to clauses 11.3.4B to 11.3.4D inclusive, to transfer any Mucking Waste through the Smugglers Way Site, the Cringle Dock Site and/or the Pensbury Place Transfer Station (in the latter case, subject always to there being sufficient capacity at the Pensbury Place Transfer Station to enable the requisite Mucking Waste to be transferred through the Pensbury Place Transfer Station, taking into account any other waste being transferred through it, as agreed by the Parties acting reasonably) and arrange for the transportation of the Mucking Waste:
- (i) by road to site(s) other than the Bellhouse Landfill Site or the Greatness Landfill Site nominated by the Authority and capable of accepting delivery of any such Mucking Waste by road (in which case, the haulage is to be undertaken by the Contractor or an Affiliate of the Contractor), or

- (ii) by river to any site nominated by the Authority and capable of accepting delivery of any such Mucking Waste by river (in which case, the haulage is to be undertaken either by the Contractor or an Affiliate of the Contractor or through a Third Party Arrangement); and/or
- (c) subject to clauses 11.3.4B to 11.3.4D and subject to the requisite Third Party Arrangement having been entered into by the Contractor, to direct any Mucking Waste to third parties other than an Affiliate of the Contractor without transferring such Mucking Waste through the Smugglers Way Site, the Cringle Dock Site or the Pensbury Place Transfer Station.

11.3.4A In respect of:

- (a)
 - (i) each tonne of Mucking Waste disposed of pursuant to clauses 11.3.4(a)(i) and 11.3.4(a)(ii) at the Bellhouse Landfill Site and/or the Greatness Landfill Site during the Interim Non Mucking Period, the Authority shall pay to the Contractor the Interim Non Mucking Period A Payment ("WDEPA") calculated as follows:

$$WDEPA = \sum [(A * D) + (A * (B - 15)) + (A * E)]$$

Where:

A = each tonne of Mucking Waste which is transferred at the Smugglers Way Site or the Cringle Dock Site or the Pensbury Place Transfer Station in the relevant Contract Month and landfilled at the Bellhouse Landfill Site or Greatness Landfill Site

B = where transportation to the Bellhouse Landfill Site or the Greatness Landfill Site from the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site is undertaken by the Contractor, an Affiliate of the Contractor or a Sub-Contractor, a

reasonable transportation charge on Pass-Through Terms

D = the Landfilled General Waste Rate (Band 1) for the Final Period

E = the applicable landfill tax rate (whether active or inactive)

(ii) tonnage disposed of pursuant to clause 11.3.4(b), the Authority shall pay the Contractor the Interim Non Mucking Period B Payment ("WDEPB") calculated as follows:

$$WDEPB = \sum [(Bi * F) + (Bii * F) + (Bi * Gi) + (Bii * Gii) + (Bi * H) + (Bii * I)]$$

Where:

Bi = each tonne of Mucking Waste transferred through the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site in the relevant Contract Month and delivered to a Non-CEL Site for disposal

Bii = each tonne of Mucking Waste transferred through the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site in the relevant Contract Month and delivered to a CEL Site other than the Bellhouse Landfill Site or the Greatness Landfill Site for disposal

F = a fee of [REDACTED] per tonne (indexed as if such rate was a Base Contract Rate using the Indexation Mechanism set out in Appendix 2.4 of Schedule 8) for transfer Services at the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site

Gi = where transportation to a Non-CEL Site from the Smugglers Way Site, the Pensbury Place Transfer

Station or the Cringle Dock Site is undertaken by road or river, a reasonable transportation charge on Pass-Through Terms as agreed between the Parties. Where a Third Party Arrangement is put in place for river transport, Gi shall be deemed to equal zero and the provisions of clause 11.3.4D shall apply so as to ensure that such transportation costs are recovered in full by the Contractor

Gii = where transportation to a CEL Site other than the Bellhouse Landfill Site or the Greatness Landfill Site from the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site is undertaken by the Contractor, an Affiliate of the Contractor or a Sub-Contractor, a reasonable transportation charge on Pass-Through Terms

H = the applicable third party disposal gate fee (for the avoidance of doubt inclusive of the applicable landfill tax rate, whether active or inactive) on Pass Through Terms

I = a gate fee (for the avoidance of doubt inclusive of the applicable landfill tax rate, whether active or inactive) no less favourable than that charged by the Contractor or its Affiliate (as applicable) to its most favoured customer(s) delivering waste of a similar composition and aggregate quantity committed to such CEL Site

(b) tonnage disposed of pursuant to clause 11.3.4(c), the Authority shall pay the Contractor the Interim Non Mucking Period C Payment ("WDEPC") calculated as follows:

$$WDEPC = \sum [(C * J) + (C * K)]$$

Where:

C = each tonne of Mucking Waste not transferred through any of the Smugglers Way Site, the Cringle Dock Site or the Pensbury Place Transfer Station in the relevant Contract Month

J = [REDACTED] (indexed as if such rate was a Base Contract Rate using the Indexation Mechanism set out in Appendix 2.4 of Schedule 8)

K = the applicable third party disposal gate fee (for the avoidance of doubt inclusive of the applicable landfill tax rate, whether active or inactive) on Pass-Through Terms

11.3.4B no direction may be given by the Authority pursuant to clause 11.3.4(a), 11.3.4(b) or 11.3.4(c) until the Contractor has agreed with the third party or third parties nominated by the Authority the relevant terms and conditions governing the transfer, transportation (if applicable) and disposal of such Mucking Waste by the relevant third party and such terms have been approved in writing by the Authority. In agreeing such terms and conditions, it is acknowledged by the Authority that the Contractor should not be required to assume any greater level of liability or risk compared to the liability and risk that a reasonable waste management contractor would assume in the ordinary course of business. The Contractor shall comply with all reasonable instructions from the Authority prior to and throughout the course of the negotiations of any such terms and conditions provided that such instructions are produced in good faith and the Contractor can comply with such instructions by acting in accordance with Good Industry Practice. The Authority shall be entitled to attend any negotiation meetings with nominated third parties, and approve any material communications from the Contractor to a third party in connection with such negotiations prior to their dispatch. The Contractor shall proceed diligently with all negotiations and, to the extent reasonably practicable and subject always to the reasonable directions of the Authority, shall use all reasonable endeavours to ensure that negotiations are concluded and the necessary agreements are put in place prior to the scheduled date for commencement of the relevant service(s);

11.3.4C any written contract entered into by the Contractor with a third party in response to an Authority direction pursuant to clause 11.3.4(a), 11.3.4(b) or 11.3.4(c), which follows the procedure set out in clause 11.3.4B shall be referred to as a "**Wind Down Third Party Arrangement**". For the avoidance of doubt, Services which the Contractor offers to undertake and which it intends to sub-contract in the normal course shall not be Wind Down Third Party Arrangements;

11.3.4D once the final provisions of any Wind Down Third Party Arrangement have been approved by the Authority, then:

- (a) the Contractor shall enter into the Wind Down Third Party Arrangement, and provide the Authority with a complete certified copy thereof as soon as reasonably practicable after it has been entered into; and
- (b) the Contractor shall at all times follow the reasonable instructions of the Authority in relation to the operation of the Wind Down Third Party Arrangement, save where to do so would be in breach of Good Industry Practice, in which event the Contractor shall notify the Authority of its position and, if no agreement as to the correct course of action can be reached within 48 hours, the issue may be referred by either Party to the Dispute Resolution Procedure; and
- I the Authority shall be entitled to, and the Contractor shall ensure that the Authority receives, the benefit of any payments or services undertaken by a sub-contractor under a Wind Down Third Party Arrangement; and
- (d) the Authority shall be responsible for and shall indemnify the Contractor on demand from and against any liabilities the Contractor incurs in accordance with the terms of a Wind Down Third Party Arrangement (including any payments due from the Contractor to its contractual counterparty in accordance with the provisions of the Wind Down Third Party Arrangement), save to the extent caused by the negligent or wilful acts or omissions of the Contractor; and

(e) for the avoidance of doubt, the Contractor shall not be entitled to any remuneration (howsoever described) for acting as a lead contractor in relation to Wind Down Third Party Arrangements.

11.3.4E the Contractor shall (without prejudice to any pre-existing right of action of the Authority in respect of any breach by the Contractor of its obligations under the ASS Contract) continue to carry out the Authority Site Works, and the Output Specification shall (to the extent necessary) be amended by agreement between the Parties (such agreement not to be unreasonably withheld or delayed) to reflect the obligation of the Contractor to continue with the Interim Services during the Interim Non-Mucking Period until the expiry of the Wind Down Period;

11.3.4F all payments due under clauses 11.3.4 to 11.3.4E shall be made in accordance with the provisions of clause 29; and

11.3.4G for the avoidance of doubt, the provisions of clauses 14.1C and 14.1D shall continue to apply during the Wind Down Period.

11.3.5 Prior to undertaking the Services during the Wind Down Period, the Parties (acting reasonably) shall agree the extent (if any) to which the Contractor will be granted relief from Slow Tonnage Payments and Diverted Tonnage Payments under the Collateral Warranties as a result of the changes (if any) to the transfer activities undertaken at the Smugglers Way Site and/or the Cringle Dock Site or any other arrangements contemplated by this Deed.

11.4 If the EfW Commissioning Date has not occurred before the EfW Latest Works Completion Date the Parties may agree to extend the EfW Latest Works Completion Date for a further period, **PROVIDED THAT** any such extension shall automatically reduce the maximum Wind Down Period for any termination by a period of time equivalent to the extension of the EfW Latest Works Completion Date pursuant to this clause 11.4.

11.5 For the avoidance of doubt, the remaining provisions of the ASS Contract (including without limitation clauses 41, 44 and 45) shall continue to apply during the Wind Down Period.

PART IV – OPERATIONS

12. CONTRACT PERIOD

The obligation of the Contractor to provide the Services and the Authority to pay the Contract Rates shall commence on the Services Commencement Date and continue until the expiry of the Contract Period.

13. AUTHORITY'S PRIMARY OBLIGATIONS

13.1 The Authority agrees:

13.1.1 subject to clause 13.2 and the terms of this Agreement, to direct the Constituent Councils pursuant to its Power of Direction to deliver all Authority Waste for which they are responsible to the Contractor at the Agreed Sites or such locations as may be agreed between the Authority and the Contractor in accordance with the Waste Direction Protocol;

13.1.2 save to the extent that Waste is destined to be recycled by the Constituent Council under recycling schemes set up pursuant to sections 48(2) and 48(6) EPA and subject to clause 13.2 and the terms of this Agreement, to make available to the Contractor all Authority Waste delivered to the Authority CA Sites and the Constituent Council CA Sites;

13.1.3 to pay for the Services provided by the Contractor in accordance with clause 29 and Schedule 8;

13.1.4 to inform the Contractor as soon as reasonably practicable after it becomes aware that it is unable to meet any of its financial obligations to the Contractor, and in such case inform and keep the Contractor informed of any course of action to remedy the situation proposed by the Authority or any Relevant Authority;

13.1.5 not to unreasonably prevent or hinder the provision of the Services by the Contractor in accordance with the Method Statement **PROVIDED THAT** any breach of clause 13.1.1 or 13.1.2 shall not constitute a breach of this clause 13.1.5;

13.1.6 whilst on a Site, to comply and procure that its employees and officers comply, with the Contractor's or the relevant operator's site rules and

security requirements (such site rules and security requirements in respect of the Authority Sites and the Feathers Wharf Site to be subject to the approval of the Authority prior to their implementation or amendment, such approval not to be unreasonably withheld or delayed); and

13.1.7 to ensure that any Authority Party engaged by the Authority to work on an Authority Site and/or the Feathers Wharf Site is contractually bound to comply with the Contractor's site rules whilst on the Authority Site, and, upon the request of the Contractor, to use reasonable endeavours to enforce such rights against such Authority Party when such Authority Party is in breach of such site rules.

13.2 Under no circumstances shall the Authority be obliged to:

13.2.1 direct Waste to the Contractor in respect of which a Constituent Council from time to time makes recycling arrangements pursuant to sections 48(2) and 48 (6) of the EPA; or

13.2.2 object to any such recycling arrangements made by the Constituent Councils under section 48(4) of the EPA.

13A. OBJECTION UNDERTAKING

13A.1 Subject to clauses 13A.2 and 13A.4, for the duration of the Objection Undertaking Period the Authority shall exercise its Power Of Objection in relation to all the Co-Mingled Recyclables which are the subject to a Constituent Council Co-Mingled Recycling Scheme Notice and the Authority shall object to any Constituent Council Co-Mingled Recycling Scheme such that the Constituent Council is barred from implementing the Constituent Council Co-Mingled Recycling Scheme.

13A.2 The Authority shall have the right to consent to a Constituent Council Co-Mingled Recycling Scheme where such consent is made conditional upon the occurrence of the Objection Undertaking Termination Date, such that the Constituent Council Co-Mingled Recycling Scheme in question only commences after that date and that (subject to the remainder of this clause 13A) during the Objection Undertaking Period all Co-Mingled Recyclables are delivered to the Contractor.

13A.3 Subject to clause 13A.6, an "Objection Undertaking Default" shall be deemed to have occurred where, prior to the Objection Undertaking Termination Date, a

Constituent Council fails to deliver to the Contractor any quantity of Co-Mingled Recyclables which it is required pursuant to the terms of this Agreement to deliver to the Contractor.

13A.4 If an Objection Undertaking Default has occurred, the Contractor shall be entitled to give the Authority notice in writing of such default, giving reasonable details of the circumstances (an "**Objection Default Notice**").

13A.5 If the Authority fails to effect an Objection Undertaking Default Remedy within the Objection Undertaking Default Remedy Period:

13A.5.1 as from the expiry of the Objection Undertaking Default Remedy Period the provisions of clause 13A, , paragraph 14.1A of the Payment Mechanism (*Co-Mingled Recyclables Income*) and the *Revised Co-Mingled Recyclables Rate* line in Appendix 1 of the Payment Mechanism shall cease to apply in relation to any Co-Mingled Recyclables thereafter delivered by the defaulting Constituent Council(s) listed in the Objection Default Notice and the terms of the Agreement as if the Objection Undertaking had terminated shall apply in relation to any such Co-Mingled Recyclables, unless otherwise agreed in writing between the Contractor and the Authority;

13A.5.2 without prejudice to clause 13A.5.1, the Authority shall be liable to the Contractor for payment of the Revised Co-Mingled Recycling Rate as if the relevant Constituent Council had continued to deliver Co-Mingled Recyclables to the Contractor after the expiry of the Objection Undertaking Default Remedy Period, based on tonnage equal to the average monthly tonnage delivered by each defaulting Constituent Council over three months immediately prior to the relevant Objection Undertaking Default, until an Objection Undertaking Default Remedy has been effected; and

13A.5.3 the Authority shall be responsible for and indemnify the Contractor from and against any liabilities accruing by the Contractor to non-Affiliates of the Contractor under the terms of its Co-Mingled Recyclables offtake contracts caused by the Objection Undertaking Default, and reimburse the Contractor for any income lost to the Contractor under such offtake contracts (in each case as demonstrated to the reasonable satisfaction of the Authority).

The remedies of the Contractor set out in this clause 13A.5 shall be sole remedies of the Contractor in relation to an Objection Undertaking Default.

13A.6 If the Authority can reasonably demonstrate that an Objection Undertaking Default was or is being committed without a formal decision of the relevant defaulting Constituent Council(s), for a period of up to twenty-one Working Days the provisions of clause 13A.5.1 shall not apply and the provisions of clauses 13A.5.2 and 13A.5.3 shall apply limited to the period that such Objection Undertaking Default persists.

13A.7 In consideration of the Objection Undertaking, subject to clauses 13A.3 to 13A.6 for the duration of the Objection Undertaking Period paragraph 14.1A of the Payment Mechanism (*Co-Mingled Recyclables Income*) and the *Revised Co-Mingled Recyclables Rate* line in Appendix 1 of the Payment Mechanism shall apply.

13A.8 Either Party may terminate the Objection Undertaking Period upon giving not less than twelve (12) months' notice in writing to the other Party, **PROVIDED THAT** neither Party may serve any such notice prior to 1 April 2017.

13A.9 The service by one Party of an Objection Undertaking Termination Notice shall not preclude the other Party from serving an Objection Undertaking Termination Notice provided that such Objection Undertaking Termination Notice complies with the requirements of clause 13A.4 and its stated Objection Undertaking Termination Date falls on a date earlier than that specified in the other Party's Objection Undertaking Termination Notice.

13A.10 Upon termination of the Objection Undertaking Period in accordance with notice given under clauses 13A.8 and/or 13A.9, the provisions of clause 13A paragraph 14.1A of the Payment Mechanism (*Co-Mingled Recyclables Income*) and the *Revised Co-Mingled Recyclables Rate* line in Appendix 1 of the Payment shall cease to apply.

13A.11 Once served, an Objection Undertaking Termination Notice shall only be revocable with the consent of the other Party (which may be withheld at such Party's absolute discretion).

14. CONTRACTOR'S PRIMARY OBLIGATIONS

14.1 Subject to clause 14.1A, during the Contract Period the Contractor shall provide or procure the provision of the Services for the benefit of the Authority.

14.1A Notwithstanding any other provision of this Agreement (including, for the avoidance of doubt, clause 11) during any Interim New Mucking Period, the Interim Non-Mucking Period or the EfW Interim Delay Period (unless the Termination Date has occurred), the Contractor shall only be required to provide or procure the provision of the Interim Services.

14.1B During any Interim Non-Mucking Period the Authority shall direct the Contractor to perform the Interim Services other than the landfill transportation and disposal Services and replace such landfill transportation and disposal Services with any combination of the options set out in clauses 14.1B(A) to 14.1B(C) below as nominated by the Authority from time to time (subject always to the relevant site(s) (including the Authority Sites) and/or operator(s) of those sites (including the Contractor and/or its Affiliates) having the Necessary Consents and to the Authority acting reasonably), **PROVIDED THAT** the Authority shall not be entitled to exercise any of the option(s) set out in clauses 14.1B(A) to 14.1B(C) until all relevant outstanding details relating to the chosen option(s) (including without limitation the costs associated with such options (in circumstances where this clause 14.1B leaves such costs to be determined at the relevant time) and the relief (if any) that is to be granted to the Contractor by the Authority in relation to any Slow Tonnage Payments and/or Diverted Tonnage Payments under the Collateral Warranties pursuant to an in accordance with clause 11.3.5 as if such clause applied also during the Interim Non-Mucking Period) have been agreed between the Parties. In finalising such outstanding details and putting the agreed arrangements in place, the Parties shall act reasonably in order to avoid any interruption to the relevant Interim Services. The options available to the Authority shall be to direct the Contractor to:

(A) subject to clauses 14.1B(b) to (d) inclusive dispose of Mucking Waste by loading it into open top articulated trailers at the Smugglers Way Site and/or the Cringle Dock Site and/or Pensbury Place Transfer Station (in the latter case, subject always to there being sufficient capacity available to enable the requisite Mucking Waste to be transferred through the Pensbury Place Transfer Station, taking into account any other waste being transferred through it, as agreed by the Parties acting reasonably) and to dispose of it:

(i) (in relation to a maximum 150,000 tonnes per annum, as nominated by the Authority) at the Bellhouse Landfill Site and (in relation to a

maximum 50,000 tonnes per annum, as nominated by the Authority) at the Greatness Landfill Site (in each case pro rated where the Interim Non Mucking Period is greater or less than a full 12-month period) with the costs associated with such disposal in each case to include transportation by the Contractor or an Affiliate of the Contractor of the open top articulated trailers; and/or

- (ii) in relation to tonnages in excess of 150,000 tonnes per annum at the Bellhouse Landfill Site and/or in relation to tonnages in excess of 50,000 tonnes per annum at Greatness Landfill Site as may be agreed by the Contractor, acting reasonably; and/or

(B) subject to clauses 14.1B(b) to (d) inclusive, to transfer any Mucking Waste through the Smugglers Way Site, the Cringle Dock Site and/or the Pensbury Place Transfer Station (in the latter case, subject always to there being sufficient capacity at the Pensbury Place Transfer Station to enable the requisite Mucking Waste to be transferred through the Pensbury Place Transfer Station, taking into account any other waste being transferred through it, as agreed by the Parties acting reasonably) and arrange for the transportation of the Mucking Waste:

- (i) by road to site(s) other than the Bellhouse Landfill Site or the Greatness Landfill Site nominated by the Authority and capable of accepting delivery of any such Mucking Waste by road (in which case, the haulage is to be undertaken by the Contractor or an Affiliate of the Contractor), or
- (ii) by river to any site nominated by the Authority and capable of accepting delivery of any such Mucking Waste by river (in which case, the haulage is to be undertaken either by the Contractor or an Affiliate of the Contractor or through a Third Party Arrangement); and/or

(C) subject to clauses 14.1B (b) to (d) and subject to the requisite Third Party Arrangement having been entered into between by the Contractor, to direct any Mucking Waste to third parties other than an Affiliate of the Contractor without transferring such Mucking Waste through the Smugglers Way Site, the Cringle Dock Site or the Pensbury Place Transfer Station.

- (a) In respect of:
- (i) each tonne of Mucking Waste disposed of pursuant to clauses 14.1B(A)(i) and 14.1B(A)(ii) at the Bellhouse Landfill Site and/or the Greatness Landfill Site during the Interim Non Mucking Period, the Authority shall pay to the Contractor the Interim Non Mucking Period A Payment ("WDEPA") calculated as follows:

$$\text{WDEPA} = \sum [(A * D) + (A * (B - 15)) + (A * E)]$$

Where:

A = each tonne of Mucking Waste which is transferred at the Smugglers Way Site or the Cringle Dock Site or the Pensbury Place Transfer Station in the relevant Contract Month and landfilled at the Bellhouse Landfill Site or Greatness Landfill Site

B = where transportation to the Bellhouse Landfill Site or the Greatness Landfill Site from the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site is undertaken by the Contractor, an Affiliate of the Contractor or a Sub-Contractor, a reasonable transportation charge on Pass-Through Terms

D = the Landfilled General Waste Rate (Band 1) for the Final Period

E = the applicable landfill tax rate (whether active or inactive)

- (ii) tonnage disposed of pursuant to clause 14.1B(B), the Authority shall pay the Contractor the Interim Non Mucking Period B Payment ("WDEPB") calculated as follows:

$$\text{WDEPB} = \sum [(Bi * F) + (Bii * F) + (Bi * Gi) + (Bii * Gii) + (Bi * H) + (Bii * I)]$$

Where:

- Bi = each tonne of Mucking Waste transferred through the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site in the relevant Contract Month and delivered to a Non-CEL Site for disposal
- Bii = each tonne of Mucking Waste transferred through the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site in the relevant Contract Month and delivered to a CEL Site other than the Bellhouse Landfill Site or the Greatness Landfill Site for disposal
- F = a fee of [REDACTED] per tonne (indexed as if such rate was a Base Contract Rate using the Indexation Mechanism set out in Appendix 2.4 of Schedule 8) for transfer Services at the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site
- Gi = where transportation to a Non-CEL Site from the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site is undertaken by road or river, a reasonable transportation charge on Pass-Through Terms as agreed between the Parties. Where a Third Party Arrangement is put in place for river transport, Gi shall be deemed to equal zero and the provisions of clause 14.1B(d) shall apply so as to ensure that such transportation costs are recovered in full by the Contractor
- Gii = where transportation to a CEL Site other than the Bellhouse Landfill Site or the Greatness Landfill Site from the Smugglers Way Site, the Pensbury Place Transfer Station or the Cringle Dock Site is undertaken by the Contractor, an Affiliate of the Contractor or a Sub-Contractor, a reasonable transportation charge on Pass-Through Terms
- H = the applicable third party disposal gate fee (for the avoidance of doubt inclusive of the applicable landfill tax rate, whether active or inactive) on Pass Through Terms

I = a gate fee (for the avoidance of doubt inclusive of the applicable landfill tax rate, whether active or inactive) no less favourable than that charged by the Contractor or its Affiliate (as applicable) to its most favoured customer(s) delivering waste of a similar composition and aggregate quantity committed to such CEL Site.

(iii) tonnage disposed of pursuant to clause 14.1BI the Authority shall pay the Contractor the Interim Non Mucking Period C Payment ("WDEPC") calculated as follows:

$$\text{WDEPC} = \sum [(C * J) + (C * K)]$$

Where:

C = each tonne of Mucking Waste not transferred through any of the Smugglers Way Site, the Cringle Dock Site or the Pensbury Place Transfer Station in the relevant Contract Month

J = [REDACTED] (indexed as if such rate was a Base Contract Rate using the Indexation Mechanism set out in Appendix 2.4 of Schedule 8)

K = the applicable third party disposal gate fee (for the avoidance of doubt inclusive of the applicable landfill tax rate, whether active or inactive) on Pass-Through Terms

(b) No direction may be given by the Authority pursuant to clause 14.1.B(A), 14.1.B(B) or 14.1.B(C) until the Contractor has agreed with the third party or third parties nominated by the Authority the relevant terms and conditions governing the transfer, transportation (if applicable) and disposal of such Mucking Waste by the relevant third party and such terms have been approved in writing by the Authority. In agreeing such terms and conditions, it is acknowledged by the Authority that the Contractor should not be required to assume any greater level of liability or risk compared to the liability and risk that a reasonable waste management contractor would assume in the ordinary course of business. The Contractor shall comply with all reasonable instructions from the Authority prior to and throughout the

course of the negotiations of any such terms and conditions provided that such instructions are produced in good faith and the Contractor can comply with such instructions by acting in accordance with Good Industry Practice. The Authority shall be entitled to attend any negotiation meetings with nominated third parties, and approve any material communications from the Contractor to a third party in connection with such negotiations prior to their dispatch. The Contractor shall proceed diligently with all negotiations and, to the extent reasonably practicable and subject always to the reasonable directions of the Authority, shall use all reasonable endeavours to ensure that negotiations are concluded and the necessary agreements are put in place prior to the scheduled date for commencement of the relevant service(s).

- (c) Any written contract entered into by the Contractor with a third party in response to an Authority direction pursuant to clause 14.1.B(A), 14.1.B(B) or 14.1B(C), which follows the procedure set out in clause 14.1B(b) shall be referred to as a "**Third Party Arrangement**". For the avoidance of doubt, Services which the Contractor offers to undertake and which it intends to sub-contract in the normal course shall not be Third Party Arrangements.
- (d) Once the final provisions of any Third Party Arrangement have been approved by the Authority, then:
 - (i) the Contractor shall enter into the Third Party Arrangement, and provide the Authority with a complete certified copy thereof as soon as reasonably practicable after it has been entered into; and
 - (ii) the Contractor shall at all times follow the reasonable instructions of the Authority in relation to the operation of the Third Party Arrangement, save where to do so would be in breach of Good Industry Practice, in which event the Contractor shall notify the Authority of its position and, if no agreement as to the correct course of action can be reached within 48 hours, the issue may be referred by either Party to the Dispute Resolution Procedure; and
 - (iii) the Authority shall be entitled to, and the Contractor shall ensure that the Authority receives, the benefit of any payments or services undertaken by a sub-contractor under a Third Party Arrangement; and

- (iv) the Authority shall be responsible for and shall indemnify the Contractor on demand from and against any liabilities the Contractor incurs in accordance with the terms of a Third Party Arrangement (including any payments due from the Contractor to its contractual counterparty in accordance with the provisions of the Third Party Arrangement), save to the extent caused by the negligent or wilful acts or omissions of the Contractor; and
 - (v) for the avoidance of doubt, the Contractor shall not be entitled to any remuneration (howsoever described) for acting as a lead contractor in relation to Third Party Arrangements.
- (e) The Contractor shall (without prejudice to any pre-existing right of action of the Authority in respect of any breach by the Contractor of its obligations under the ASS Contract) continue to carry out the Authority Site Works, and the Output Specification shall (to the extent necessary) be amended by agreement between the Parties (such agreement not to be unreasonably withheld or delayed) to reflect the obligation of the Contractor to continue with the Interim Services during the Interim Non-Mucking Period.
- (f) All payments due under this clause 14.1B shall be made in accordance with the provisions of clause 29.

14.1C The Parties have agreed to continue to use the Mucking Landfill Site after 31 December 2007 for the disposal of Authority Waste (save to the extent such waste is otherwise required to be managed or treated pursuant to the terms of the ASS Contract), notwithstanding the terms of Planning Permission APP/M1595/A/00/1035822 granted by the Secretary of State on appeal of 20 September 2001 requiring cessation of landfilling by 31 December 2007 and the conditions relating to Planning Permission 06/00663/TTGCND dated 16 May 2007 and notwithstanding the absence of any other Necessary Consents relating to the Mucking Landfill Site (collectively the "**Planning Restrictions**") (for the purposes of this Deed, such services shall be referred to as the "**Temporary Disposal Services**").

14.1.D In order to enable the Contractor to continue to provide the Temporary Disposal Services, the Parties have agreed that notwithstanding any other provisions of the

ASS Contract the following provisions shall apply in respect of any Interim Mucking Period and/or Interim Non Mucking Period:

- (a) the Contractor shall be relieved from any breach or default of its obligations under the ASS Contract (including, without limitation, any Performance Failure or default points), and shall be relieved from any claims or demands by, or losses or liabilities owing or due to, the Authority or any Constituent Council under the ASS Contract or any Collateral Warranty which arise as a result of the Planning Restrictions or as a result of the Contractor carrying out the Temporary Disposal Services including, without limitation, any claims made by the Authority or liabilities of the Contractor arising in respect of clauses 4.7, 14.3.3, 14.3.4 or 14.3.5 or Appendix B(1) (ASS Method Statement) (including, in particular, Part Three, Performance Schedule 2, Items 5 and 8);
- (b) the Contractor shall not be obliged to indemnify the Authority under clause 33.1 of the ASS Contract to the extent that any such Authority Losses arise as a result of the Planning Restrictions or the Contractor carrying out the Temporary Disposal Services; and
- (c) the Contractor shall not otherwise be liable to the Authority in law or equity or otherwise under any theory of law whatsoever in respect of any claims, demands, losses or liabilities arising as a result of the Planning Restrictions or as a result of the Contractor carrying out the Temporary Disposal Services,

provided that the provisions of this clause 14.1D shall only apply to the extent that the Contractor or the provision of the Temporary Disposal Services is affected by any Planning Restrictions or by any action taken by a Relevant Authority as a result of any Planning Restrictions.

- 14.2 The Services do not require the Contractor to meet any minimisation, recycling or recovery targets imposed on the Authority by the UK Government or any other Relevant Authority, and the Contractor shall not be liable for any penalties imposed on the Authority or any other person in relation to any failure to achieve any such targets. It is agreed that the Contractor is not responsible for meeting the obligations of the Authority or the Constituent Councils under the Waste and Emissions Trading Act 2003 and Landfill Allowance and Trading Scheme (England) Regulations 2004,

and shall not be liable to the Authority or the Constituent Councils in relation thereto.

14.3 In the provision of the Services, the Contractor shall, subject to the terms of this Agreement, act in accordance with:

14.3.1 Good Industry Practice;

14.3.2 the Output Specification;

14.3.3 the Method Statement;

14.3.4 all relevant Laws and Guidance; and

14.3.5 all Necessary Consents.

14.4 The Contractor may not refuse to accept Authority Waste at the Authority Sites or the Feathers Wharf Site, nor divert Authority Waste to other Site(s) for any reasons other than:

14.4.1 it is physically unable to accept any Waste of the relevant type at such Site;
or

14.4.2 to accept the Authority Waste would put the Contractor in breach of this Agreement.

14.5 Where the Contractor accepts waste other than Authority Waste at an Authority Site or the Feathers Wharf Site, the Contractor shall at all times give priority to Authority Waste at such Authority Site or the Feathers Wharf Site.

14.6 Not used.

14.7 Subject to clause 14.8, the Contractor shall use reasonable endeavours to comply with the reasonable requests of the Authority made in connection with the Services. For the avoidance of doubt:

14.7.1 compliance with requests which amount to a Variation shall be dealt with in accordance with the procedure set out in clause 21, and

- 14.7.2 compliance with requests which amount to an EfW Authority Change shall be dealt with in accordance with the procedure set out in paragraph 6 of Schedule 15.
- 14.8 The Contractor shall be entitled to refuse any request of the Authority made pursuant to clause 14.7 in circumstances where compliance with such request:
- 14.8.1 would involve material expenditure;
 - 14.8.2 would require a departure from the Method Statement in relation to the manner in which the Contractor provides the Services; or
 - 14.8.3 might reasonably lead to a breach by the Contractor of this Agreement, or give rise to the issue of a Rectifiable Provisional Default Notice, Default Notice or Repeat Default Notice.
- 14.9 Where the Contractor complies with an Authority request in accordance with clause 14.7, the Contractor shall not be relieved from any responsibility in relation to its acts and omissions under this Agreement or otherwise by virtue of the fact that such act or omission was undertaken at the request of the Authority.
- 14.10 The Contractor shall, in the provision of the Authority Site Services, at no additional cost to the Authority comply with all relevant Authority Policies, details of which are set out in Appendix J.
- 14.11 The Contractor shall, in the provision of the Authority Site Services, comply with all other relevant Authority Policies of which the Authority may from time to time give written notice to the Contractor, **PROVIDED THAT:**
- 14.11.1 subject to clauses 14.11.2, and 21.13 any such Authority Policy is consistent with the Output Specification, the Method Statement and Good Industry Practice, and its implementation would not put the Contractor in breach of this Agreement; and
 - 14.11.2 where compliance with any such Authority Policy carries a material cost or risk implication, the Contractor shall notify the Authority thereof and the Authority may (but shall not be obliged to) invoke the Variation Procedure. In the event that the Authority does not invoke the Variation Procedure, or invokes the Variation Procedure but rejects the Contractor's Quotation

pursuant to clause 21.22, the Contractor shall not be obliged to comply with such Authority Policy.

14.12 The Contractor shall, upon the request of the Authority and at no additional cost to the Authority, use reasonable endeavours to assist the Authority in connection with its duties to investigate maladministration, pursue internal complaint procedures, and undertake litigation, in each case arising out of, or in connection with, the Services. For the avoidance of doubt, the Contractor's duties under this clause 14.12 shall be restricted to the provision of information and/or (where necessary) its attendance at meetings and/or hearings.

14.13 Not used.

14.14 Notwithstanding any other provisions of this Agreement including, without limitation, this clause 14, during the carrying out of the MRF Works and up to Completion of the MRF Works, the Contractor shall be relieved from:

14.14.1 the obligation in paragraph 3.1.7 of the Output Specification in relation to monthly average turnaround times;

14.14.2 the payment of any Applicable Default Payment calculated in the manner referred to in Appendix 8, Part Six of the ASS Method Statement;

14.14.3 the payment of any Diverted Tonnage Payment or Slow Tonnage Payment referred to in any Collateral Warranty; and

14.14.4 any Performance Failure, Default or Repeat Default arising as a direct result of the Contractor's failure to achieve required turnaround times,

which arise as a result of the carrying out of the MRF Works to the extent that they could not otherwise have been avoided by the Contractor using reasonable endeavours to mitigate any such effects on the Services.

15. AUTHORITY SITES

15.1 On the Agreement Date the Parties shall enter into the Feathers Wharf Agreement for Lease.

15.2 The Contractor shall be deemed to have satisfied itself in relation to:

- 15.2.1 the means of access to and through each Authority Site and the possibility of interference by any person with such access;
- 15.2.2 save to the extent that responsibility is accepted by the Authority pursuant to clause 33.4.4, the methods of working necessary to prevent any nuisance, whether public or private, to any third parties; and
- 15.2.3 the boundaries of each Authority Site.
- 15.3 The Contractor shall conduct or commission all appropriate surveys of each Authority Site at its own expense and satisfy itself as to the results of those surveys and shall promptly disclose to the Authority all reports commissioned and obtained.
- 15.4 Subject to clauses 15.6 to 15.9 inclusive, the Contractor shall be responsible for all risks arising from each Authority Site and the Feathers Wharf Site including (without limitation) man-made obstacles such as utilities, concrete, pipes and conduits and all geological obstacles on each Authority Site and the Feathers Wharf Site and all costs arising therefrom.
- 15.5 Without prejudice to the foregoing and subject to clauses 15.6 to 15.9 inclusive and clause 16, the Contractor shall take the Authority Sites and the existing buildings thereon in their state and condition in all respects as at the date of occupation of such Authority Sites by the Contractor. Nothing in this Agreement or otherwise shall constitute or imply a warranty by or on behalf of the Authority as to the fitness and suitability of the Authority Sites or any part thereof for the provision of the Authority Site Services or the Authority Site Works.
- 15.6 The Contractor shall, except to the extent brought onto any Authority Site by an Authority Party, be responsible for any Hazardous Substances, and Historic Pollution for which the Contractor takes responsibility pursuant to clause 15.7, present at, on or in the Authority Sites from time to time on or after the Services Commencement Date, and, save to the extent that the following are increased as a result of any act or omission on the part of any Authority Party, shall indemnify the Authority against all Authority Losses which are incurred by the Authority as a result of the acts or omissions of any Contractor Party in handling or otherwise dealing with such Hazardous Substances, or Historic Pollution for which the Contractor takes responsibility pursuant to clause 15.7.

15.7 Save to the extent that liability for the costs of cleaning up any Historic Pollution arises during the course of, or as a result of, the MRF Works (in relation to which the provisions of clauses 6.2, 6.3 and 6A shall apply), the Contractor shall not have any responsibility nor liability in respect of Historic Pollution including, without limitation, for:

15.7.1 any requirement to carry out or pay for any Clean-up Works or liability in relation to any Environmental Claim;

15.7.2 any liability to carry out any other works (including investigation or remediation) or any liability or responsibility to comply with any agreement, indemnity, obligation or term, or Necessary Consents, where such works or compliance are required by and/or arise in consequence of any Historic Pollution and/or which will be rendered unnecessary and/or pointless as a result of and/or in consequence of any Historic Pollution (as the case may be); and

15.7.3 any payments to be made (including by way of tax or the provision of financial security including bonds or insurance) in relation to or as a consequence of Historic Pollution,

except to the extent that such Historic Pollution was, on the balance of probabilities, aggravated by or escaped at, in, or into the Environment as a direct result of, the acts or omissions of any Contractor Party.

15.8 Save to the extent that liability for the costs of cleaning up any Historic Pollution arises during the course of, or as a result of, the MRF Works (in relation to which the provisions of clauses 6.2, 6.3 and 6A shall apply), the Authority shall:

15.8.1 be responsible for, and indemnify the Contractor against, all Direct Losses arising from those aspects relating to Historic Pollution for which the Contractor is not responsible pursuant to clause 15.7 (but excluding any increased costs of carrying out the Authority Site Works as a result of the presence of such Historic Pollution); and

15.8.2 indemnify and keep the Contractor indemnified against all Direct Losses caused by the contamination of any Authority Site by the acts and omissions of any Authority Party after the Services Commencement Date.

15.9 Save to the extent that liability for the costs of cleaning up any Historic Pollution arises during the course of, or as a result of, the MRF Works (in relation to which the provisions of clauses 6.2, 6.3 and 6A shall apply), subject to the Parties' respective obligations under clauses 15.6 to 15.8 inclusive, the Authority shall be liable to:

15.9.1 remove or pay for the removal of Hazardous Substances present on (but not in) any Authority Site prior to the Services Commencement Date; and

15.9.2 carry out or pay for any Clean-up Works,

PROVIDED THAT the Contractor shall (after consultation with the Authority) have the right, but not the obligation, to remove such Hazardous Substances and/or carry out any Clean-up Works at the Authority's reasonable cost and expense. The Contractor agrees to undertake an open competitive tender process for the removal and/or clean-up sub-contract(s) pursuant to the procedure set out in clause 21.11, and to agree the identity of the sub-contractor with the Authority (such agreement by the Authority not to be unreasonably withheld or delayed).

16. MAINTENANCE OF AUTHORITY ASSETS

16.1 Not used.

16.2 The Contractor shall, at all times during the Contract Period, and at no additional expense to the Authority, maintain or procure the maintenance of the Authority Assets in accordance with the Output Specification and the Method Statement, so as to ensure that:

16.2.1 the Services are provided;

16.2.2 the Authority Assets identified in the first Bi-Annual Conditions Survey are kept in no materially worse condition than that revealed in the Existing Conditions Survey (fair wear and tear excepted) or, if any such Authority Asset did not exist at the time of the Existing Conditions Survey, then in no materially worse condition than that revealed in the first Bi-Annual Conditions Survey (fair wear and tear excepted) until replaced in accordance with the Method Statement; and

16.2.3 the Reverting Assets are kept in good structural and decorative order until the date of the conditions survey undertaken by the Contractor pursuant to

clause 16.7 next following the commissioning of such Reverting Asset (fair wear and tear excepted) and thereafter in no materially worse condition than that revealed in such condition survey until replaced in accordance with the Method Statement.

- 16.3 Not used.
- 16.4 Any works undertaken in fulfilment of the Contractor's maintenance obligations under the ASS Contract shall be carried out in accordance with the provisions of clauses 4.8.4, 4.8.5 and 4.9 which shall apply mutatis mutandis.
- 16.5 The Authority Sites shall be returned to the Authority at the expiry or earlier termination of the ASS Contract in the same condition as:
- 16.5.1 the Existing Conditions Survey; or
- 16.5.2 in relation to the Authority Site Works, the Bi-Annual Conditions Survey next following Completion of such Authority Site Works or
- 16.5.3 in relation to any Authority Asset not identified in the Existing Conditions Survey, the first Bi-Annual Conditions Survey,
- fair wear and tear excepted.
- 16.6 The use of the Authority Assets by the Contractor shall be regulated by the provisions of Schedule 12.
- 16.7 The Contractor shall, at its own cost, obtain a conditions survey of the Authority Sites and the Authority Buildings every two years (the reasonable proportionate cost of the conditions survey relating to the Authority Buildings to be for the account of the Authority), the first such survey to be obtained by 31 January 2006 (the "**Bi-Annual Conditions Survey**") provided that the Contractor shall be under no obligation to obtain a subsequent Bi-Annual Conditions Survey by 31 January 2008 in circumstances where the ASS Contract is terminated pursuant to clause 11.1.1. The Contractor shall supply a copy of the Bi-Annual Conditions Survey free of charge to the General Manager. Unless otherwise agreed with the General Manager, the Bi-Annual Conditions Survey shall be in the form adopted by the Existing Conditions Survey and shall be carried out by a reputable organisation approved by the General Manager, such approval not to be unreasonably withheld or delayed.

- 16.8 The Contractor shall assume total responsibility for the maintenance of the Authority Assets and shall, at the reasonable cost and expense of the Authority, maintain and paint the Authority Buildings to the same standard as the Authority Assets. To the extent that any Authority Asset is not used by the Contractor to perform the Services, the Contractor shall keep the same safely stored, unless it is agreed by the Parties that the relevant Authority Asset is no longer required and may be disposed of in accordance with the provisions of Schedule 12. All the costs associated with the maintenance, cleaning, storage, disposal and replacement of the Authority Assets shall be borne by the Contractor.
- 16.9 If any damage or loss to any Authority Asset shall occur from any cause other than fair wear and tear, the Contractor shall inform the General Manager of the circumstances relating to any such damage or loss as soon as reasonably practicable and the Contractor, with the approval of the General Manager (such approval not to be unreasonably withheld or delayed), shall make arrangements for the repair or making good of the same so that during the Contract Period and at the end thereof, the condition of the Authority Assets shall conform in every material respect with the requirements of the ASS Contract.
- 16.10 Save to the extent caused by the acts or omissions of an Authority Party, the cost of repairs or making good any damage or loss to any Authority Asset shall be borne by the Contractor. The cost of repairs or making good any Authority Asset to the extent caused by the acts or omissions of any Authority Party shall be borne by the Authority. In either case, the Parties agree to use all reasonable endeavours to ensure that the repairs are both undertaken in a timely fashion and in a manner designed to minimise disruption (to the extent reasonably practicable) to the Services.
- 16.11 Where any Contractor Asset, any Authority Asset, the EfW Facility or assets used in the provision of the River Transportation Services is damaged as a result of any act or omission of a Constituent Council Party, the Authority shall use its reasonable endeavours to assist the Contractor in:
- 16.11.1 recovering any damages or loss suffered by the Contractor as a result of such act or omission (including the cost of repairs to or of making good of the relevant Contractor Asset, any Authority Asset or the EfW Facility); and

- 16.11.2 ensuring that appropriate disciplinary action be taken by the Constituent Council Party against the person responsible for such act or omission.
- 16.12 The Contractor shall, as soon as reasonably practicable after discovery, notify the Authority of all design defects and/or construction and/or maintenance failures existing prior to 5 October 2002 and affecting the Authority Sites and/or the Authority Plant and Equipment ("**Defects**").
- 16.13 The Contractor shall, as soon as reasonably practicable after notifying the Authority of the relevant Defects pursuant to clause 16.12, issue a Variation Notice pursuant to clause 21 to remedy or procure the remediation of any Defect which relates to the Authority Sites (other than the Authority Site Works) subject to the Contractor's liability in respect of the reasonable costs of remediation of any such Defects (including, without limitation, the Contractor's or any Affiliate of the Contractor's internal management costs and the costs of third party advisers) not exceeding either singularly or in aggregate £1,748,966,332. For the purposes of this cap, individual proper and reasonable claims which do not exceed £29,149 shall be ignored, **PROVIDED THAT** upon the request of the Contractor the Authority shall assign to the Contractor the benefit of any contractual rights held by the Authority in respect of any work previously carried out and forming part of the Authority Sites.
- 16.14 The Authority shall, as soon as reasonably practicable after receiving notification of the relevant Defects pursuant to clause 16.12 or upon discovery itself of any such Defect in respect of Authority Plant and Equipment, remedy and/or procure the remediation of any Defect or, if necessary, arrange for the replacement of any such Authority Plant and Equipment so affected.
- 16.15 Notwithstanding the provisions of clauses 16.12 and 16.14, the Contractor shall not be liable for any design defects and/or construction and/or maintenance failures in respect of the Authority Site Works or Authority Plant and Equipment supplied by the Contractor which are discovered after the Expiry Date **PROVIDED THAT** with effect from the Expiry Date the Contractor shall have assigned all its contractual rights against the relevant Building Contractor(s) under the relevant Building Contract(s) to the Authority.
- 16.16 The Contractor shall:
- 16.16.1 inform the Authority of planned outages at the EfW Facility; and

16.16.2 liaise with the Authority through the Liaison Procedure and shall use its best endeavours to procure that all planned maintenance required by the ASS Contract, the Output Specification and the ASS Method Statement is carried out at times and in a manner so as to minimise disruption to the provision of the Authority Site Services.

16A DEFECTS IN MRF WORKS

16A.1 For the purpose of this clause 16A, a "MRF Defect" means any defect in the MRF Works including, without limitation:

16A.1.1 any defect that is a result of defective design, defective materials or defective workmanship;

16A.1.2 any failure of the MRF Works to meet or continue to meet the requirements in the Output Specification, the ASS Method Statement or any other provision of this Agreement; and

16A.1.3 any damage, destruction or other effect consequential on any such defect.

16A.2 For the duration of the MRF Defect Relief Period, for the purposes of this Agreement but without prejudice and subject to the provisions of clause 42, the occurrence of any MRF Defect shall be deemed to be a Relief Event. Upon the expiry of the MRF Defect Relief Period, the provisions of this clause 16A.1 shall cease to apply.

17. SUB-CONTRACTING

17.1 The Contractor shall not enter into or permit any Principal Sub-Contract in relation to the carrying out of the Authority Site Works or the provision of the Authority Site Services without the prior written consent of the Authority. Where:

17.1.1 the Principal Sub-Contract is with an Affiliate of the Contractor such consent shall not be unreasonably withheld or delayed by the Authority; and

17.1.2 in all other circumstances, the Authority shall only be able to withhold its consent on the grounds of the repute, technical ability and capacity, or relevant experience of the proposed Principal Sub-Contractor.

- 17.2 The Authority hereby confirms that the contractors listed in Schedule 14 shall be approved Principal Sub-Contractors for the purposes of clause 17.1.
- 17.3 The Contractor shall notify the Authority of the following details in relation to all Principal Sub-Contracts:
- 17.3.1 the identity of the Contractor's contractual counterparty;
 - 17.3.2 its duration;
 - 17.3.3 the nature of the obligations undertaken;
 - 17.3.4 the circumstances in which the Contractor can be defaulted and/or the Principal Sub-Contract terminated due to the default of the Contractor;
 - 17.3.5 the limit (or maximum extent) of the Contractor's liability under such Principal Sub-Contract; and
 - 17.3.6 any material changes to any of the above.
- 17.4 The Authority shall not be liable to the Contractor under the terms of this Agreement in respect of any Principal Sub-Contract which is entered into in by the Contractor in breach of clause 17.1 or 17.3, or to the extent that material changes are not notified to the Authority pursuant to clause 17.3.6.
- 17.5 The Contractor shall remain responsible to the Authority for the performance of all its obligations under this Agreement notwithstanding its entry into any Principal Sub-Contract, and no consent given by the Authority to the appointment of any Principal Sub-Contractor shall relieve the Contractor from its obligations hereunder.
- 17.6 The ASS Contractor shall be responsible to the Authority for the management and supervision of all Contractor Parties and for any physical loss of or damage to Authority Assets arising as a result of the acts, omissions and neglects of any Contractor Parties as if they were the acts, omissions and neglects of the ASS Contractor, save to the extent that such loss or damage arises out of the breach of this Agreement by or any act or omission or neglect of any Authority Party. The EfW Contractor shall be responsible to the Authority for the management and supervision of all EfW Contractor Parties and for any physical loss of or damage to Authority Assets arising as a result of the acts, omissions and neglects of any EfW Contractor Parties as if they were the acts, omissions and neglects of the EfW Contractor, save

to the extent that such loss or damage arises out of the breach of this Agreement by or any act or omission or neglect of any Authority Party.

17.7 The Contractor shall deliver to the Authority within twenty (20) Working Days of the same having been signed or otherwise executed by the relevant parties a copy of each Sub-Contract and Professional Appointment.

17.8 The Contractor shall enforce its own rights, under the Principal Sub-Contracts in circumstances where the absence of such enforcement would financially disadvantage the Authority to a material extent (and as the Authority shall certify to the Contractor upon request). The Contractor may, in its absolute discretion, request in writing clarification from the Authority of the financial consequences to the Authority of any such failure by the Contractor to enforce such rights. Without prejudice to any liability that the Contractor may have to the Authority pursuant to this clause 17.8, the Contractor shall not be bound to enforce its rights under a Principal Sub-Contract in circumstances where the Authority has clarified that non-enforcement would lead to the Authority being financially disadvantaged. Any failure by the Authority to respond in writing to any such request within ten (10) Working Days shall be deemed to constitute confirmation from the Authority that the relevant Contractor Party's failure to exercise any such right will not financially disadvantage the Authority to a material extent, and, accordingly, the Authority shall not subsequently seek to rely upon the provisions of this clause in respect of any failure by the Contractor to enforce such rights.

17.9 The Contractor shall:

17.9.1 subject to clause 17.9.2, ensure that each Building Contract provides that the Building Contractor is obliged to novate such Building Contract to the Authority in the event of termination of the ASS Contract prior to Completion of the relevant Authority Site Works;

17.9.2 in relation to circumstances where there is a termination for Authority Default, use reasonable endeavours to ensure that each Building Contract provides that the relevant Building Contractor is obliged to novate such Building Contract to the Authority in the event of termination of the ASS Contract prior to Completion of the relevant Authority Site Works **PROVIDED THAT** in circumstances where the Building Contractor refuses to agree the Contractor shall give the Authority a reasonable opportunity to

negotiate directly with the Building Contractor and **PROVIDED FURTHER THAT** the failure of the Authority to agree appropriate terms with the Building Contractor shall not prejudice the Contractor's right to appoint such Building Contractor;

17.9.3 use reasonable endeavours to include in any Building Contract third party enforcement rights in favour of the Authority to enable the enforcement of any right to novation of the Building Contract in favour of the Authority against the Building Contractor; and

17.9.4 in respect of each Principal Sub-Contract (other than in relation to the Building Contracts and Leased Assets), procure (where the Principal Sub-Contractor is part of the Contractor Group) or use reasonable endeavours (where the Principal Sub-Contractor is not part of the Contractor Group) to ensure that it is freely assignable by the Contractor without the consent of the Principal Sub-Contractor to the Authority or the Authority's nominee.

18. WEIGHBRIDGES

18.1 The Contractor shall be responsible for the maintenance and calibration of the Weighbridges and shall comply with all statutory requirements with respect to the operation, maintenance and calibration thereof, the results of which shall be made available upon reasonable notice for inspection by the Authority. In addition, the Contractor shall carry out daily cross-checks of the Weighbridges by weighing at least one (1) vehicle weighing in excess of seven and a half (7.5) tonnes and at least one (1) vehicle weighing less than seven and a half (7.5) tonnes on two (2) separate Weighbridges to confirm consistency and shall keep a record of the results of such cross-checks. In the event of any discrepancy, the Contractor shall notify the Authority as soon as reasonably practicable.

18.2 The Authority may, at its own expense and after giving reasonable notice to the Contractor, carry out such additional tests as the Authority reasonably deems necessary to determine the accuracy of the Weighbridges. Should such additional tests identify a material fault in any Weighbridge:

18.2.1 the Contractor shall remedy any such fault as soon as is reasonably practicable at its own expense;

18.2.2 the Contractor shall reimburse the Authority the reasonable cost of the tests carried out under this clause 18.2; and

18.2.3 to the extent that the Weighbridge has been weighing inaccurately so as to result in the Authority paying more or less for the Services than was properly due, the Parties shall reconcile the overcharge or undercharge (as appropriate). The monetary adjustment shall be agreed between the Authority and the Contractor or, in the absence of agreement, shall be referred to the Dispute Resolution Procedure for determination.

18.3 The Authority Waste delivered in private cars to the CA Sites shall be bulk weighed at a Weighbridge prior to its onward transfer.

18.4 Property in, and responsibility for, Authority Waste required to be weighed under this Agreement and which has been delivered to the Contractor shall pass to the Contractor upon the completion of the first weighing transaction at the relevant Site.

18.5 Property in, and responsibility for, Authority Waste required to be collected by the Contractor shall pass to the Contractor upon the Contractor taking possession of such Authority Waste at the relevant CA Site.

18.6 Property in, and responsibility for, Abandoned Vehicles shall pass as set out in the Output Specification and the Refuse Disposal (Amenity) Act 1978.

19. CHANGES IN TECHNOLOGY, MARKETS AND CONTINUOUS IMPROVEMENT

19.1 Either Party may propose:

19.1.1 additional sources of income for the Contractor;

19.1.2 the use of new technology; or

19.1.3 alternative methods for the improvement of the efficiency and environmental aspects of the waste disposal operation

to reduce the cost of providing the Authority Site Services in respect of Authority Waste. In such event, the Parties shall co-operate to appraise and if appropriate introduce such proposals in accordance with clause 21 by following the Variation Procedure.

- 19.2 If any of the changes referred to in clauses 19.1.1 to 19.1.3 inclusive are introduced by the Contractor in respect of the provision of the Authority Site Services, whether pursuant to clause 19.1 or otherwise, such that Savings are made by the Contractor in the provision of the Authority Site Services, in respect of Authority Waste, then the Authority shall be entitled to serve a Variation Notice on the Contractor under clause 21.
- 19.3 The Contractor shall comply with the continuous improvement initiatives set out in the Method Statement in respect of the Authority Site Services.

20. BEST VALUE

20.1 The Contractor shall use its reasonable endeavours during the Contract Period to assist the Authority in complying with its Best Value Duty in relation to the Services, and in so doing shall (without limitation to the generality of the foregoing) comply with any reasonable request made by the Authority (in connection with the Services):

20.1.1 for assistance in conducting Best Value Reviews and preparing Best Value Performance Plans;

20.1.2 for information, data or other assistance in pursuance of its Best Value Duty including:

20.1.2.1 to facilitate the inspection of the Authority's compliance with its Best Value Duty pursuant to Part 1 of the Local Government Act 1999;

20.1.2.2 to assist the Authority in relation to any action taken by the Secretary of State under section 15 of the Local Government Act 1999; and

20.1.2.3 to enable the Authority to comply with The Publication of Information Direction 1999 (England);

20.1.3 to procure, having received reasonable notice of any such meeting, the attendance of the EfW Operator and specific employees of the Contractor at any meetings of the Authority at which the provision of the Services is to be discussed in the context of the Authority's Best Value Duty; and

20.1.4 to examine jointly with the Authority the scope for using market testing of any part of the Services as a means of securing best value for the Authority.

21. VARIATIONS

21.1 Subject to the provisions of this clause, clause 19 and clause 46.1, either Party may request a Variation to the ASS Contract by serving a notice on the other identifying the proposed Variation (a "**Variation Notice**") specifying:

21.1.1 the nature of the Variation;

21.1.2 the reason for the Variation;

21.1.3 (where appropriate) the relevant Change in Law requiring the Variation;

21.1.4 where the Variation Notice is issued by the Contractor, the extent and period (if any) for which the Contractor requires relief from its obligations in relation to carrying out the Authority Site Works and/or providing the ASS Services; and

21.1.5 any time limits within which the Variation is required to be implemented; and

21.1.6 whether the implementation of the Variation necessitates a change to the EfW Contract (in which event the requesting Party shall also serve an EfW Authority Notice of Change or EfW Contractor Notice of Change (as appropriate)).

21.2 Where the Contractor issues a Variation Notice relating to an ASS Change in Law with which the Contractor is legally bound to comply in accordance with clause 22, so that the Authority is unable to reject the Variation Notice, the nature of the Variation proposed by the Contractor shall be capable of referral by the Authority to the Dispute Resolution Procedure where it believes such solution to be unnecessary, inappropriate or otherwise not represent the most cost-effective (to the Authority) modification to the Services consistent with the Contractor's compliance with clause 22.

21.3 If either Party reasonably considers that the information accompanying a Variation Notice served by the other Party is insufficient to allow it to properly consider such Variation Notice and (in the case of the Contractor) prepare a Variation Notice, it

may request additional information, in which event the Variation Notice shall be deemed not to have been served until such additional information has been supplied.

21.4 Each Party shall be entitled to serve Variation Notices:

21.4.1 in order to comply with a Change in Law affecting such Party, without limitation; or

21.4.2 otherwise, no more than twice in any Contract Year (and once each in respect of the periods from the Services Commencement Date to 31 March 2003 and 1 April 2032 to the Expiry Date) except with the prior consent of the other Party, such consent not to be unreasonably withheld or delayed.

21.5 If, over a rolling thirty (30) day period:

21.5.1 Authority Waste comprising Asbestos Waste and delivered to an Authority Site amounts to:

21.5.1.1 on average more than two and a half (2.5) tonnes per day; or

21.5.1.2 on average, more than five (5) Loads per day; or

21.5.2 the average weight of each Load of General Waste delivered to the Authority Sites is less than three (3) tonnes; or

21.5.3 seventeen and a half per cent (17.5%) or more of the tonnage of General Waste delivered to the Authority Sites in such period is delivered outside the hours of 06:00 to 17:00 on Monday to Friday and 06:00 to 13:00 Saturday and Sunday; or

21.5.4 ten per cent (10%) or more of the tonnage of General Waste delivered to the Authority Sites in such period is delivered in vehicles without automatic discharge; or

21.5.5 ten per cent (10%) or more of the tonnage of Tyre Waste delivered to the Authority Sites in such period is delivered outside the hours of 06:00 to 17:00 on Monday to Friday, 07:00 to 15:00 on Saturday and 08:00 to 12:00 on Sunday;

21.5.6 seven and a half per cent (7.5%) or more of the tonnage of Authority Waste comprising Inert Waste delivered to the Authority Sites in such period is

delivered outside the hours of 06:00 to 17:00 on Monday to Friday, 07:00 to 15:00 on Saturday and 08:00 to 12:00 on Sunday; or

21.5.7 ten per cent (10%) or more of the tonnage of Authority Waste comprising Clean Timber delivered to the Authority Sites in such period is delivered outside the hours of 06:00 to 17:00 on Monday to Friday, 07:00 to 15:00 on Saturday and 08:00 to 12:00 on Sunday,

the Contractor shall be entitled to raise a Variation Notice, which shall not be capable of rejection by the Authority and shall be treated in the same way as a Variation Notice served to comply with a Change in Law with which the Contractor is bound to comply pursuant to the procedure in clause 21.2 **PROVIDED THAT** the Contractor's Quotation for any such Variation Notice shall provide for payment to the Contractor in accordance with clause 21.18.

21.6 The Parties agree that, to the extent that either Party can reasonably demonstrate that changes to Good Industry Practice arising from the implementation of the ELV Directive have resulted in an increase or decrease in administrative duties in relation to Abandoned Vehicles, either Party may issue a Variation Notice in respect of the Abandoned Vehicle Management Fee. The Variation Notice, which shall not be capable of rejection by the Authority, shall be treated in the same way as a Variation Notice served to comply with a Change in Law with which the Contractor is bound to comply pursuant to the procedure in clause 21.2 **PROVIDED THAT** the Contractor's Quotation for any such Variation Notice shall provide for payment to the Contractor on a Neutral Position Without Profit basis to the extent that the Contractor's administrative duties increase, and for a decrease in the Abandoned Vehicle Management Fee to leave the Contractor in a Neutral Position Without Profit to the extent that the Contractor's administrative duties decrease.

21.7 During the Interim Period only, if a Third Party Delivery Point shall become unable to receive General Waste for a period in excess of twenty (20) consecutive days for reasons other than any act or omission of the Contractor, the Contractor shall be entitled to serve a Variation Notice on the Authority requesting proportionate relief for the duration of the inability in relation to coefficient (E) in the Diverted Tonnage Payment formula attached as Appendix A to the Collateral Warranties in respect of the Royal Borough of Kensington and Chelsea, the London Borough of Wandsworth and the London Borough of Lambeth respectively and as specified in the Diverted

Tonnage Default Notice through the substitution of the affected Third Party Delivery Point grid reference with the grid reference of an alternative Site or alternative Sites (as appropriate), and a subsequent recalculation of the Contracted Delivery Distance for the purposes of the Diverted Tonnage Default Notice and the calculation of the Diverted Tonnage Payment.

21.8 The Authority shall not unreasonably delay or withhold its consent to any Variation Notice issued pursuant to clause 21.7. Any agreed or Finally Determined Variation shall take effect from the first day of the Contract Month following agreement or Final Determination, and shall cease to have effect upon the relevant Third Party Delivery Point ceasing to be unable to receive General Waste. For the avoidance of doubt and without limitation, it shall be reasonable for the Authority to withhold its consent where the Contractor has not taken all reasonable steps to secure the shortest overall travelling distance for the affected Constituent Council without requiring the Contractor to bear substantial additional cost.

21.9 The Contractor shall (subject to clauses 21.13 to 21.18 inclusive):

21.9.1 in the case of a Variation Notice issued by the Contractor, accompany the Variation Notice; or

21.9.2 in the case of a Variation Notice served by the Authority, and subject to clauses 21.4 and 21.11 within twenty (20) Working Days of such service on the Contractor (or such longer period as may be agreed or Finally Determined to be reasonable having regard to the subject matter of the proposed Variation and the extent to which such works and/or services need to be sub-contracted), provide the Authority,

with a quote to the Authority for the implementation of the Variation, including any consequent necessary changes to the terms of the ASS Contract (including without limitation any necessary extensions to Relevant Construction Dates) and a breakdown of any Cost or Saving to the Contractor consequent upon such Variation ("**Contractor's Quotation**").

21.10 In quoting to the Authority for the implementation of a Variation, the Contractor shall:

21.10.1 where a Variation Notice is served in connection with an Authority Legislative Change Risk which requires Capital Expenditure in respect of

any landfill site, provide a Contractor's Quotation which reflects such Contractor's Quotation in an increase or reduction (as appropriate) in the relevant Contract Rate(s) in substitution for the payment of a lump sum or staged payments; and

21.10.2 in all other circumstances, use its reasonable endeavours to give the Authority the option of reflecting any Contractor's Quotation in an increase or reduction (as appropriate) in the relevant Contract Rate(s) in substitution for the payment of a lump sum or staged payments.

21.11 In relation to a Variation Notice, to the extent that the Contractor or any Sub-Contractor intends to sub-contract works with a value in excess of [REDACTED] and/or services with a value in excess of [REDACTED] per annum to third parties, the Contractor shall (or procure that the relevant Sub-Contractor shall):

21.11.1 undertake a competitive tendering process in a manner agreed in advance by the Authority (such agreement not to be unreasonably withheld or delayed);

21.11.2 seek the Authority's approval of any tender documents and any list of pre-qualifying contractors prior to their issue (such approval not to be unreasonably withheld or delayed);

21.11.3 disclose the results of the competitive tendering process to the Authority in such detail as the Authority may reasonably require;

21.11.4 take account of any representations of the Authority in relation to the Authority's preferred choice of sub-contractor; and

21.11.5 not be obliged to pick the cheapest tender where it can reasonably justify another tender on other grounds.

21.12 The Contractor shall bear all of its internal costs (which, for the avoidance of doubt, shall include those incurred by the ASS Operator) in connection with providing a Contractor's Quotation. In any Contract Year, the external costs to the Contractor Group in compiling Contractor's Quotations in response to Variation Notices issued by the Authority shall not exceed [REDACTED]. Any external costs reasonably incurred above [REDACTED] shall be borne by the Authority, **PROVIDED THAT** the Contractor shall agree the cost of preparing the Contractor's Quotation in advance with the

Authority and prior to incurring any expenditure over and above [REDACTED] in any Contract Year.

21.13 The Contractor shall be entitled to reject a Variation Notice issued by the Authority on the following grounds:

21.13.1 that the request for the Variation is outside the legal capacity or power of the Authority; or

21.13.2 that the Authority has insufficient financial means to pay for the Variation; or

21.13.3 that the implementation of the Variation would breach any relevant Law or Guidance or would be a departure from Good Industry Practice; or

21.13.4 that the implementation of the Variation would cause any Necessary Consent (which is not reasonably likely, on the balance of probabilities, to be capable of modification) to be revoked (rather than amended or replaced) or to become unobtainable; or

21.13.5 that the implementation of the Variation would require a new Necessary Consent or an amendment to an existing Necessary Consent which will not (using all reasonable endeavours) be obtainable; or

21.13.6 that the time specified by the Authority for commencement and/or completion of the Variation cannot be reasonably achieved by the Contractor; or

21.13.7 that the Variation, either in itself or when taken together with the delays caused by other Authority Variations, would involve a delay in the programmed completion of any element of the Authority Site Works in excess of eighteen (18) months; or

21.13.8 that the Variation would involve Capital Expenditure in the relevant Contract Year which either in itself or when taken together with Capital Expenditure required by other Variations in that Contract Year exceeds [REDACTED];

21.13.10 that the Variation would result on the balance of probabilities either in itself or when taken together with other Variations in a change in the projected

amount of Authority Waste to be processed by the Contractor of forty-six thousand and two hundred (46,200) tonnes per annum; or

21.13.11 that the Variation or its implementation necessitates a change to the EfW Contract pursuant to paragraph 6 of Schedule 15 but the Contractor is entitled to refuse the EfW Authority Change on grounds referred to in paragraph 6.1 of Schedule 15 or the Authority withdraws (or is deemed to withdraw) the relevant EfW Authority Notice of Change pursuant to paragraph 6.7 or 6.8 of Schedule 15,

PROVIDED THAT the Contractor shall not be entitled to refuse to quote where the Variation is required by the Authority in order to comply with an existing Law or a Change in Law.

21.14 Where a Variation Notice is required to be served by the Contractor as a result of a Change in Law other than one comprising an Authority Legislative Change Risk:

21.14.1 if the Variation increases or does not affect the Contractor's Cost, the Contractor's Quotation shall not entitle the Contractor to any payment in connection with the Variation;

21.14.2 if the Variation adversely affects any Authority Site Service to a material extent, the Contractor's Quotation shall entitle the Authority to a reduction in the relevant Contract Rates to reflect the reduced level of Authority Site Service and leave the Authority in a Neutral Position Without Profit; and

21.14.3 if the Variation beneficially affects any Authority Site Service, the Contractor's Quotation shall not entitle the Contractor to any payment in connection with the Variation.

21.15 Where a Variation Notice is served in connection with an Authority Legislative Change Risk, the Contractor's Quotation shall entitle the Contractor or the Authority (as the case may be) to payment by the Authority or the Contractor (as the case may be) in order to leave the Contractor in a Neutral Position Without Profit **PROVIDED THAT** the first [REDACTED] in aggregate of Capital Expenditure associated with Authority General Change in Law Risks shall be for the account of the Contractor.

21.16 Where the Variation Notice is served in connection with an Authority Specific Change in Law Risk, the Contractor's Quotation shall take into account the effects of

Indexation, to the extent reasonably practicable, to avoid possible double-counting. Either Party may request at any time a reconciliation of the effects of Indexation to the extent that the Contractor has underestimated or overestimated any double-counting effect the Indexation has on payments made to the Contractor under the ASS Contract.

21.17 Where a Variation Notice is served by either Party pursuant to clause 19, the Contractor's Quotation shall provide for the Net Saving to the Contractor to be shared equally between the Parties.

21.18 In all circumstances other than those set out in clauses 21.14 to 21.17 inclusive:

21.18.1 the Contractor's Quotation shall be based on a disclosed cost plus a fair return in undertaking the Variation where this involves a Cost or risk to the Contractor or a sub-contractor, such fair return to reflect prevailing competitive market rates for works and/or services of the relevant kind and any consequent risk and/or cost increases or decreases to the provision of the Services. For the avoidance of doubt, such fair return shall exclude the funding for such Variation, which shall be dealt with (where appropriate) separately as an option pursuant to clause 21.10; and

21.18.2 subject to clauses 21.12, the Contractor's Quotation shall be entitled to take account of any Direct Losses which may accrue to the Contractor or any sub-contractor as a result of the proposed Variation.

21.19 Within thirty (30) Working Days of receipt of the Contractor's Quotation the Authority shall, after consultation with the Contractor, accept or reject the Contractor's Quotation (as clarified and/or amended as a result of the consultation process) and (where appropriate) which payment option it prefers.

21.20 Subject always to clause 21.18, the Authority may refer the Contractor's Quotation to the Dispute Resolution Procedure in circumstances where it believes the Contractor's Quotation to be excessive. The Authority shall be under no obligation to accept the Contractor's Quotation once it has been Finally Determined. For the avoidance of doubt, the costs of the Parties in pursuing the Dispute Resolution Procedure shall be Finally Determined as part of the Dispute Resolution Procedure.

21.21 If the Authority accepts the Contractor's Quotation (as agreed or Finally Determined) the Variation shall be implemented and payment made in accordance with the Contractor's Quotation (as agreed or Finally Determined).

21.22 If the Authority rejects the Contractor's Quotation (as agreed or Finally Determined), the Variation shall not be implemented. For the avoidance of doubt:

21.22.1 in recognition of the fact that there may be a number of ways in which the Authority may wish to meet its obligations following a Change in Law, the Authority may reject a Contractor's Quotation (as agreed or Finally Determined) which is requested by the Authority in order for the Authority to comply with Changes in Law affecting the Authority; and

21.22.2 where the Authority rejects a Contractor's Quotation in circumstances where clause 21.22.1 applies, this shall not prevent the Contractor from serving its own Variation Notice where a Variation is required by the Contractor in order for it to comply with such Change in Law.

21.23 Where necessary, when a Variation is required by either Party in order to comply with a Change in Law which affects the Authority Site Services or either Party's obligations under the ASS Contract;:

21.23.1 the Parties shall use reasonable endeavours to expedite the procedures in this clause in order to facilitate the implementation of the Variation prior to the date on which the Law makes the relevant Authority Site Service unlawful or puts the Authority in breach of statutory duty; and

21.23.2 the Contractor shall (at its own risk and without prejudice to the Authority's rights under the ASS Contract) be entitled to make such unilateral modification(s) to the Authority Site Services as may be necessary in order to comply with its obligations under clause 22. Any such unilateral modification shall be capable of referral by the Authority to the Dispute Resolution Procedure where it believes such unilateral modification to be unnecessary, inappropriate or otherwise not represent the most cost-effective (to the Authority) modification to the Authority Site Services consistent with the Contractor's compliance with clause 22.

22. COMPLIANCE WITH LAWS

- 22.1 The Contractor shall procure that at all times the Authority Site Works and the Authority Site Services are performed in compliance with all relevant Laws and Necessary Consents. The Contractor shall also give all notices required by any statutory undertaker with rights over any Authority Site, or with whose systems the Authority Sites or any part of the Authority Sites is or shall be connected, which may be required in relation to the Project, the operation of the Authority Sites or any part of the Authority Sites or otherwise affecting the provision of the Authority Site Services.
- 22.2 The Contractor shall pay all fees and charges required to be paid under any Law relating to the performance of the Authority Site Works and/or the Authority Site Services.

23. LICENCES

Without prejudice to the generality of clause 22:

- 23.1 The Contractor shall, at its own expense, ensure that all necessary Authority Site Licences and Port of London Authority licences throughout the Contract Period are obtained and at all times maintained. The Contractor shall provide a copy of each Authority Site Licence and Port of London Authority licence to the General Manager not later than fourteen (14) days after its issue and/or periodic renewal to the Contractor.
- 23.2 The Contractor shall operate, maintain and manage the Authority Sites in accordance with and in all other respects comply with the Authority Site Licences and shall comply in all respects with the Port of London Authority licences.
- 23.3 The Contractor shall (insofar as the Law allows) indemnify and keep indemnified the Authority against all Authority Losses incurred in respect of any breaches by any Contractor Party of the Authority Site Licences, Port of London Authority licences and associated documentation and requirements, including any reasonably incurred costs of disruption or of the making of alternative Authority Waste transfer or disposal arrangements that may arise therefrom.

23.4 Subject to clause 23.5, the Contractor shall be responsible for paying all costs, fees and charges associated with the Authority Site Licences and Port of London Authority licences referred to in clause 23.1.

23.5 The Authority shall bear all its own costs and those of its external advisors in circumstances where it is the grantor of any Authority Site Licence.

23.6 Any proposed variations to the existing Authority Site Licences must be approved by the General Manager before any application for such variation is made, such approval not to be unreasonably withheld or delayed.

24. HEALTH AND SAFETY

24.1 Without prejudice to the generality of clause 22, the Contractor shall ensure that all Contractor Parties shall, in carrying out the Authority Site Works or providing the Authority Site Services, comply with the Health and Safety at Work etc. Act 1974, the Factories Act 1961 (where applicable), the Freight Containers (Safety Convention) Regulations 1984, the Dock Regulations 1988 and all mandatory requirements or regulations relating to health and safety of the Port Health Authority, the Port of London Authority and the Environment Agency (all of which Legislation shall collectively be referred to as the "**Health and Safety Obligations**").

24.2 Without prejudice to the obligation in clauses 24.1, the following obligations relating to health and safety shall apply:

24.2.1 the Authority shall be notified of any amendments to the Contractor Health and Safety Policies and two (2) copies of any revised documents shall be lodged with the General Manager;

24.2.2 the Contractor shall carry out safety inspections and audits for all areas and activities on the Authority Sites and the Feathers Wharf Site in accordance with and not less frequently than specified in the Contractor Health and Safety Policies and shall submit two (2) copies of written reports to the General Manager within twenty (20) Working Days of completion of any such inspection or audit;

24.2.3 the Contractor shall produce a code of safe working practice for the safe tipping of Authority Waste at the Weighbridges which shall be issued to all regular users of the Authority Sites, such code to receive the prior written

approval of the General Manager, such approval not to be unreasonably withheld or delayed;

24.2.4 the Contractor shall ensure that all Contractor Employees working at the Authority Sites and/or the Feathers Wharf Site are made aware of all health risks associated with carrying out and/or providing any of the Authority Site Works and/or the Authority Site Services and in particular those associated with Leptospiral Jaundice (Weil's Disease), as well as Poliomyelitis, Tetanus, Hepatitis A, Hepatitis B and Toxicara Canis or Cati; and

24.2.5 in relation to any accident or other incident which is reportable to the Environment Agency, the Health and Safety Executive or any other agency responsible for health and safety matters, such accident or incident shall also be reported to the General Manager as soon as reasonably practicable after the accident or incident occurs.

25. STAFFING

- 25.1 Without prejudice to the generality of clause 22 and without limitation, the Contractor shall not, and shall take all reasonable steps to secure that all Contractor Parties employed in the provision of the Authority Site Services do not unlawfully discriminate within the meaning and scope of any applicable provisions of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disability Discrimination Act 1995.
- 25.2 The Contractor shall ensure that there is a suitably qualified manager in attendance at each Authority Site at all operating times, and that the name and contact number for such manager is notified to the Authority prior to the manager taking control of such Authority Site.
- 25.3 All persons connected with the day-to-day provision of the Authority On-Site Services shall, when on duty, wear a uniform or badge which clearly identifies the individual by name and which clearly identifies such individual as being an employee, Sub-Contractor, representative or agent of the Contractor.
- 25.4 The Authority shall consult with the Contractor before employing any person other than temporary staff after the Agreement Date and prior to the Services Commencement Date who shall be employed wholly or mainly to carry out tasks which shall be performed by the Contractor in the provision of the Services. Unless

such appointment relates to a temporary member of staff, the Authority shall obtain the Contractor's prior written consent to the appointment of any such person, such consent not to be unreasonably withheld or delayed and to have regard to historical or seasonal fluctuation. The Authority shall as soon as is reasonably practicable notify the Contractor in writing of any appointment made in accordance with this clause 25.4, giving the commencement date, name and age of the new employee of the Authority (a "**Replacement Employee**").

- 25.5 During the period between the Agreement Date and the Services Commencement Date, the Authority shall not without the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed) materially amend the rates of remuneration, holiday entitlement or hours to be worked by any person who is likely to be an Authority Transferring Employee.
- 25.6 In the interests of good industrial relations the Parties shall provide such information and carry out such consultation (if applicable) as may be required by Regulation 10 of the TUPE Regulations. The Parties shall, and the Contractor shall procure that all of the Contractor's Sub-Contractors shall provide any other relevant person (including employers of employees who may be Third Party Transferring Employees) with such information and in sufficient time so as to enable that person to inform and consult with trades unions and/or elected representatives and the Contractor shall forthwith upon request by the Authority and/or any employer of affected Third Party Transferring Employees furnish to the Authority and/or the employer of any affected Third Party Transferring Employees as the case may be any information concerning any measures (within the meaning of the TUPE Regulations) that the Contractor or any of its Sub-Contractors proposes to take in relation to any affected employee.
- 25.7 The Authority shall no later than one month prior to the Services Commencement Date provide the Contractor with details in accordance with the information set out in Appendix G of the Authority Transferring Employees who will be transferring to the Contractor on the Services Commencement Date. The information to be provided pursuant to this clause 25.7 will be correct as at the date one month prior to the Services Commencement Date.

- 25.8 The Authority shall indemnify and keep the Contractor indemnified fully in respect of any costs, losses, damage, claims, actions, expenses (including the cost of reasonable legal and other professional services) demands and charges arising from:
- 25.8.1 any breach by the Authority of clauses 25.4 or 25.5;
 - 25.8.2 any inaccuracy as at the Services Commencement Date of any information disclosed under clause 25.7; and
 - 25.8.3 any failure to provide any information required to be disclosed under clause 25.7.
- 25.9 The Parties acknowledge that as at the Agreement Date there are or may be individuals employed or engaged by third parties in the provision of some services to the Authority which are the same or similar to the Services and in connection with such persons the Authority has obtained such information as has been provided to it in Appendix H which is, to the best of the Authority's knowledge and belief, accurate as at the date of the respective covering letters from Cleanaway in Appendix H.
- 25.10 The Contractor shall be responsible for all contractually binding emoluments and other benefits in respect of any of its employees and shall procure that any Sub-Contractor shall be responsible for their employees (including in either case any Authority Transferring Employees, Replacement Employees or any Third Party Transferring Employees) and including without limitation all wages, holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and otherwise which are attributable to the period from 00:01 hours on the Services Commencement Date and the Contractor hereby agrees to indemnify and hold harmless the Authority against all reasonably incurred liabilities, claims, demands and expenses (including reasonable legal expenses) in respect of the same.
- 25.11 The Contractor shall indemnify and keep indemnified the Authority against any claim or claims by an Authority Transferring Employee, Replacement Employee or Third Party Transferring Employee or a claim by a trade union representative or elected representative in respect of any such employees made against the Authority arising out of any acts or omissions of the Contractor or any Sub-Contractor which occurred after 00:01 hours on the Services Commencement Date or the date of transfer by virtue of the Acquired Rights Directive or the TUPE Regulations whichever is the earlier and prior to the Termination Date or the Expiry Date,

whichever is the earlier, except to the extent that any such claim is brought about by any failure of the Authority or of any Third Party Transferring Employee's employer to comply with its or their obligations under Regulation 10 of the TUPE Regulations. A claim may include but is not limited to a claim for breach of contract, loss of office, unfair dismissal, equal pay, redundancy, sex or race or disability discrimination, personal injury, unlawful deduction of wages or under the Working Time Regulations 1998.

25.12 The Authority shall indemnify and keep indemnified the Contractor against any claim or claims by an Authority Transferring Employee or Replacement Employee or a claim by a trade union representative or elected representative of an Authority Transferring Employee or Replacement Employee made against the Contractor arising out of the acts or omissions of the Authority which occurred prior to 00:01 hours on the Services Commencement Date or the date of transfer by virtue of the Acquired Rights Directive or the TUPE Regulations (whichever is the earlier) except to the extent that any such claim is brought about by any failure of the Contractor or of any Sub-Contractor to comply with its or their obligations under Regulation 10 of the TUPE Regulations. A claim may include but is not limited to a claim for breach of contract, loss of office, unfair dismissal, equal pay, redundancy, sex or race or disability discrimination, personal injury, unlawful deduction of wages or under the Working Time Regulations 1998.

25.13 If any contract of employment with an employee of the Authority other than an Authority Transferring Employee or Replacement Employee shall have effect or be alleged to have effect after the Services Commencement Date as having originally been made between the Contractor and such person by virtue of the operation of the Acquired Rights Directive or the TUPE Regulations, provided that this is within ten (10) Working Days of the Services Commencement Date the Contractor shall, upon becoming aware of such operation of the Acquired Rights Directive or the TUPE Regulations or alleged such operation in relation to such contract, within the time period specified notify the Authority immediately, whereupon the Authority shall have ten (10) Working Days in which to offer alternative employment to such individual. If no alternative employment is offered or if such employment as is offered by the Authority is not accepted by the individual, the Contractor shall be entitled to terminate the individual's contract of employment forthwith, provided that such termination is for an economic, technical or organisational reason entailing changes in the workforce, in which event the Authority shall indemnify and keep

indemnified the Contractor against any losses, damages, costs, claims, liabilities and expenses of whatsoever nature (including reasonable legal costs and expenses) arising out of such employment from the transfer date and its termination.

25.14 Each Party shall promptly notify the other of any circumstances which have given or are likely to give rise to a claim under the indemnities in clauses 25.11, 25.12, 25.13, 25.15 (where it applies) and 25.18 providing reasonable details of the circumstances and each Party shall comply with the conduct of claims provisions in clause 36.

25.15 This clause 25.15 shall apply if the Transfer Regulations apply at any time during the Contract Period or on the termination for any reason of the whole or any part of the ASS Contract or any of the Contractor's Sub-Contracts at any level.

25.15.1 The Contractor shall indemnify and keep indemnified the Authority against any claim or claims by a Contractor Employee made against the Authority arising out of any acts or omissions of the Contractor or any Sub-Contractor which occurred prior to the date of transfer by virtue of the operation of the Transfer Regulations. A claim may include but is not limited to a claim for breach of contract, loss of office, unfair dismissal, equal pay, redundancy, sex or race or disability discrimination, personal injury, unlawful deduction of wages or under the Working Time Regulations 1998. This indemnity shall not apply to any claim which arises in connection with any act or omission of the Authority.

25.15.2 Notwithstanding the operation of the Transfer Regulations in transferring to the Authority or to any new supplier of the same or similar services as the Services ("**Replacement Supplier**") the employments of those Likely Transferring Contractor Employees as defined in clause 25.16.1 who have been wholly or mainly employed in the provision of the Authority Site Services immediately prior to termination if there is an economic, technical or organisational reason entailing changes in the workforce which applies to any of the Contractor Employees then either the Contractor shall terminate any such individual's contract of employment or, if such termination has not been effected prior to transfer the Authority or any Replacement Supplier (as the case may be) may terminate the employment on the minimum notice required by law (either as provided for by statute or under the terms of the employment contract, whichever is the longer) provided such termination

takes place within ten (10) Working Days after the date of transfer and in either case, the Contractor shall indemnify and keep indemnified the Authority and any Replacement Supplier against any losses, damages, costs, claims, liabilities and expenses of whatsoever nature (including reasonable legal costs and expenses) arising out of the employment of that individual up to the date of termination or the termination itself.

25.15.3 The Contractor shall indemnify and keep indemnified the Authority on behalf of itself or any Replacement Supplier against any claim or claims by any Contractor Employee who should have been identified as a Likely Transferring Contractor Employee and whose employment transfers or should have transferred, but for a dismissal by the Contractor or any of its Sub-Contractors. A claim may include but is not limited to a claim for breach of contract, loss of office, unfair dismissal, equal pay, redundancy, sex or race or disability discrimination, personal injury, unlawful deduction of wages or under the Working Time Regulations 1998.

25.16 During the period of six (6) months preceding the Expiry Date or in the event of step-in pursuant to clause 39 or after the Authority has given notice to terminate the ASS Contract, and whether or not the Transfer Regulations apply, the Contractor shall:

25.16.1 as soon as reasonably practicable identify to the Authority those Contractor Employees who have had significant involvement in the provision of the Services and, in particular, whose employments are expected to transfer to the Authority or to any Replacement Supplier by virtue of the Transfer Regulations ("**Likely Transferring Contractor Employees**") together with any third parties significantly involved, employed, assigned or engaged in the provision of the Authority Site Services;

25.16.2 subject to clause 25.17, fully and accurately disclose to the Authority upon the Authority's written request the information listed in Schedule 10 relating to the Likely Transferring Contractor Employees and (so far as such information is available) any third parties significantly involved, employed, assigned or engaged in the provision of the Authority Site Services;

25.16.3 permit the Authority to use the information to inform any future prospective bidder for any services which are substantially the same as the Authority Site Services or to inform any prospective employer about the employees; and

- 25.16.4 enable and assist the Authority and such other person(s) referred to in clause 25.16.3 to communicate with and meet those employees and their trade union or other employee representatives when and where the Authority may determine.
- 25.17 The Contractor's obligation to provide information under clause 25.16.2 is subject always to the Contractor's obligations under any applicable data protection Legislation and any obligations of confidentiality which the Contractor owes to third parties (and which the Contractor shall endeavour to have waived, where appropriate) and in relation to employees who are not directly employed by the Contractor or by an Affiliate of the Contractor or in relation to any third parties significantly involved, employed, assigned or engaged in the provision of the Authority Site Services shall be satisfied provided the Contractor uses reasonable endeavours to obtain the information.
- 25.18 The Contractor shall indemnify and keep the Authority indemnified fully in respect of any loss arising from the inaccuracy of, or failure to provide, any information required to be disclosed under clause 25.16.
- 25.19 During the period of twelve (12) months preceding the Expiry Date, or where notice terminating the ASS Contract early has been given by either Party, the Contractor shall not, and shall procure that its Sub-Contractors shall not, without the prior written agreement of the Authority (such agreement not to be unreasonably withheld or delayed):
- 25.19.1 materially amend the rates of remuneration, holiday entitlement or hours to be worked by any Likely Transferring Contractor Employee or any third party significantly involved, employed, assigned or engaged in the provision of the Authority Site Services; or
- 25.19.2 replace any such Likely Transferring Contractor Employee or deploy any person other than those already providing the Services to perform the Authority Services (save in circumstances where such replacement or redeployment is required as a result of the dismissal of an employee for disciplinary or health reasons or in order to ensure that the Contractor is in a position to comply with the Output Specification) or materially increase the number of persons performing the Authority Site Services.

25.20 The Contractor shall provide each Contractor Employee engaged in carrying out the Authority Site Works and/or providing the Authority Site Services with a copy of the Public Interest Disclosure Code:

25.20.1 upon the date upon which any such Contractor Employee first becomes engaged in the Authority Site Works or the provision of the Authority Site Services; and

25.20.2 on each fifth anniversary of the Services Commencement Date.

25.21 The Contractor shall confirm to the Authority in writing on each fifth anniversary of the Services Commencement Date that it has complied with its obligations under clause 25.20.

25.22 The provisions of Schedule 2 (Default Termination Sums) shall have effect subject to the provisions in clause 25.15 if the Transfer Regulations apply, save that:

25.22.1 in the event of an Authority Default Termination under clause 45, the indemnities in clause 25.15.2 and 25.15.3 shall not apply; and

25.22.2 in the event of a Contractor Default Termination under clause 41, the indemnity in clause 25.15.2 shall be modified so that the period of ten (10) Working Days is extended to two (2) months after the date of transfer or two (2) months after the date of delivery of all information to which the Authority is entitled pursuant to clause 25.16, whichever is the later.

26. PENSIONS

26.1 The Contractor shall:

26.1.1 before the Services Commencement Date enter into discussions with the Authority and the Actuary to the LPFA Fund with a view to reaching agreement on the terms on which a bulk transfer shall be made from the LPFA Fund to the New Scheme (as defined in clause 26.1.2) to provide, in respect of service before the Services Commencement Date for and in respect of Pension Employees who, having joined the New Scheme, elect to have such a transfer made in respect of them, provided an agreed transfer value is paid, benefits which are at least equal in value to the benefits earned under the LPFA Fund, and the benefits in both schemes shall be valued for

this purpose using actuarial assumptions agreed by the Actuary to the LPFA Fund and an actuary advising the Contractor. The Parties shall instruct their respective agents who will be parties to those discussions to act in good faith and with all reasonable endeavours for the purpose of reaching agreement on the amount of assets to be transferred from the LPFA Fund;

- 26.1.2 before the Services Commencement Date nominate or establish a retirement benefits scheme (the "**New Scheme**") which is exempt approved or capable of exempt approval under Chapter 1 of Part XIV of the Income and Corporation Taxes Act 1988, capable of accepting, and willing to accept, a transfer payment from the LPFA Fund in respect of the Pension Employees and is certified by the Government Actuary's Department as being designed to provide broadly equivalent benefits as set out in clause 26.1.4;
- 26.1.3 procure that each of the Pension Employees is (unless the exempt approval of the New Scheme would be adversely affected thereby) admitted to the New Scheme on the Services Commencement Date for future service benefits and notified of their right to opt out of the New Scheme;
- 26.1.4 procure that the New Scheme shall provide each of the Pension Employees who has not reached age sixty-five (65) and has not opted out of active membership of the New Scheme with benefits in respect of pensionable service on and after the Services Commencement Date which are at least broadly equivalent (as certified by the Government Actuary's Department) to the benefits to which they would have been entitled in respect of such service under the provisions of the LPFA Fund in force immediately before the Services Commencement Date; and
- 26.1.5 on or before the Services Commencement Date issue an announcement to the Pension Employees in a form previously agreed by the Authority (such agreement not to be unreasonably withheld or delayed) which identifies the New Scheme and confirms that benefits shall be provided under the New Scheme for the Pension Employees with effect from the Services Commencement Date in accordance with clause 26.1.1 and 26.1.4.
- 26.2 The Contractor may elect in lieu of, and in complete satisfaction of, its obligations under clauses 26.1.1 to 26.1.5 above, to participate in the LPFA Fund in respect of the Pension Employees with effect from the Services Commencement Date.

- 26.3 If the Contractor shall be admitted to participation in the LPFA Fund with effect from the Services Commencement Date its participation shall satisfy the obligations of the Contractor relating to pensions under this clause during such time as such participation in the LPFA Fund shall continue and in the event of such participation ceasing in relation to the Pension Employees the obligations of the Contractor under clauses 26.1.1 to 26.1.5 above shall resume save that references to the Services Commencement Date in those clauses shall be read as if they were references to the date on which participation in the LPFA Fund ceased except that the obligation in clause 26.1.4 shall be an obligation to provide benefits broadly equivalent to the benefits to which the Pension Employees would have been entitled in respect of service after the date the Contractor ceases to participate in the LPFA Fund on the basis of its governing provisions in force immediately before the Services Commencement Date.
- 26.4 The Contractor shall procure that each Third Party Transferring Employee who immediately prior to the Services Commencement Date is an active member of an occupational pension scheme of his then employer (other than the LPFA Fund) shall (unless the scheme's approval would be prejudiced thereby) be admitted to membership of an occupational pension scheme established or nominated by the Contractor (and which may be the New Scheme) so that admission takes effect from the Services Commencement Date for future service benefits and each such employee is notified of his right to opt out of such Scheme (the "**Replacement Scheme**").
- 26.5 The Contractor shall nominate the Ocean Nestor Pension Scheme (Atlas Section) as the Replacement Scheme and shall offer membership of the Ocean Nestor Pension Scheme (Atlas Section) for future service to each Third Party Transferring Employee who is, at the Services Commencement Date, an active member of or eligible for active membership (without the need for the employer's consent) of his employer's pension scheme and has not reached the age of sixty-five (65) (or the normal retirement age in the Ocean Nestor Pension Scheme (Atlas Section) if lower). Membership shall be offered on one of the standard benefit terms of the Ocean Nestor Pension Scheme.
- 26.6 The Contractor shall, before the Services Commencement Date enter into discussions with the employer of the Third Party Transferring Employees which will be transferred to it with a view to reaching agreement on the terms on which a bulk

transfer of assets shall be made from the pension scheme of which the Third Party Transferring Employees are members (the "**Old Scheme**") to the Replacement Scheme to provide, in respect of service before the Services Commencement Date and if the agreed transfer value is paid benefits for and in respect of those Third Party Transferring Employees who joined the Replacement Scheme, such benefits to be equal in value to the benefits earned under the Old Scheme prior to the Services Commencement Date on the basis of the actuarial assumptions agreed. The parties to those discussions shall act in good faith and with all reasonable endeavours for the purpose of reaching agreement on the amount of assets to be transferred from the Old Scheme to the Replacement Scheme.

26.7 The Authority will procure that, in the event of the ASS Contract being terminated or the Contractor being replaced under the ASS Contract for whatever reason, any new agreement entered into by the Authority with any new contractor will contain provisions relating to pensions to be provided by the new contractor for employees transferred to it and obligations regarding transfers of assets from the New Scheme to the pension scheme of the new Contractor which are substantially the same as those contained in this clause 26 and in particular as if clause 26.1.4 had effect with references to the LPFA Fund replaced by references to the New Scheme, and with references to the Services Commencement Date replaced with references to the date of commencement of service provision by the new contractor, and with reference to the Government Actuary's Department replaced with references to the Actuary to the New Scheme.

26.8 The Contractor shall, before the date on which the new contractor begins to provide the Services, procure that the trustees of the New Scheme enter into discussion with the new contractor with a view to reaching agreement on the terms on which a bulk transfer of assets shall be made from the New Scheme to the scheme of the new contractor in respect of employees who join the new contractor's scheme and request a transfer of their accrued benefits. The intention will be to provide a sufficient transfer value that, in respect of service before that date and if the agreed transfer value is paid, benefits can be (and will be) provided which are equal in value to the benefits earned in the New Scheme on the basis of actuarial assumptions to be agreed at the time. The Contractor shall procure that the trustees of the New Scheme will, and the Authority shall procure that the new contractor will, act in good faith, and with all reasonable endeavours for the purpose of reaching agreement on the amount of assets to be transferred from the New Scheme to the new contractor's scheme.

27. NUISANCE AND COMPLAINTS

- 27.1 The Contractor shall take all reasonable steps with a view to maintaining good customer care and relations with the owners, tenants or occupiers of properties adjacent to any Authority Site or the Feathers Wharf Site and to the public and third parties generally and to any persons or entities using the Authority Sites or the Feathers Wharf Site.
- 27.2 The Contractor shall establish prior to the Services Commencement Date a procedure for dealing with any claims, complaints and enquiries received by the Authority or directly from any member of the public or any other source, such procedure to be approved by the Authority prior to its implementation, such approval not to be unreasonably withheld. All claims, complaints and enquiries received (whether in writing or by telephone or in person) must be reported to the General Manager. An accurate record must be supplied to the General Manager containing inter alia full details of the claim, complaint or enquiry including the date, time and address and telephone number of the person making the claim, complaint or enquiry.
- 27.3 Without prejudice to its obligations to perform the Services the Contractor shall comply with any reasonable instruction given by the General Manager to the Contractor in response to a complaint or enquiry received from a member of the public or any other source which has been investigated by the General Manager.

28. AUTHORITY SITE ACCESS

- 28.1 The Contractor shall at all times during the Contract Period allow such persons as may be nominated from time to time by the General Manager reasonable access (upon reasonable notice except where the giving of such notice would reasonably defeat the purpose of requiring such access including, for example, where the Authority is monitoring the Contractor's compliance with the ASS Method Statement in order to calculate Deductions) to all Authority Sites and the Feathers Wharf Site for the purpose of:
- 28.1.1 monitoring the Contractor's performance under the ASS Contract, the Property Agreements and the Collateral Warranties;
- 28.1.2 inspecting and auditing data, records, accounting information and documents in the possession or control of the Contractor relating to the Contractor's performance under the ASS Contract; and

- 28.1.3 showing a reasonable number of visitors approved by the General Manager the Authority Sites and the Feathers Wharf Site, save that such visitors shall not include any Authority Party and shall be accompanied by a person nominated in advance by the General Manager or, if reasonably requested by the General Manager, a member of the Contractor's staff.
- 28.2 The Contractor shall be responsible for the safety and protection of all visitors to the Authority Sites and the Feathers Wharf Site, and for the maintenance of security at the Authority Sites and the Feathers Wharf Site when visitors are given access to the Authority Sites and the Feathers Wharf Site pursuant to the ASS Contract.
- 28.3 The Authority shall use reasonable endeavours to ensure that all of its visitors to any Authority Site or the Feathers Wharf Site are aware of and comply with any site rules and reasonable requests of any Contractor Party.
- 28.4 The Contractor shall be entitled to evict any person from any Authority Site or the Feathers Wharf Site who fails to comply with the Contractor's site rules and any requests of any Contractor Party. The Contractor shall be liable to the Authority for any Authority Losses which the Authority may incur as a result of the eviction by the Contractor of any person who is complying with the Contractor's site rules or where the relevant request of any Contractor Party is agreed or Finally Determined pursuant to the Dispute Resolution Procedure to be unreasonable.
- 28.5 The Contractor shall take all reasonable precautions, acting in accordance with Good Industry Practice, to deny trespassers access to the Authority Sites and the Feathers Wharf Site.
- 28.6 The Contractor shall, upon reasonable notice, use reasonable endeavours to arrange visits to the EfW Facility by the General Manager and a reasonable number of visitors nominated and approved by the General Manager from time to time.

29. PAYMENTS

- 29.1 Payment for the Services shall be calculated and made in accordance with the provisions of the Payment Mechanism and this clause 29.
- 29.2 The Contractor shall provide separate Invoices to the Authority for the Authority Site Services and the EfW Services as soon as reasonably practicable (and in any event within twenty (20) Working Days) following the end of each Contract Month or EfW

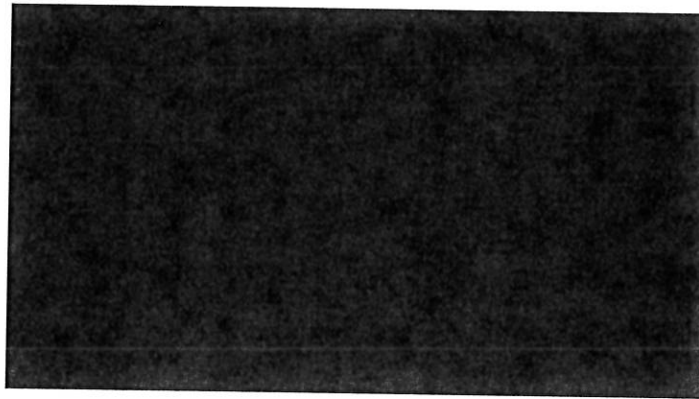
Contract Month (as appropriate) during the Contract Period in relation to the ASS Contract and the EFW Contract respectively. The Invoices shall include such supporting documentation as the Authority may reasonably require from time to time.

29.3 In relation to Invoices:

29.3.1 from the Contractor to the Authority, payment shall be due twenty (20) Working Days following the date of presentation by the Contractor of each Invoice, such Invoices to be addressed and sent to the General Manager; and

29.3.2 from the Authority to the Contractor, save to the extent specifically stated to the contrary, payment shall be due from the Contractor twenty (20) Working Days following the presentation by the Authority of an Invoice for the relevant amount, such Invoices to be addressed and sent to the Contractor's Representative.

29.4 All payments under this Agreement shall be made in Sterling by electronic transfer of funds. Payments shall be made to such accounts as the Parties shall notify each other in writing from time to time. Payments to the Contractor in respect of the EFW Contract shall be made to the following trust account only:



and payment to such account shall constitute a good discharge of the Authority's obligation to make such payment to the Contractor.

29.5 The Authority shall inform the Contractor if it disputes in good faith any amount specified in any Invoice delivered pursuant to clause 29.3 (a "**Disputed Amount**") within fifteen (15) Working Days of receipt of the relevant Invoice, providing details of the amount disputed and the grounds of the dispute. If the Authority gives such notice to the Contractor the Authority shall be entitled to withhold any Disputed

Amount from the relevant payment, **PROVIDED THAT** the Authority shall be entitled to withhold no more than [REDACTED] in respect of disputed Deductions per monthly Invoice. Any failure by the Authority to serve a notice under this clause 29.5 shall be without prejudice to the right of the Authority to dispute any Invoice at any later date.

29.6 If any amount due and payable by either Party to the other under this Agreement is not paid on the date due then:

29.6.1 if such unpaid sum is undisputed, interest shall accrue on the sum at the Default Interest Rate from (and including) the date the sum became due and payable to (but excluding) the date the sum is paid; or

29.6.2 if such unpaid sum is disputed (and unless otherwise determined pursuant to any reference to the Disputes Resolution Procedure in which case such determination shall apply and not this clause 29.6), interest shall accrue at the Default Interest Rate on such of the sum as is determined to be the proper sum due and payable from (and including) the date the disputed sum became due and payable (or would have been due and payable had the sum not been disputed) to (but excluding) the date the sum determined to be the proper sum is paid.

30. INDEXATION

30.1 Subject to clause 30.3, with effect from 1 April 2008, and on each anniversary thereafter (the year in which each such date falls referred to as "**Indexation Year_n**"), all monetary amounts (except where expressly stated to the contrary) shall be adjusted by multiplying such amounts as are stated in this Agreement (the "**Base Data**") by the following:

$$\frac{I^{n-1}}{I^{2006}}$$

where:

I^{n-1} = the Index for the month of December in the year immediately preceding Indexation Year_n
 I^{2006} = the Index for the month of December 2006

30.2 For the avoidance of doubt, the figures in the Agreement as at the Third Amended Agreement Date are stated in 1 April 2007 terms.

30.3 The Base Contract Rates shall be adjusted in accordance with the provisions of paragraph 2 of the Payment Mechanism.

31. VALUE ADDED TAX

31.1 In addition to any sums due and payable and/or notionally due and payable pursuant to any provision in this Agreement the Authority or the Contractor (as the case may be) shall pay to the Contractor, the EfW Operator or the Authority (as the case may be) such Value Added Tax (at the rate for the time being in force) as may be properly chargeable upon receipt from the relevant party of a tax invoice in respect thereof.

31.2 Where, pursuant to any provision in the Agreement, the Contractor carries out any improvement, maintenance, repair or replacement of land, buildings, structures, Contractor Plant and Equipment, Authority Plant and Equipment or the like, then it shall bear the payment or notional payment of any Value Added Tax (at the rate for the time being in force) payable or notionally payable in respect of such work.

31.3 If, following a Change in Law affecting the Authority Site Services or either party's obligations under the ASS Contract, the Contractor becomes unable to recover VAT attributable to supplies to be made to the Authority by the Contractor pursuant to the ASS Contract, the Authority and the Contractor shall co-operate, as far as is practicable and reasonable to ensure that the Contractor is left in no better and no worse position than it would have been had such Change in Law not occurred (including but not limited to making such amendments to the ASS Contract as the Contractor and the Authority shall agree acting reasonably) **PROVIDED THAT** the Contractor shall use all reasonable endeavours to mitigate the adverse effects of any such Change in Law.

32. SET-OFF

32.1 Without prejudice to clause 29.6, whenever under this Agreement any sum of money shall be agreed or Finally Determined to be properly due and payable by a Party to the other Party the same may be deducted by the other Party from any sum then properly due and payable or which at any time thereafter may become properly due and payable to such Party provided that where such sum relates to the ASS Contract, it may only be deducted from or applied to reduce the amount of any sum then due,

or which at any time afterwards may become due, to the Contractor from the Authority in relation to the ASS Contract and provided further that where such sum relates to the EfW Contract, it may only be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, to the Contractor from the Authority in relation to the EfW Contract.

32.2 Without prejudice to clause 32.1, either Party shall be entitled to recover all such sums as are due from the other Party pursuant to this Agreement as a debt.

33. INDEMNITIES

33.1 Save to the extent that responsibility is accepted by the Authority pursuant to clause 33.4.4 and subject to clauses 14.2 and 33.2, the Contractor shall be responsible for and shall release and indemnify the Authority on demand from and against Authority Losses sustained by the Authority in consequence of:

33.1.1 death and/or personal injury;

33.1.2 loss of or damage to property (including without limitation property belonging to the Authority or for which it is responsible); and

33.1.3 without prejudice to clauses 33.1.1 and 33.1.2, any third party action, claim or demand (excluding any third party action, claim or demand by any Authority Party),

which arise out of, or in consequence of, the performance or non-performance of the Works and/or Services, or the presence on the Authority Sites or the Feathers Wharf Site of any Contractor Party or EfW Contractor Party.

33.2 The Contractor shall not be obliged to indemnify the Authority under clause 33.1 against Authority Losses to the extent caused or contributed to by the negligent acts or omissions or deliberate misconduct of any Authority Party on the Authority Sites, the Feathers Wharf Site, or at the EfW Facility, or by the breach by the Authority of its obligations under any Authority Project Document.

33.3 The Contractor's liability to the Authority arising under any indemnity in this Agreement shall be without prejudice to any other right or remedy available to the Authority, provided that there shall be no double recovery by the Authority.

33.4 The Authority shall, subject to clause 33.5, be responsible for and shall release and indemnify the Contractor on demand from and against all Direct Losses sustained by the Contractor in consequence of:

33.4.1 death and/or personal injury;

33.4.2 loss of or damage to property (including without limitation property belonging to the Contractor or for which it is responsible);

33.4.3 without prejudice to clauses 33.4.1, 33.4.2, and 33.4.4 any third party action, claim or demand (other than an Excluded Third Party Claim); and

33.4.4 any Inherent Risk Claim,

which (except in relation to liability under clause 33.4.4) arise out of, or in consequence of the negligent acts or omissions or deliberate misconduct of any Authority Party.

33.5 The Authority shall not be obliged to indemnify the Contractor under clause 33.4 against any Direct Losses to the extent caused or contributed to by the negligent acts or omissions or deliberate misconduct of any Contractor Party, or by the breach by the Contractor of its obligations under any Authority Project Document.

33.6 The Authority's liability to the Contractor arising under any indemnity in this Agreement shall be without prejudice to any other right or remedy available to the Contractor, provided that there shall be no double recovery by the Contractor.

33.7 Upon the occurrence of a third party action, claim or demand (other than an Excluded Third Party Claim) relating to the Authority Site Services (which for these purposes shall exclude the Transportation Services and the Off-Site Interim Services) (an **"Authority Site Services Third Party Claim"**):

33.7.1 the Party in receipt of the Authority Site Services Third Party Claim shall, as soon as is reasonably practicable, inform the other Party of such Authority Site Services Third Party Claim, and thereafter the Parties shall endeavour to agree whether the Authority Site Services Third Party Claim is an Inherent Risk Claim. In default of agreement within five (5) Working Days, either Party may refer the issue to the Dispute Resolution Procedure;

33.7.2 if the Authority Site Services Third Party Claim is agreed or Finally Determined to be an Inherent Risk Claim:

33.7.2.1 if the Authority makes a claim under the Required Insurances in relation to such Inherent Risk Claim, the deductible and any resultant increase in premium shall be for the account of the Authority; and

33.7.2.2 the Authority shall be entitled to issue a Variation Notice in order to avoid the occurrence of similar Inherent Risk Claims in the future, for which purposes such Variation Notice shall be deemed to relate to an ASS Change in Law with which the Authority is bound to comply; and

33.7.3 if the Authority Site Services Third Party Claim is agreed or Finally Determined not to be an Inherent Risk Claim:

33.7.3.1 if the Contractor makes a claim under the Required Insurances in relation to such Authority Site Services Third Party Claim, the deductible and any resultant increase in premium shall be for the account of the Contractor; and

33.7.3.2 the Contractor shall be entitled to issue a Variation Notice in order to avoid the occurrence of similar Authority Site Services Third Party Claims in the future, agreement to which the Authority shall not unreasonably withhold or delay its consent **PROVIDED THAT** the costs associated with the implementation and consequences of the proposed Variation shall be for the account of the Contractor.

34. LIMITATION ON LIABILITY

34.1 Subject to clause 34.2, the only remedies of the Authority in relation to the occurrence of a Performance Failure shall be as set out in clause 38.43.

34.2 For the purposes of any indemnity under any Authority Project Document, without limitation but subject to any limitations on liability set out in any such relevant Authority Project Document, the occurrence of a Performance Failure (whether or not a Rectifiable Provisional Default Notice or Default Notice is issued in respect of

such Performance Failure) shall, unless such breach of contract results directly from the occurrence of a Compensation Event or Excusing Cause, continue to constitute a breach of contract by the Contractor notwithstanding the fact that the Contractor may otherwise be relieved from liabilities which would otherwise accrue in respect of such breach of contract pursuant to clause 38.

34.3 In circumstances where the Contractor is in breach of any obligation under an Authority Project Document which breach is not a Performance Failure, the Authority's remedies, and the Contractor's liability, shall be limited to:

34.3.1 any express rights, remedies and/or recourse of the Authority pursuant to the Authority Project Document(s) (including without limitation under any indemnity); and

34.3.2 a claim for breach of contract in relation to any Authority Losses it may have suffered; and

34.3.3 any injunctive relief or a decree of specific performance or other discretionary remedy of the court.

Accordingly, the Contractor shall not be liable to the Authority in tort in respect of any negligent act or omission of any Contractor Party relating to or in connection with the Authority Project Documents.

34.4 Subject to the provisions of clause 34.5 and 34.6, in circumstances where the Authority is in breach of an Authority Project Document, the Contractor's remedies, and the Authority's liability, shall be limited to:

34.4.1 any express rights, remedies or recourse of the Contractor pursuant to the relevant Authority Project Document(s) (including without limitation under any indemnity); and

34.4.2 a claim for breach of contract in relation to any Direct Losses it may have suffered in accordance with the procedure set out in clause 8 or 43 (as appropriate);

34.4.3 a claim following the occurrence of an EfW Compensation Event in accordance with the procedure set out in paragraph 3 of Schedule 15; and

34.4.4 any injunctive relief or a decree of specific performance or other discretionary remedy of the court.

Accordingly, the Authority shall not be liable to the Contractor in tort in respect of any negligent act or omission of any Authority Party relating to or in connection with the Authority Project Documents.

- 34.5 Subject always to clauses 45, 47, the provisions of Schedule 2, and paragraphs 9 and 18 of Schedule 15 in relation to failure(s) by the Authority to Direct Authority Waste to the Contractor or to make Available Authority Waste to the Contractor which result in the occurrence of an Authority Default and/or EfW Authority Default respectively, and subject always to the Contractor's obligation to mitigate loss pursuant to clause 37, the Authority's liability under any provision of this Agreement in relation to each tonne of Authority Waste or Third Party Waste denied to the Contractor shall be subject to the Default Contract Rate Compensation Cap.
- 34.6 The sole remedy of the Contractor in relation to any breach by the Authority of clause 2.4, and the Authority's liability in relation to a breach by the Authority of clause 2.4, shall be limited to the Authority's obligation to reimburse to the Contractor twenty per cent (20%) of any Diverted Tonnage Payments and/or Slow Tonnage Payments made by the Contractor under the relevant Collateral Warranty.
- 34.7 Subject to this clause 34 but without prejudice to clauses 34.3, 34.4, and 38.43, neither Party shall be entitled to recover compensation or make a claim under any Authority Project Document in respect of any loss that it has incurred or any failure of the other Party to the extent that it has already been compensated in respect of that loss or failure pursuant to this Agreement or otherwise.
- 34.8 Under no circumstances shall either Party be liable to the other for any Direct or Indirect Losses incurred in respect of the period prior to the Agreement Date.
- 34.9 The Authority shall not be liable to the Contractor for Losses incurred by the Contractor under the ASS Primary Sub-Contract to the extent that such ASS Primary Sub-Contract would (but for the operation of this clause) act to increase the scope or quantum of liabilities of the Authority beyond those for which the Authority would have been liable had such obligations been undertaken directly by the Contractor itself.

34.10 Notwithstanding anything to the contrary in this Agreement, the Authority shall not be liable directly or indirectly for the New Subordinated Debt or any interest or other payments or liabilities that may accrue to any party from time to time in connection therewith.

35. INSURANCE

35.1 The Contractor shall during the Contract Period take out and maintain or procure the maintenance of any insurance as may be required by Law from time to time with insurers of good repute and creditworthiness.

35.2 In addition, the Contractor shall during the Contract Period take out and maintain or procure the maintenance of the Required Insurances and (for the duration of the MRF Works) the MRF Works Insurances. The Required Insurances must be effective no later than the Services Commencement Date. The Contractor shall not be required to procure that the EfW Insurances are taken out or maintained.

35.3 No Party shall take 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 the Required Insurances.

35.4 The Required Insurances, (and in relation to clauses 35.4.1 to 35.4.4 inclusive only, the MRF Works Insurances and the EfW Insurances (excluding Employer's Liability insurance and Motor Liability insurance)), shall:

35.4.1 name the Authority as co-insured with any other party maintaining the insurance;

35.4.2 contain a clause waiving the insurer's subrogation rights against the Authority, its employees and agents;

35.4.3 include a provision whereby the insurance shall apply to each of the insured as if a separate policy had been issued to each of them other than in the event of exhaustion of the sum insured or limit of indemnity;

35.4.4 include breach of condition or warranty, severability, and non-vitiating provisions reasonably acceptable to the Authority or if such provision is not generally available in equivalent policies written in the world-wide insurance market, each of the Parties covenant with the other for the duration

of such non-availability that neither shall make any misrepresentation to, or breach any condition or warranty made to, the insurer or take or omit to take any action which would cause the Required Insurance to fail;

35.4.5 include a provision which requires the insurer to send copies of all notices of cancellation or any other notices given under or in relation to the Required Insurances to the Authority;

35.4.6 include a provision whereby the policy shall only be cancelled subject to thirty (30) days' notice;

35.4.7 include a provision that a notice of a claim given to the insurer by the Authority or the Contractor under the policy shall, in the absence of manifest error, be accepted by the insurer as valid notification of a claim in respect of the interests of all insured parties;

35.4.8 include a provision that such insurance shall be primary and no other policy shall be called into contribution;

35.4.9 provide for payment of any proceeds to be made by insurers in accordance with clause 35.14; and

35.4.10 provide for a deductible level of [REDACTED]. In circumstances where the Contractor takes out or renews the Required Insurance with a deductible level in excess of [REDACTED], the Contractor shall be liable to the Authority for such additional excess above [REDACTED] in circumstances where the Authority claims under the Required Insurances.

35.5 The Contractor shall provide to the Authority:

35.5.1 a copy of the cover notes and the broker's certificates detailing cover effected in respect of the Required Insurances within twenty (20) Working Days of its inception, modification or renewal;

35.5.2 a copy of the Required Insurances policy wording within ten (10) Working Days of its receipt by the Contractor;

- 35.5.3 upon reasonable notice, copies of all insurance policies (other than the Required Insurances) taken out pursuant to clause 35.1;
- 35.5.4 upon reasonable notice, evidence reasonably acceptable to the Authority that the premiums payable under all insurance policies taken out pursuant to clause 35.1 have been paid and that the insurances are in full force and effect; and
- 35.5.5 its own original policy for the Required Insurances within five (5) Working Days of its receipt by the Contractor (in its capacity as a co-insured).
- 35.6 If the Contractor is in breach of clause 35.2 above, the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 35.7 The Contractor shall give the Authority notification within thirty (30) days after any claim in excess of [REDACTED] on the Required Insurances together with full details of the incident giving rise to the claim.
- 35.8 Neither failure to comply nor full compliance with the insurance provisions of the ASS Contract shall limit or relieve the Contractor of its liabilities and obligations under the ASS Contract.
- 35.9 The Required Insurances shall be taken out with insurers of good repute and creditworthiness in each case approved by the Authority in writing (such approval not to be unreasonably withheld or delayed).
- 35.10 The Contractor undertakes with the Authority in relation to the Required Insurances:
- 35.10.1 to comply with the requirements of the insurers, and such insurer recommendations as the insured should reasonably comply acting in accordance with Good Industry Practice;
- 35.10.2 not to do or omit to do anything which could cause any Required Insurance to become void or voidable wholly or in part;
- 35.10.3 to comply with the requirements of the fire authority and other competent authorities, and such fire authority and other competent authority recommendations as the insured should reasonably comply with acting in accordance with Good Industry Practice; and

35.10.4 to give notice to the Authority as soon as reasonably practicable upon the happening of any event which might adversely affect any Required Insurance.

35.11 The Authority undertakes with the Contractor in relation to the Required Insurances:

35.11.1 in relation to the Authority Buildings:

35.11.1.1 to comply with the requirements of the insurers, and such insurer recommendations as the insured should reasonably comply acting in accordance with Good Industry Practice; and

35.11.1.2 to comply with the requirements of the fire authority and other competent authorities, and such fire authority and other competent authority recommendations as the insured should reasonably comply with acting in accordance with Good Industry Practice;

35.11.2 not to do or omit to do anything which could cause any Required Insurance to become void or voidable wholly or in part; and

35.11.3 to give notice to the Contractor as soon as reasonably practicable upon the happening of any event which might adversely affect any Required Insurance.

35.12 The Contractor shall, prior to the Services Commencement Date, procure the issue of a broker's letter of undertaking in the form of Part 2 of Schedule 7 in relation to the Required Insurances. Thereafter, upon the renewal of the Required Insurances, or upon the appointment by the Contractor of a replacement broker for placing the Required Insurances, the Contractor shall use its reasonable endeavours to procure a broker's letter of undertaking substantially in the form set out in Part 2 of Schedule 7 in relation to the Required Insurances. To the extent that the Contractor ceases to use a broker, the obligations contained in the letter of undertaking shall be undertaken directly by the Contractor.

35.13 For the avoidance of doubt, the Authority reserves the right, through the application of the Variation Procedure, to require the Contractor to make such amendments to the insurance programme detailed in Schedule 7 throughout the Contract Period as it

may reasonably require in order to reflect changes in the circumstances surrounding the ASS Contract.

35.14 All insurance proceeds received under the Material Damage Insurance shall be applied to repair, reinstate, and replace each part or parts of the Facilities in respect of which the proceeds were received.

35.15 All insurance proceeds received by the Contractor under the Material Damage Insurance in respect of a single event (or a series of related events) in an amount in excess of [REDACTED] shall be paid into an account in the joint names of the Authority and the Contractor.

35.16 Where:

35.16.1 a claim is made or proceeds of insurance are received or are receivable under the Material Damage Insurance in respect of a single event (or a series of related events) in an amount in excess of [REDACTED] (a "Relevant Incident"); or

35.16.2 damage to any Authority Asset(s) with a value in excess of [REDACTED] occurs, the Contractor shall deliver as soon as practicable, and in any event within twenty (20) Working Days after the making of the claim, a plan (the "Replacement Plan") prepared by the Contractor for the carrying out of works necessary (the "Reinstatement Works") to repair, reinstate or replace the Authority Assets or any part of the Authority Assets the subject of the relevant claim or claims. The Replacement Plan shall set out:

35.16.3 the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed;

35.16.4 how the Reinstatement Works shall affect the Services; and

35.16.5 the proposed terms and timetable upon which the Reinstatement Works are to be effected (including any interim arrangements and the date that the Authority Assets shall become fully operational),

the final terms of which shall be subject to the prior written approval of the Authority where either there is a Relevant Incident or the Authority is responsible for the cost

of reinstatement pursuant to clause 35.22, such approval not to be unreasonably withheld or delayed.

35.17 Provided that the Authority is satisfied that the Reinstatement Plan shall enable the Contractor to effect the Reinstatement Works within a reasonable timescale:

35.17.1 the Reinstatement Plan shall be adopted;

35.17.2 the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan; and

35.17.3 in relation to any Relevant Incident, the proceeds of the Material Damage Insurance located in the joint account referred to in clause 35.15 in respect of the Relevant Incident (the "**Relevant Proceeds**") (together with any interest accrued) shall be released to the Contractor as required to enable it to make payments in accordance with the terms of the Reinstatement Plan, and to meet any other costs and expenses of the Contractor for the sole purposes of financing the Reinstatement Works.

35.18 The Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this clause, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in all material respects in accordance with the Reinstatement Plan (subject to any delay arising as a result of a Relief Event, Compensation Event, Excusing Cause or Force Majeure Event), it shall not exercise any right which it might otherwise have to terminate the ASS Contract by virtue of the event which gave rise to the damage.

35.19 The Authority undertakes to use all reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan.

35.20 After the Reinstatement Plan has been implemented the Authority shall authorise the release to the Contractor of any Relevant Proceeds then located in the joint account referred to in clause 35.15 in respect of the Relevant Incident, together with any interest accrued.

35.21 The Contractor shall maintain in relation to each Authority Site and the Feathers Wharf Site such standards of vigilance and shall take all such precautions as may from time to time be recommended or required by regulators for the protection and

security of the Facilities against damage by fire or malicious damage and with which the Contractor should comply in accordance with Good Industry Practice.

35.22 Where a claim under the Required Insurances is made in circumstances where the Authority is liable for the relevant damage or loss pursuant to clauses 16.10 and/or 33, the Authority shall pay the deductible and any resultant increase in premium. In all other circumstances, the deductible and any resultant increase in premium shall be borne by the Contractor.

35.23 Nothing in this clause 35 shall oblige the Contractor to take out a Required Insurance in respect of an Uninsurable Risk.

35.24 If a Minimum Insurance Requirement Risk becomes an Uninsurable Risk, then the Contractor shall be relieved from its obligation to insure against such Uninsurable Risk and the ASS Contract shall continue but with the Contract Rates being adjusted in each year for which the relevant insurance is not maintained, by an amount equal to the premium paid by the Contractor in respect of the relevant risk in the year prior to it becoming an Uninsurable Risk. Where the risk is an Uninsurable Risk for part of a year only, the adjustment in the Contract Rates shall be pro rated to the number of months for which the risk was an Uninsurable Risk.

35.25 On the occurrence of the relevant Minimum Insurance Requirement Risk which has become an Uninsurable Risk the Authority may (at its option):

35.25.1 pay to the Contractor an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available (payment to be made to the joint account referred to in clause 35.15) within six (6) calendar months of the date on which the risk occurs, in which case the ASS Contract shall continue; or

35.25.2 the ASS Contract shall terminate and the provisions of clauses 10 or 40 (as appropriate) shall be deemed to apply.

36. CONDUCT OF CLAIMS

36.1 This clause shall apply to the conduct, by a party from whom an indemnity is sought under this Agreement, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to

have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the party giving the indemnity is referred to as the "**Indemnifier**". Accordingly:

36.1.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Agreement, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within twenty (20) Working Days of receipt of the same;

36.1.2 subject to clauses 36.1.3, 36.1.4 and 36.1.5 the giving of a notice by the Beneficiary pursuant to clause 36.1.1 where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

36.1.3 with respect to any claim conducted by the Indemnifier pursuant to clause 36.1.2:

36.1.3.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

36.1.3.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute; and

36.1.3.3 the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

36.1.4 the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

36.1.4.1 the Indemnifier is not entitled to take conduct of the claim in accordance with clause 36.1.2; or

36.1.4.2 the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Working Days of the notice from the Beneficiary under clause 36.1.1 or notifies the Beneficiary that it does not intend to take conduct of the claim; or

36.1.4.3 the Indemnifier fails to comply in any material respect with the provision of clause 36.1.3;

36.1.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which clause 36.1.2 applies. On receipt of such notice, the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this clause 36.1.5, then the Indemnifier shall be released from any liability under its relevant indemnity under this Agreement and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to clause 36.1.2 in respect of such claim;

36.1.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

36.1.6.1 an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and

expenses properly incurred by the Beneficiary in recovering the same; and

36.1.6.2 the amount paid to the Beneficiary by the Indemnifiers in respect of the claim under the relevant indemnity,

PROVIDED THAT there shall be no obligations on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary; and

36.1.7 any person taking any of the steps contemplated by clauses 36.1.1 to 36.1.5 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

37. MITIGATION

Each of the Parties shall at all times take all reasonable steps to minimise and mitigate any loss, damage or expense for which the relevant Party is entitled to claim pursuant to this Agreement.

38. DEFAULT NOTICES

38.1 If the Contractor commits a Performance Failure and such Performance Failure constitutes a Rectifiable Provisional Default an Authority Representative may issue a Rectifiable Provisional Default Notice detailing:

38.1.1 the date the Rectifiable Provisional Default occurred (or, where appropriate, the date upon which the Rectifiable Provisional Default became or ought reasonably have become apparent to the Authority) and a unique identification number for that Rectifiable Provisional Default;

38.1.2 a description of the Rectifiable Provisional Default;

38.1.3 the relevant Performance Schedule and Performance Failure reference numbers from Part Three or Four of the ASS Method Statement in respect of the particular Rectifiable Provisional Default;

38.1.4 the classification of the Rectifiable Provisional Default as minor, major or critical as set out in respect of the relevant Performance Failure in Part Three or Four of the ASS Method Statement; and

38.1.5 a reasonable period (if possible to be agreed between the Authority's Representative and the Contractor's Site Manager acting reasonably prior to the issue of the Rectifiable Provisional Default Notice), within which the Contractor can rectify such Rectifiable Provisional Default taking into account, where applicable, any practicalities relevant to the rectification of the Rectifiable Provisional Default (the "**Rectification Period**").

If such omission or failure constitutes a Non-Rectifiable Default then the General Manager may issue a Default Notice in accordance with clause 38.9.

38.2 If the Parties cannot agree a Rectification Period pursuant to clause 38.1.5, the matter shall be referred to the General Manager and the Contractor's Representative for resolution. Any such referral shall be without prejudice to either Party's rights under clause 38.38 to refer the matter to the Dispute Resolution Procedure.

38.3 A Rectifiable Provisional Default Notice shall be signed by an Authority Representative prior to its issue and, upon receipt (all Rectifiable Provisional Default Notices to be hand delivered to the Contractor's Site Manager's Office) counter-signed, timed and dated by the Contractor's Site Manager and a copy of such counter-signed, timed and dated Rectifiable Provisional Default Notice returned to the Authority.

38.4 A Rectifiable Provisional Default Notice shall be in writing, save that where an Authority Representative reasonably believes that:

38.4.1 a serious risk exists to the health or safety of persons or property or to the environment as a result of the Rectifiable Provisional Default; or

38.4.2 the Rectifiable Provisional Default will lead to the Authority being unable to discharge a statutory duty,

then the Contractor's Site Manager may initially be notified orally of a Rectifiable Provisional Default by an Authority Representative provided that such notification shall then be followed by the issue of a Rectifiable Provisional Default Notice as soon as reasonably practicable.

- 38.5 Upon oral notification of a Rectifiable Provisional Default pursuant to clause 38.4 the Contractor shall take all reasonable steps to rectify, or procure the rectification of, such Rectifiable Provisional Default notwithstanding the absence of a Rectifiable Provisional Default Notice. In the event that the Contractor disputes the need for oral notification of the Rectifiable Provisional Default by the Authority Representative, the Contractor shall rectify, or procure the rectification of, the Rectifiable Provisional Default before referring the relevant dispute to the Dispute Resolution Procedure.
- 38.6 Following receipt of any Rectifiable Provisional Default Notice, the Contractor shall rectify the Rectifiable Provisional Default within the Rectification Period, which shall commence, notwithstanding the provisions of clause 38.4, at the time and date identified in the counter-signed Rectifiable Provisional Default Notice returned to the Authority by the Contractor pursuant to clause 38.3.
- 38.7 Upon rectification of the Rectifiable Provisional Default, the Contractor shall give the Authority written notice of such rectification and (where appropriate) invite an Authority Representative to inspect the relevant rectification work. Should no such notice be issued by the Contractor within the Rectification Period, the Authority shall be entitled to assume that the relevant Rectifiable Provisional Default has not been rectified.
- 38.8 Rectification of the Rectifiable Provisional Default within the Rectification Period shall result in the Rectifiable Provisional Default Notice being withdrawn and no Default Notice shall be capable of being issued pursuant to clause 38.9 in respect of such rectified Rectifiable Provisional Default and no Default Deduction shall be made in respect of such Rectifiable Provisional Default and the Authority shall not be able to claim any Direct Losses or Indirect Losses suffered or incurred by it as a result of the occurrence of such Rectifiable Provisional Default unless any such Direct Losses or Indirect Losses may be claimed pursuant to provisions of this Agreement other than this clause 38.
- 38.9 Upon either:
- 38.9.1 the expiry of the Rectification Period without rectification of the Rectifiable Provisional Default by the Contractor pursuant to clause 38.6; or
- 38.9.2 the occurrence of a Non-Rectifiable Default,

the General Manager may, within fifteen (15) Working Days of the expiry of the Rectification Period or the date upon which the Non-Rectifiable Default occurred (or, where appropriate, the date upon which the Non-Rectifiable Default became or ought reasonably have become apparent to the Authority), as the case may be, issue a Default Notice.

38.10 A Default Notice shall include the following information:

38.10.1 the date the Default occurred (or, where appropriate, the date upon which the Default became or ought reasonably have become apparent to the Authority);

38.10.2 a unique identification number for the Default which, if applicable, will be the same as that for the Rectifiable Provisional Default giving rise to the Default;

38.10.3 a description of the Default;

38.10.4 the relevant Performance Schedule and Performance Failure reference numbers from Part Three or Four of the ASS Method Statement in respect of the particular Default;

38.10.5 the classification of the Default as minor, major or critical as set out in respect of the relevant Performance Failure in Part Three or Four of the ASS Method Statement; and

38.10.6 the Repeat Code for the particular Default.

38.11 A Default Notice shall be signed by the General Manager prior to its issue and, upon receipt (all Default Notices to be hand delivered to the Contractor's Site Manager's Office), counter-signed, timed and dated by the Contractor's Site Manager and a copy of such counter-signed, timed and dated Default Notice returned to the Authority **PROVIDED THAT** the General Manager shall ensure that all Critical Default Notices are hand delivered directly to the Contractor's Representative and copied by first class registered post to the Contractor's Chief Executive.

38.12 Following receipt of a Default Notice in respect of a Default caused by the Contractor's non-rectification of a Rectifiable Provisional Default in accordance with clause 38.6, the Contractor shall rectify such Default within the Repeat Code for the Default (as identified in the relevant Default Notice), which shall commence at the

time and date identified in the counter-signed Default Notice returned to the Authority by the Contractor pursuant to clause 38.11, whereupon the Contractor shall give the Authority written notice that the Default has been rectified and (where appropriate) invite an Authority Representative to inspect the relevant rectification work. Should no such rectification notice be issued by the Contractor within the relevant Repeat Code for the Default, the Authority shall be entitled to assume that the Default has not been rectified.

38.13 Until such time as the relevant Repeat Code has expired in respect of a Default or a Repeat Default, the Authority may not:

38.13.1 in the case of a Non-Rectifiable Default, issue a further Default Notice in respect of a repetition of the same Non-Rectifiable Default or issue a Rectifiable Provisional Default Notice, Default Notice or Repeat Default Notice in respect of a Rectifiable Provisional Default, Default or Repeat Default arising as a result of the occurrence of the initial Non-Rectifiable Default; and

38.13.2 in the case of a Default or Repeat Default caused by the Contractor's failure to rectify a Rectifiable Provisional Default, issue a further Repeat Default Notice or Default Notice in respect of such failure or issue a Rectifiable Provisional Default Notice, Default Notice or Repeat Default Notice in respect of any Rectifiable Provisional Default, Default or Repeat Default arising as a result of the occurrence of the initial Default.

38.14 The repetition of a Non-Rectifiable Default, that has a Repeat Code in excess of seven (7) days within a period equivalent to (but not greater than) twice that of the Repeat Code will result in the Authority being able to raise a Repeat Default in respect of such repeated Non-Rectifiable Default.

Minor Defaults

38.15 Minor Defaults shall be those Defaults that are classified as minor within the relevant Default Notice.

38.16 As described in the Payment Mechanism, the Contractor will reflect in the Invoice relating to each Contract Month a deduction of [REDACTED] for each Minor Default in respect of which a Minor Default Notice has been receipted and acknowledged by the Contractor in that Contract Month in accordance with clause 38.11.

- 38.17 A Minor Default which is not rectified in accordance with clause 38.12 may result in the Minor Default being raised a second time (a "**Minor Repeat Default**") through the issue by an Authority Representative of a Minor Repeat Default Notice within fifteen (15) Working Days of the expiry of the Repeat Code for the relevant Minor Default.
- 38.18 A Minor Repeat Default Notice shall be signed by the General Manager prior to its issue and, upon receipt (all Minor Repeat Default Notices to be hand delivered to the Contractor's Site Manager's Office), counter-signed, timed and dated by the Contractor's Site Manager and a copy of such counter-signed, timed and dated Minor Repeat Default Notice returned to the Authority.
- 38.19 The Contractor shall rectify a Minor Repeat Default within the Repeat Code for the Minor Repeat Default (as identified in the relevant Minor Repeat Default Notice) which shall commence at the time and date identified in the counter-signed Minor Repeat Default Notice returned to the Authority by the Contractor pursuant to clause 38.18, whereupon the Contractor shall give the Authority written notice that the Minor Repeat Default has been rectified and (where appropriate) invite an Authority Representative to inspect the relevant rectification work. Should no such rectification notice be issued by the Contractor within the relevant Repeat Code for the Minor Repeat Default, the Authority shall be entitled to assume that the Minor Repeat Default has not been rectified.
- 38.20 If a Minor Repeat Default is not rectified in accordance with clause 38.19 the Authority may, within fifteen (15) Working Days of the expiry of the Repeat Code for the Minor Repeat Default, issue a further Minor Repeat Default Notice in respect of such omission or failure (a "**Second Minor Repeat Default**") and the provisions of clauses 38.18 and 38.19 shall apply mutatis mutandis to the Second Minor Repeat Default.
- 38.21 If a Second Minor Repeat Default is not rectified in accordance with clause 38.19 the Authority may, within fifteen (15) Working Days of the expiry of the Repeat Code for the Second Minor Repeat Default, issue a Major Default Notice in respect of such omission or failure.
- 38.22 As described in the Payment Mechanism, the Contractor will reflect in the Invoice relating to each Contract Month a deduction of [REDACTED] for each Minor Repeat Default and Second Minor Repeat Default in respect of which a Minor Repeat Default Notice

has been receipted and acknowledged by the Contractor in that Contract Month in accordance with clause 38.18.

Major Default

38.23 Major Defaults shall be:

38.23.1 those Defaults that are classified as major within the Default Notice; or

38.23.2 Second Minor Repeat Defaults which become Major Defaults pursuant to clause 38.21.

38.24 As described in the Payment Mechanism, the Contractor will reflect in the Invoice relating to each Contract Month a deduction of [REDACTED] for each Major Default, Major Repeat Default and Second Major Repeat Default in respect of which a Major Default Notice or Major Repeat Default Notice (as the case may be) has been receipted and acknowledged by the Contractor in that Contract Month in accordance with clause 38.11 or clause 38.26 (as the case may be).

38.25 A Major Default which is not rectified in accordance with clause 38.12 may result in the Major Default being raised a second time (a "**Major Repeat Default**") through the issue by the General Manager of a Major Repeat Default Notice within fifteen (15) Working Days of the expiry of the Repeat Code for the relevant Major Default.

38.26 A Major Repeat Default Notice shall be signed by the General Manager prior to its issue and, upon receipt (all Major Repeat Default Notices to be hand delivered to the Contractor's Site Manager's Office), counter-signed, timed and dated by a Contractor's Site Manager and a copy of such counter-signed, timed and dated Major Repeat Default Notice returned to the Authority.

38.27 The Contractor shall rectify a Major Repeat Default within the Repeat Code for the Major Repeat Default (as identified in the relevant Major Repeat Default Notice) which shall commence at the time and date identified in the counter-signed Major Repeat Default Notice returned to the Authority by the Contractor pursuant to clause 38.26, whereupon the Contractor shall give the Authority written notice that the Major Repeat Default has been rectified and (where appropriate) invite an Authority Representative to inspect the relevant rectification work. Should no such rectification notice be issued by the Contractor within the relevant Repeat Code for the Major

Repeat Default, the Authority shall be entitled to assume that the Major Repeat Default has not been rectified.

38.28 If a Major Repeat Default is not rectified in accordance with clause 38.26 the Authority may, within fifteen (15) Working Days of the expiry of the Repeat Code for the Major Repeat Default, issue a further Major Repeat Default Notice in respect of such omission or failure (a "**Second Major Repeat Default**") and the provisions of clauses 38.26 and 38.27 shall apply mutatis mutandis to the Second Major Repeat Default.

38.29 If a Second Major Repeat Default is not rectified in accordance with clause 38.27 the Authority may, within fifteen (15) Working Days of the expiry of the Repeat Code for the Second Major Repeat Default, issue a Critical Default Notice in respect of such omission or failure.

Critical Default

38.30 Critical Defaults shall be:

38.30.1 those Defaults that are classified as critical defaults within the relevant Default Notice; or

38.30.2 Second Major Repeat Defaults which become Critical Defaults pursuant to clause 38.29.

38.31 As described in the Payment Mechanism, the Contractor will reflect in the Invoice relating to each Contract Month a deduction of [REDACTED] for each Critical Default and Critical Repeat Default in respect of which a Critical Default Notice or Critical Repeat Default Notice (as the case may be) has been receipted and acknowledged by the Contractor in that Contract Month in accordance with clause 38.11 or clause 38.33 (as the case may be).

38.32 A Critical Default which is not rectified in accordance with clause 38.12 may result in the Critical Default being raised a second time (a "**Critical Repeat Default**") through the issue by the General Manager of a Critical Repeat Default Notice within fifteen (15) Working Days of the expiry of the Repeat Code for the relevant Critical Default.

- 38.33 A Critical Repeat Default Notice shall be signed by the General Manager prior to its issue and, upon receipt (all Critical Repeat Default Notices to be hand delivered directly to the Contractor's Representative and copied by first class registered post to the Contractor's Chief Executive), counter-signed, timed and dated by the Contractor's Representative and a copy of such counter-signed, timed and dated Critical Repeat Default Notice returned to the Authority.
- 38.34 The Contractor shall rectify a Critical Repeat Default within the Repeat Code for the Critical Repeat Default (as identified in the relevant Critical Repeat Default Notice) which shall commence at the time and date identified in the counter-signed Critical Repeat Default Notice returned to the Authority by the Contractor pursuant to clause 38.33, whereupon the Contractor shall give the Authority written notice that the Critical Repeat Default has been rectified and (where appropriate) invite the General Manager to inspect the relevant rectification work. Should no such rectification notice be issued by the Contractor within the relevant Repeat Code for the Critical Repeat Default, the Authority shall be entitled to assume that the Critical Repeat Default has not been rectified.
- 38.35 If a Critical Repeat Default is not rectified in accordance with clause 38.34 the Authority may, within fifteen (15) Working Days of the expiry of the Repeat Code for the Critical Repeat Default, issue a further Critical Repeat Default Notice in respect of such omission or failure.
- 38.36 Critical Defaults and Critical Repeat Defaults will, for the purposes of clauses 41.1.2 and 41.1.3, have a default points value of twenty (20), except for:
- 38.36.1 Critical Defaults or Critical Repeat Defaults that result from a repeated failure to rectify a Major Repeat Default that did not itself arise from a Minor Repeat Default, which shall have a default points value of ten (10); and
- 38.36.2 Critical Defaults or Critical Repeat Defaults that result from a repeated failure to rectify a Minor Repeat Default, which shall have a default points value of zero (0).
- 38.37 All Minor Defaults, Minor Repeat Defaults, Second Minor Repeat Defaults, Major Defaults, Major Repeat Defaults and Second Major Repeat Defaults shall have a default points value of zero (0).

General

38.38 Where any Default or Repeat Default occurs as a direct result of the occurrence of an Overriding Relief Event or a Specific Relief, the Default and/or Repeat Default shall be deemed not to have occurred and the Authority shall not be able to claim any Authority Losses suffered or incurred by it as a result of any failure by the Contractor to comply with the requirements of the ASS Method Statement as a result of the occurrence of such Overriding Relief Event or Specific Relief (unless any Authority Losses suffered or incurred by the Authority are recoverable pursuant to provisions of this Agreement other than this clause 38) and no default points will be awarded pursuant to clause 38.36 **PROVIDED THAT** the relief set out in this clause 38.38 shall be conditional upon and subject to the following:

38.38.1 in the case of an Overriding Relief Event other than an Overriding Relief Event which is a Compensation Event, an EfW Compensation Event, a Relief Event, an EfW Relief Event, a Force Majeure Event, an EfW Force Majeure Event or an Excusing Cause the Contractor shall follow the procedure to claim relief as set out in clauses 42.3 to 42.7 inclusive applied mutatis mutandis **PROVIDED THAT**:

38.38.1.1 the specific conditions to relief set out in the third column of Performance Schedule 1 to Part Three of the ASS Method Statement shall have been met; and

38.38.1.2 the relief shall be limited to the stated application of the Overriding Relief Event set out in the fourth column of Performance Schedule 1 to Part Three of the ASS Method Statement; and

38.38.2 in the case of an Overriding Relief Event comprising of a Compensation Event, Relief Event, Force Majeure Event or an Excusing Cause, the Contractor shall follow the relevant procedure to claim relief as detailed in clauses 8, 9, 42, 10 or 40 and 43 respectively, and in the case of an Overriding Relief Event comprising of an EfW Compensation Event, EfW Relief Event or EfW Force Majeure Event, the Contractor shall follow the relevant procedure to claim relief as detailed in paragraphs 3, 4, and 14 of Schedule 15 respectively;

38.38.3 in the case of a Specific Relief, the Contractor shall follow the procedure to claim relief as set out in clauses 42.3 to 42.7 inclusive applied mutatis mutandis **PROVIDED THAT:**

38.38.3.1 the specific conditions to relief set out in the fifth column of the Performance Schedules shall have been met; and

38.38.3.2 the relief shall be limited to the stated application of the Specific Relief set out in the fifth column in the Performance Schedules;

38.38.4 the Contractor shall take all reasonable steps to mitigate the relevant event or circumstances and to continue to provide the unaffected Services to the Authority; and

38.38.5 the Contractor shall implement the Emergency Plan where appropriate.

38.39 The issue and details of any Rectifiable Provisional Default Notice, Default Notice, Repeat Default Notice or claim for relief pursuant to clause 38.38 may be referred by either Party to the Dispute Resolution Procedure.

38.40 The Contractor and the Authority shall both maintain separate records of all Rectifiable Provisional Default Notices, Default Notices and Repeat Default Notices issued by the Authority and all counter-signed Rectifiable Provisional Default Notices, Default Notices and Repeat Default Notices returned by the Contractor.

38.41 Notwithstanding the other provisions of this clause 38, it is agreed by the Parties that:

38.41.1 no Default Deductions will be incurred by the Contractor;

38.41.2 no default points will be accrued by the Contractor; and

38.41.3 the Contractor will not be liable for any Direct Losses or Indirect Losses suffered or incurred by the Authority, unless any such Direct Losses or Indirect Losses may be claimed pursuant to provisions of this Agreement other than this clause 38,

as a result of the issue of any Default Notice or Repeat Default Notice and there shall be no Defaults or Deductions before, on or for a period of eighteen (18) months after the Services Commencement Date.

38.42 The sums payable pursuant to clauses 38.16, 38.22, 38.24 and/or 38.31 ("**Default Deductions**") are agreed to be a genuine pre-estimate of the value reduction to the Services or Works caused by the relevant Default or Repeat Default.

38.43 Subject to:

38.43.1 any other express right, remedy and/or recourse of the Authority pursuant to this Agreement (including, without limitation, under any indemnity from the Contractor); and

38.43.2 the Authority's right to claim its Indirect Losses (which shall for the purposes of this clause 38.42 include the Authority's loss of revenue (if any)) suffered or incurred by it as a result of the Default or Repeat Default up to a maximum amount (in aggregate) of [REDACTED] in any rolling twelve (12) month period,

and without prejudice to any liability the Contractor may have to the Authority for the breach of any other obligation under any Authority Project Document, the sole remedy of the Authority in respect of any Performance Failure shall be the operation of the default mechanism pursuant to this clause 38.

39. **AUTHORITY STEP-IN RIGHTS**

39.1 Subject to clause 39.10, if the Authority reasonably believes that it needs to take action in connection with the provision of the Services (including, without limitation, the diversion of Authority Waste away from the Authority Sites and/or away from the Contractor):

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

39.1.2 to discharge a statutory duty,

then the Authority shall be entitled to take action in accordance with clauses 39.3 and 39.4, **PROVIDED THAT** (without prejudice to clause 39.10.2) the Authority shall not be entitled to take step-in action in relation to the tugs or barges, or at the EfW Facility.

39.2 Where practicable, the Authority shall give the Contractor the opportunity to remedy the situation prior to taking action under this clause 39.

39.3 If clause 39.1 applies and the Authority wishes to take action (subject always to clause 39.10), the Authority shall, where practicable and on giving the Contractor such notice (if any) as may be reasonable in the circumstances, notify the Contractor in writing of the following:

39.3.1 the action it wishes to take;

39.3.2 the reason for such action;

39.3.3 the date it wishes to commence such action;

39.3.4 the time period which it believes such action shall take; and

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

39.4 Following service of such notice, the Authority shall take such action as notified under clause 39.3 above and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

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

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

39.5.2 in respect of the period in which the Authority is taking the Required Action, the Authority Waste handled by the Authority for the duration of the Required Action shall be deemed to be Diverted Waste, and the provisions of clause 39.8 shall apply.

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

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

39.6.2 the Contractor shall take all steps reasonably necessary to allow the Authority (acting reasonably) to cease the Required Action and return responsibility for the affected Services to the Contractor; and

39.6.3 in respect of the period in which the Authority is taking the Required Action, payments attributable to the Services affected by the Required Action shall equal the Contract Rates less an amount equal to the Authority Losses incurred in taking the Required Action (including without limitation any employment and/or termination of employment costs incurred by the Authority in connection with any TUPE transfer which occurs during the Required Action period) **PROVIDED THAT** any undisputed negative balance shall be a debt owed by the Contractor to the Authority payable within twenty (20) Working Days of receipt by the Contractor of an Invoice for such amount from the Authority.

39.7 If and to the extent that, in the course of taking the Required Action, the Authority takes physical control of any Authority Site and/or the Feathers Wharf Site and/or equipment ("**Required Equipment**") away from a Contractor Party (as appropriate the "**Relevant Contractor Licensee**"), the Authority shall exercise such skill and care in the use of such Required Equipment as is reasonable in the circumstances. If damage (fair wear and tear excepted) is caused to the Required Equipment before such Required Equipment is returned to the physical control of the Relevant Contractor Licensee, the Authority shall indemnify the Contractor against the reasonable cost of rectifying such damage.

39.8 If the Authority directs any Constituent Council to divert Authority Waste away from the Contractor in circumstances referred to in clause 39.5 ("**Diverted Waste**"), in respect of the period during which the Authority is diverting Authority Waste the Contractor shall be relieved of its obligations to provide the Services in respect of the Diverted Waste and the payments due from the Authority to the Contractor pursuant to clause 29 shall equal:

39.8.1 in respect of tonnages of Diverted Waste, (subject to clause 34.5) the Contractor's Direct Losses and the Direct Losses of the EfW Operator; and

39.8.2 in respect of such Authority Waste as is collected and/or disposed of by the Contractor during such time, the Contract Rates;

as such sums shall be established to the reasonable satisfaction of the Authority.

39.9 The Authority shall give the Contractor such notice as shall be reasonable in the circumstances of its intention to cease the Required Action, whereupon responsibility for the provision of the Services subject to the Required Action shall revert to the Contractor.

39.10 Notwithstanding any other provision of this Agreement:

39.10.1 the Authority's right to take action pursuant to this clause 39 in connection with the provision of the Services shall not entitle the Authority to take step-in action in relation to the tugs or barges, or at the EfW Facility or at facilities owned or used by the EfW Operator (which, for the avoidance of doubt, does not include the Authority Sites); and

39.10.2 where the Authority exercises its right to step-in pursuant to this clause 39, the Authority shall use its reasonable endeavours to ensure the ongoing transfer of General Waste and Third Party Waste to the EfW Facility (but, for the avoidance of doubt, without the Authority undertaking any obligations or incurring any liabilities to either the Contractor or the EfW Operator under the EfW Waste Supply Agreement but without prejudice to the provisions of this clause 39).

40. FORCE MAJEURE

40.1 The provisions of this clause 40 shall apply to Force Majeure Events which occur after the latest of:

40.1.1 the Completion of the MRF Works; and

40.1.2 the Completion of the CA Site Works.

40.2 On the occurrence of a Force Majeure Event in accordance with clause 40.1 which affects the ASS Contract or the performance by either party of its obligations under the ASS Contract, the Affected Party shall be relieved from those obligations under the ASS Contract which the Affected Party is prevented from carrying out due to the Force Majeure Event for the duration of the Force Majeure Period.

40.3 Subject to clause 40.4, the Party not affected by the Force Majeure Event shall not be entitled to bring a claim for breach of the Affected Party's obligations under the ASS

Contract nor shall the Affected Party incur any liability to the other Party for any Direct or Indirect Losses incurred by the other Party to the extent that the Affected Party is prevented from carrying out its obligations as a result of a Force Majeure Event.

40.4 Nothing in this clause 40 shall affect any entitlement of the Authority to make Deductions during the Force Majeure Period.

40.5 For the avoidance of doubt, where the Contractor is unable to dispose of Authority Waste in accordance with the ASS Method Statement due to a Force Majeure Event, the Authority shall, upon notification by the Contractor pursuant to clause 40.7, be entitled to divert such Authority Waste away from the Contractor until the Contractor is able to dispose of such Authority Waste in accordance with the ASS Method Statement and notifies the Authority to that effect pursuant to clause 40.9 provided that the Authority shall in these circumstances use reasonable endeavours to divert such Authority Waste to the EfW Facility after the EfW Commissioning Date. The cost of disposing of the Authority Waste by alternative means pursuant to this clause 40.5 shall (subject to clause 40.6.2) be for the sole account of the Authority **PROVIDED THAT** for the avoidance of doubt the Contractor shall have no right to claim any compensation from the Authority in relation to any costs which it, or any third party, may incur as a result of its inability to dispose of Authority Waste in accordance with the ASS Method Statement during the period of diversion.

40.6 During the Force Majeure Period, the following provisions shall apply:

40.6.1 the Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event and shall continue to comply with its obligations under the ASS Contract to the extent not affected by the Force Majeure Event;

40.6.2 the Authority shall only pay the Contractor for the Services actually provided; and

40.6.3 save as set out in clauses 40.6.2, 40.10 and 47, the Contractor shall be entitled to no further payment or compensation whatsoever in connection with the Force Majeure Event.

40.7 On the occurrence of a Force Majeure Event the Affected Party shall notify the other Party of such occurrence 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.

40.8 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 effect of the Force Majeure Event and facilitate the continued performance of the ASS Contract.

40.9 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Period ceases. Following such notification the ASS Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

40.10 If, as a result of a Force Majeure Event, the Affected Party is unable to comply with its obligations under the ASS Contract in all material respects for a period in excess of:

40.10.1 twelve (12) months where the Force Majeure Event affects the provision of any Authority Site Services and it has not been agreed or Finally Determined that as a result the EfW Facility has ceased to be economically viable: or

40.10.2 six (6) months where the Force Majeure Event affects the provision of any Authority Site Services and it has been agreed or Finally Determined that as a result the EfW Facility has ceased to be economically viable,

either Party may terminate the ASS Contract by one (1) month's written notice (such notice not to be served earlier than eleven (11) months after the occurrence of the Force Majeure Event where clause 40.10.1 applies or five (5) months where clause 40.10.2 applies) provided that if the Contractor serves a notice of termination, the Authority shall have the right to serve a counter-notice, stating a period of time, not to exceed the earlier of three (3) years and the expiry of the Contract Period, during which the Authority requires the ASS Contract to continue, in which event the ASS Contract shall continue and shall, subject to earlier termination pursuant to the other provisions of the ASS Contract, terminate upon the later of the expiry of the notice of termination and the period specified by the Authority in the counter-notice.

40.11 During the period set out in the counter-notice served pursuant to clause 40.10:

40.11.1 the Output Specification shall (to the extent necessary) be amended by agreement between the Parties (such agreement not to be unreasonably withheld or delayed) to reflect the obligation of the Contractor to continue with those Authority Site Services not affected by the Force Majeure Event; and

40.11.2 the Authority shall be obliged to pay the Contract Rates in accordance with clause 29 with effect from the expiry of twelve (12) months from the occurrence of the Force Majeure Event as if the Authority Site Services affected by the Force Majeure Event have been or are being provided fully in accordance with the ASS Contract until the period set out in the counter-notice expires.

40.12 For the avoidance of doubt, the remaining provisions of the ASS Contract (including without limitation clause 41 shall apply in relation to the Authority Site Services not affected by the Force Majeure Event.

40.13 Upon termination of the ASS Contract pursuant to clause 40.10, and subject to any earlier termination of the ASS Contract, the ASS Contract shall terminate, and the provisions of clause 47 shall apply.

40.14 If the Force Majeure Period ceases to continue prior to the expiry of the twelve (12) month period (where clause 40.10.1 applies) or six (6) month period (where 40.10.2 applies), any notice of termination issued under clause 40.10 shall be void.

41. CONTRACTOR DEFAULT TERMINATION

41.1 Subject to the provisions of paragraph 1 of Schedule 16 (Ringfencing), if:

41.1.1 there is a material breach by the Contractor of its obligations under the ASS Contract (other than an obligation to pay the Authority any amount due from the Contractor to the Authority under the ASS Contract) which materially and adversely affects the performance of the Authority Site Services; or

41.1.2 the Contractor has, in any rolling three (3) month period, accrued sixty (60) or more ASS Default Points under clause 38.36; or

41.1.3 the Contractor has, in any rolling twelve (12) month period, accrued one hundred (100) or more ASS Default Points under clause 38.36; or

41.1.4 the Contractor suffers an Event of Incapacity; or

41.1.5 the Contractor ceases to carry on its business; or

41.1.6 the Contractor is in breach of its obligations relating to assignment under clause 54 in relation to the Contractor's rights in respect of the ASS Contract which has not been rectified within fifteen (15) Working Days of the Contractor being given written notification by the Authority; or

41.1.7 the following occurs:

41.1.7.1 the Contractor fails to honour a call for payment of a sum in excess of the ASS Non-Payment Default Sum properly made by the Authority in accordance with the terms of this Agreement within 20 Working Days; and

41.1.7.2 the Guarantor fails to honour a written demand for any unpaid balance made by the Authority in accordance with the terms of the Guarantee within 10 Working Days of such demand; and

41.1.7.3 (save where, upon the expiry of the 10 Working Day period referred to in clause 41.1.7.2 the outstanding amount is in excess of the undrawn balance of the Top-up Letter of Credit (if issued)) any Letter of Credit Issuing Bank fails to honour a written demand for any unpaid balance properly made by the Authority in accordance with the terms of the Top-up Letter of Credit (if issued) within 10 Business Days (as such term is defined in the Top-up Letter of Credit) of such written demand being made of the Letter of Credit Issuing Bank,

PROVIDED THAT the Authority has, to the maximum extent permitted under this Agreement, set-off any sums properly due and payable by the Contractor and/or the Guarantor against any sums properly due and payable by the Authority to the Contractor and **PROVIDED FURTHER THAT** where an amount is the subject of an application under the Dispute

Resolution Procedure, for the purposes of this clause 41.1.7 such amount shall not be deemed to be due and payable to the Authority until the date upon which a Final Determination in favour of the Authority in relation to such amount has been made pursuant to Schedule 13; or

41.1.8 the Contractor fails to issue and maintain the Top-Up Letter of Credit in accordance with the requirements of clause 2.13,

then, subject to clauses 41.2 and 41.3, the Authority may, without prejudice to any of its other remedies under this Agreement or to any rights of action which shall accrue or shall have already accrued to the Authority, terminate the ASS Contract in accordance with the provisions of this clause 41.

41.2 If a Contractor Default has occurred and the Authority wishes to terminate the ASS Contract, it must serve a termination notice ("**Contractor Default Termination Notice**") on the Contractor.

41.3 The Contractor Default Termination Notice must specify:

41.3.1 the Contractor Default that has occurred, giving reasonable details of the same;

41.3.2 in the case of any Contractor Default referred to in clauses 41.1.4, 41.1.5, 41.1.6 or 41.1.8, the date on which the ASS Contract shall terminate, such date to be not less than sixty (60) Working Days from the date of the Contractor Default Termination Notice served under clause 41.2;

41.3.3 where a Contractor Default falls within clause 41.1.1, a statement that the Contractor must either put forward a reasonable rectification programme for remedying the Contractor Default within thirty (30) Working Days of the date of service of the Contractor Default Termination Notice or alternatively rectify the Contractor Default within sixty (60) Working Days of the date of service of the Contractor Default Termination Notice; and

41.3.4 where a Contractor Default falls within clause 41.1.7, a statement that the Contractor must rectify the Contractor Default within twenty (20) Working Days of the date of service of the Contractor Default Termination Notice.

41.4 If the Contractor fails to rectify a Contractor Default pursuant to clause 41.1.1 or clause 41.1.7 (each a "**Rectifiable Contractor Default**"):

41.4.1 under clause 41.1.1, and subject to clause 41.5, within sixty (60) Working Days of the date of service of the Contractor Default Termination Notice; or

41.4.2 under clause 41.1.7, within twenty (20) Working Days of the date of service of the Contractor Default Termination Notice,

the Authority may by written notice to the Contractor terminate the ASS Contract, such termination to take effect on the date specified in the notice.

41.5 Where the Contractor Default is a Rectifiable Contractor Default under clause 41.1.1, if, within thirty (30) Working Days of the date of service of the Contractor Default Termination Notice, the Contractor serves a rectification programme on the Authority, the Parties shall meet and endeavour to agree its terms (including a timescale within which it shall operate). During such negotiations, both Parties agree to act reasonably (having regard, inter alia, to the course of events leading to the service of the Contractor Default Termination Notice by the Authority). In default of agreement within five (5) Working Days of service of the Contractor's rectification proposals on the Authority, either Party may refer the terms of the rectification programme to the Dispute Resolution Procedure. If the Contractor fails to comply with the terms of the rectification programme as agreed or determined pursuant to the Dispute Resolution Procedure, the Authority shall be entitled to serve a further written notice on the Contractor confirming the failure of the Contractor to comply with the terms of the rectification programme and terminating the ASS Contract.

41.6 If the Contractor Default is not a Rectifiable Contractor Default, upon the ASS Contract becoming terminable the Authority may by written notice to the Contractor terminate the ASS Contract, such termination to take effect on the date specified in the notice.

41.7 If the Contractor Default is a Rectifiable Contractor Default, and:

41.7.1 is rectified within the timescale set out in the Contractor Default Termination Notice; or

41.7.2 is rectified within the terms and timescale of an agreed or determined rectification programme,

then the Contractor Default Termination Notice shall be deemed to be revoked and the ASS Contract shall continue **PROVIDED THAT** for the purposes of this clause 41.7 if the Contractor's performance of the rectification programme is adversely affected by the occurrence of a Force Majeure Event, a Relief Event, a Compensation Event or an Excusing Cause then, subject to the Contractor complying with the other requirements in the ASS Contract concerning the occurrence of a Force Majeure Event, a Relief Event, a Compensation Event or an Excusing Cause (as the case may be), the time for performance of the rectification programme or any relevant element of it shall be deemed to be extended by a period equal to the Force Majeure Period or the delay caused by the Relief Event, the Compensation Event or the Excusing Cause (as the case may be) which is agreed by the parties or determined in accordance with the Dispute Resolution Procedure.

41.8 As an alternative to termination of the ASS Contract pursuant to the provisions of clauses 41.4 or 41.6, in any circumstances in which the Authority could exercise such power the Authority may, in its absolute discretion, require the Contractor by written notice to procure the termination of any relevant Authority Site Sub-Contract other than the ASS Primary Sub-Contract and procure that a replacement sub-contractor is appointed to provide all or part of those aspects of the Services which were performed by the previous sub-contractor within sixty (60) Working Days.

41.9 In circumstances where the Authority exercises its discretionary right under clause 41.8, if the Contractor fails to terminate the relevant Authority Site Sub-Contract and procure a replacement sub-contractor is appointed in accordance with the provisions of clause 41.8, the Authority shall be entitled at its option to exercise its rights in accordance with the provisions of clauses 41.4 or 41.6.

41.10 The Contractor may, on any two occasions during the Contract Period but prior to a Contractor Default under clause 41.1.2 or 41.1.3, by service of a written notice on the Authority specifically referring to this clause 41.10 elect to replace the ASS Operator in accordance with the procedure set out in clause 17 with a party which is not an Affiliate of the Contractor. Upon such election, and provided that the conditions for a Contractor Default under clauses 41.1.2 or 41.1.3 have not been met prior to such replacement taking effect, upon the replacement of the ASS Operator the balance of ASS Default Points incurred prior to the date of replacement and in the period of two (2) months after the date of replacement shall be reset to zero for the purposes of clauses 41.1.2 and 41.1.3.

41.11 Any termination of the ASS Contract by the Authority pursuant to the provisions of this clause 41 shall be without prejudice to the Contractor's right to claim damages for any breach of contract by the Authority.

42. RELIEF EVENTS

42.1 If and to the extent that a Relief Event is the direct cause of a Contractor Default then the Contractor is entitled to relief from the right of the Authority to terminate the ASS Contract pursuant to clauses 41.1.1, 41.1.2 and/or 41.1.3 (Termination for Contractor Default) (each a "**Relevant Contractor Default**").

42.2 For the avoidance of doubt, any relief to which the Contractor is entitled under this clause 42 shall not, unless otherwise expressly stated in the ASS Contract, extend to relief from Deductions made consequent upon such Relevant Contractor Default.

42.3 To obtain relief the Contractor shall:

42.3.1 as soon as reasonably practicable, and in any event within twenty (20) Working Days of it becoming aware that the Relief Event has caused and/or is likely to cause a Relevant Contractor Default, give to the Authority a notice of its claim for relief from termination, including full details (so far as available) of the nature of the Relief Event, the date of occurrence and its likely duration;

42.3.2 within fifteen (15) Working Days of receipt by the Authority of the notice referred to in clause 42.3.1 above, give full details (so far as available) of the relief claimed); and

42.3.3 demonstrate that:

42.3.3.1 the Contractor (or any of its Sub-Contractors) could not reasonably have foreseen the occurrence or consequences of the relevant Relief Event and could not have avoided such occurrence or consequences by steps which it might reasonably be expected to have taken, without incurring material expenditure;

42.3.3.2 the Relief Event directly caused the Relevant Contractor Default;

- 42.3.3.3 the consequences of the relevant Relief Event 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
 - 42.3.3.4 the Contractor is using reasonable endeavours to perform its obligations under the ASS Contract.
- 42.4 In the event that the Contractor has complied with its obligations under clause 42.3 then the relief referred to in clause 42.1 shall be granted by the Authority.
- 42.5 In the event that information required pursuant to clause 42.3 is provided after the dates referred to in clauses 42.3.3.1 and/or 42.3.3.2, then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.
- 42.6 The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted as materially inaccurate or misleading.
- 42.7 If the Authority disagrees that a Relief Event has occurred, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

43. EXCUSING CAUSES

- 43.1 If an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Authority Site Services, including to avoid doubt the performance of the Interim Services, then, subject to clause 43.2, to the extent such failure or interference arises as a result of such Excusing Cause:
- 43.1.1 such failure by the Contractor to perform shall not constitute a breach of the provisions of the ASS Contract by the Contractor;
 - 43.1.2 such interference shall be taken account of in measuring the performance of the Authority Site Services (including to avoid doubt the performance of the Interim Services) in accordance with the provisions of clause 38, the Payment Mechanism and/or the ASS Method Statement, which shall be operated as though the Authority Site Services had been performed free from such adverse interference; and

- 43.1.3 the Contractor shall be entitled to recover any Direct Losses incurred as a result of such Excusing Cause.
- 43.2 To obtain the relief and/or compensation outlined in clause 43.1, the Contractor shall:
- 43.2.1 as soon as reasonably practicable, and in any event within thirty (30) Working Days of it becoming aware that an Excusing Cause has interfered with, or caused a failure of, or is likely to interfere adversely with or cause a failure of, the performance of the Authority Site Services, give to the Authority a notice of its claim for relief and/or compensation under clause 43.1;
- 43.2.2 within thirty (30) Working Days of receipt by the Authority of the notice referred to in clause 43.2.1, give to the Authority full details (so far as available) of the Excusing Cause and/or any compensation claimed pursuant to clause 43.1.3 (in addition to the relief available pursuant to clauses 43.1.1 and 43.1.2); and
- 43.2.3 demonstrate that:
- 43.2.3.1 the Excusing Cause was the direct result of the adverse interference or failure in the performance of the Authority Site Services; and
- 43.2.3.2 the relief and/or compensation could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.
- 43.3 In the event that the Contractor has complied with its obligations under clause 43.2 then:
- 43.3.1 the relief referred to in clauses 43.1.1 and 43.1.2 shall be granted by the Authority; and
- 43.3.2 in the case of Direct Losses being incurred by the Contractor pursuant to clause 43.1.3, the Authority shall compensate the Contractor for the relevant Direct Losses demonstrated as actually have been incurred or committed

within twenty (20) Working Days of its receipt of a written demand by the Contractor supported by all relevant information.

- 43.4 In the event that the information required pursuant to clause 43.2 is provided after the dates referred to in clauses 43.2.1 and/or 43.2.2, then the Contractor shall not be entitled to any compensation and/or relief pursuant to clause 43.1, in respect of the period for which the information is delayed.
- 43.5 If the Parties cannot agree the extent of any compensation or the Authority disagrees that an Excusing Cause has occurred or disputes the consequences of an Excusing Cause, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.
- 43.6 At the request of the Authority through the issue of a Variation Notice, the Contractor agrees to use reasonable endeavours to fund the Authority's liability under clause 43.1.3 itself and recover such amount and any related funding cost (which shall include the Contractor's cost of capital where applicable) by increasing the Contract Rates.

44. CORRUPT GIFTS AND FRAUD

- 44.1 The Contractor warrants that when it entered into the original Agreement in 2002, the First Amended Agreement and the Second Amended Agreement it did not commit any Prohibited Act, and in entering into the Third Amended Agreement it has not committed any Prohibited Act.
- 44.2 If any Contractor Party, the EfW Contractor or any EfW Subcontractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders involved in the carrying out of the Works or Services commits any Prohibited Act, then the Authority shall be entitled to act in accordance with clauses 44.3 to 44.8 below.
- 44.3 If a Prohibited Act is committed by the Contractor or by an employee of the Contractor not acting independently of the Contractor, then the Authority may terminate this Agreement by giving notice to the Contractor provided that the provisions of clause 17.6 shall not apply for the purposes of this clause 44.3 to attribute the actions of a Sub-contractor or EfW Sub-contractor to the Contractor.

- 44.4 If a Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Agreement shall terminate, unless within twenty (20) Working 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 or Services by another person.
- 44.5 If the Prohibited Act is committed by a Sub-Contractor or EfW Subcontractor, or by an employee of that Sub-Contractor or EfW Subcontractor not acting independently of that Sub-Contractor or EfW Subcontractor, then the Authority may give notice to the Contractor of termination and this Agreement shall terminate, unless within twenty (20) Working Days of receipt of such notice the Contractor terminates the relevant Sub-Contract or EfW Subcontract and procures the performance of such part of the Works or Services by another Sub-Contractor or EfW Subcontractor (as appropriate).
- 44.6 If the Prohibited Act is committed by an employee of a Sub-Contractor or EfW Subcontractor involved in the carrying out of the Works or the provision of the Services and who is acting independently of that Sub-Contractor or EfW Subcontractor, then the Authority may give notice to the Contractor of termination and this Agreement shall terminate, unless within twenty (20) Working Days of receipt of such notice the relevant Sub-Contractor or EfW Subcontractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works or Services (as appropriate) by another person.
- 44.7 If the Prohibited Act is committed by any other person referred to in clause 44.2 but not specified in clauses 44.3 to 44.6 above, then the Authority may give notice to the Contractor of termination and this Agreement shall terminate unless within twenty (20) Working Days, the Contractor procures the termination of such person's employment and of their employer (where not employed by the Contractor or any Sub-Contractor or EfW Subcontractor) and, if necessary, the performance of the relevant part of the Works or Services (as appropriate) by another person.
- 44.8 Any notice of termination under this clause 44 shall specify:
- 44.8.1 the nature of the Prohibited Act;

44.8.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and

44.8.3 the date on which this Agreement shall terminate, in accordance with the applicable provision of this clause 44.

45. AUTHORITY DEFAULT TERMINATION

45.1 If an Authority Default has occurred and the Contractor wishes to terminate the ASS Contract, it must serve a termination notice on the Authority ("**Authority Default Termination Notice**").

45.2 The Authority Default Termination Notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.

45.3 The ASS Contract shall terminate on the day falling thirty (30) Working Days after the date of service of the Authority Default Termination Notice by the Contractor, unless the Authority rectifies the Authority Default within twenty (20) Working Days of the date of service of the Authority Default Termination Notice.

45.4 Any termination of the ASS Contract by the Contractor pursuant to the terms of this clause 45 shall be without prejudice to the Authority's right to claim damages for any breach of contract by the Contractor.

46. ASS CONTRACT/EFW CONTRACT INTERFACE

46.1 In circumstances where it is agreed or Finally Determined that, in order to be implemented:

46.1.1 a Variation requires a consequential EfW Change; or

46.1.2 an EfW Change requires a consequential Variation,

then without prejudice to any right of either Party to reject or dispute such Variation or EfW Change under the terms of the ASS Contract or EfW Contract (as appropriate), the implementation of any such Variation or EfW Change shall be conditional upon the agreement or (where applicable) Final Determination of the secondary amendment to the EfW Contract or ASS Contract (as appropriate).

46.2 Neither Party shall be entitled to terminate the ASS Contract or the EfW Contract save as expressly set out in this Agreement.

46.3 The rights of the Parties to terminate the ASS Contract and/or the EfW Contract, and the consequences of any such termination, shall be subject to the provisions of Schedule 16 (Ringfencing).

46.4 Without prejudice to any independent right of termination which may be available to the Contractor pursuant to any express terms of this Agreement, in circumstances where:

46.4.1 the Authority terminates the EfW Contract pursuant to:

46.4.1.1 paragraph 10 of Schedule 15 (Termination for EfW Contractor Default); or

46.4.1.2 paragraph 13 of Schedule 15 (Authority Termination for Breach of Refinancing Provisions); or

46.4.2 either Party terminates the EfW Contract pursuant to paragraph 14 of Schedule 15 (Termination for EfW Force Majeure),

the Authority shall be entitled to terminate the ASS Contract upon giving written notice to the Contractor where it determines, acting reasonably, that it would be necessary to:

46.4.2.1 avoid material prejudice to the Authority meeting its statutory obligations with respect to waste management (including without limitation any recycling, recovery or other targets to which it is subject);

46.4.2.2 avoid a breach of procurement regulations or any other applicable Law; or

46.4.2.3 prevent a deterioration in economy, efficiency and/or effectiveness when compared with the continued performance of the ASS Contract,

to retender the entire Agreement rather than the EfW Contract in isolation. Any notice served by the Authority pursuant to this clause 46.4 shall state a period of not more than three (3) years from the date of termination of the EfW Contract during which the Contractor shall continue to provide the Authority Site Services (other than the Off-Site Interim Services) prior to termination.

- 46.5 In the event that the ASS Contract terminates prior to the EfW Contract, the Authority shall either undertake the Authority Site Works and Authority Site Services itself or, at any point in time, reprocure the Authority Site Works and Authority Site Services and appoint a Replacement ASS Contractor.
- 46.6 Upon a partial reprocurement of this Agreement, in the event of a termination of Authority Site Services or EfW Services in isolation, the Authority shall include the Interface Agreement as part of the tender documents and (save where the Replacement ASS Contractor or Replacement EfW Contractor is an Affiliate of the Contractor) the Parties shall enter, and the Authority shall procure that the Replacement ASS Contractor or Replacement EfW Contractor (as appropriate) enters, into the Interface Agreement in substantially the form set out in Schedule 17 (with such amendments as the Parties shall agree (acting reasonably)). The Contractor shall be entitled (acting reasonably) to require security from the Replacement ASS Contractor or New EfW Contractor in support of the Replacement ASS Contractor's or New EfW Contractor's obligations to the Contractor under the Interface Agreement. The cost associated with any such security shall be solely for the account of the Contractor.

47. TERMINATION COMPENSATION PAYMENTS

- 47.1 In connection with an early termination of the ASS Contract, but without prejudice to any other accrued rights which the Parties may have against each other under the terms of the ASS Contract as at the Termination Date and subject to the provisions of clause 47.2:
- 47.1.1 if terminated pursuant to clause 41, the Contractor shall pay to the Authority the Contractor Default Termination Sum; and
- 47.1.2 if terminated pursuant to clause 45, the Authority shall pay to the Contractor the ASS Authority Default Termination Sum.
- 47.2 Upon termination of the ASS Contract for whatever reason prior to the Expiry Date, the Authority shall, on or prior to the Scheduled Termination Payment Date, pay to the Contractor an amount equal to:
- 47.2.1 the aggregate Transfer Values of Reverting Assets which have been Completed, installed or supplied; and

- 47.2.2 in respect of Reverting Assets which have not been Completed or fully installed as at the Termination Date, the Authority shall pay the Contractor an amount equal to the value of the work that has been properly executed by the Contractor in accordance with the provisions of this Agreement as at the Termination Date less any amounts already paid by the Authority in respect of such work on these Reverting Assets due to the application of clause 21 and/or (in relation to the MRF Works only) pursuant to clauses 6.2.2 and 6A.1), as such value shall be certified by an independent engineer appointed jointly by the Contractor and the Authority and whose costs shall be shared equally between the Contractor and the Authority save where due to a termination pursuant to clause 41 (in which event the Contractor shall pay all the independent engineer's costs) or clause 45 (in which event the Authority shall pay all the independent engineer's costs) **PROVIDED THAT** under no circumstances may the certified value of work properly executed exceed the relevant Transfer Value for such Reverting Assets.
- 47.3 In respect of Reverting Assets which are Leased Assets, upon the Expiry Date or upon any early termination of the ASS Contract the Contractor shall pay the balance outstanding to the lessor in relation to each Leased Asset and transfer such Reverting Assets to the Authority or its nominee pursuant to clause 48.1 **PROVIDED THAT:**
- 47.3.1 upon an Authority Default termination pursuant to clause 45, the Authority shall be liable to reimburse the breakage costs payable by the Contractor under the Finance Lease arising as a result of any early termination of a Finance Lease prior to such transfer; and
- 47.3.2 upon any other termination prior to the Expiry Date, the Contractor shall pay the breakage costs under the Finance Lease arising as a result of any early termination of a Finance Lease.
- 47.4 In respect of the Authority's contribution towards Capital Expenditure on Shared Usage Assets and Shared Usage Costs following the occurrence of an Authority Legislative Change Risk which has not been reflected through an adjustment in the Contract Rates, if the Authority shall not have received the use of the Capital Expenditure item for its full Design Life due to the occurrence of the Termination Date, the Contractor shall make a reconciliation payment (calculated by amortising the Capital Expenditure over the Design Life on a straight line basis) to the Authority

to reflect the loss of recovery by the Authority of the use of such Capital Expenditure item for its full Design Life **PROVIDED THAT**, save where termination occurred pursuant to clause 41 (in which event this proviso shall not apply), no such reconciliation shall be made if the Contractor can reasonably demonstrate that:

47.4.1 where the owner of the Shared Usage Asset is the Contractor or any Affiliate of the Contractor, the Contractor or any Affiliate of the Contractor (as the case may be); or

47.4.2 where the Shared Usage Asset is a landfill site, the owner of such landfill site; or

47.4.3 where the Shared Usage Asset is a Leased Asset, the owner of such Leased Asset,

receives no value from the enhanced Shared Usage Asset or Shared Usage Cost after the Termination Date.

47.5 If the Contractor has incurred Capital Expenditure on an Authority Site pursuant to clause 33.7.3.2 the legal and beneficial ownership in which is agreed or by Law becomes vested in the Authority, upon the occurrence of the Termination Date or the Expiry Date, the Authority shall make a reconciliation payment equal to:

$$\text{Capex} - \left(\frac{\text{Capex} * \text{Term}}{\text{Design Life}} \right)$$

where:

Capex means the relevant Capital Expenditure; and

Term means the period from the date upon which the item of Capital Expenditure becomes operational to (and including) the earlier of the Termination Date or Expiry Date,

PROVIDED THAT if the reconciliation payment is a negative number, the reconciliation payment shall be deemed to equal zero.

47.6 Payments from the Authority to the Contractor under this clause 47 shall fall due and payable on the Scheduled Termination Payment Date **PROVIDED THAT** the

Authority shall be entitled at any time to prepay any such amounts. Interest at the Default Interest Rate shall accrue on such sums from the date falling twenty (20) Working Days after the Termination Date or (where the Agreement terminates due to the effluxion of time) the Expiry Date to the date of actual payment.

47.7 Payments from the Contractor to the Authority under this clause 47 shall fall due and payable on the date falling twenty (20) Working Days after the Termination Date or (where the Agreement terminates due to the effluxion of time) the Expiry Date. Interest at the Default Interest Rate shall accrue on such sums from the date falling twenty (20) Working Days after the Termination Date or (where the Agreement terminates due to the effluxion of time) the Expiry Date to the date of actual payment.

48. CONSEQUENTIAL ARRANGEMENTS ON TERMINATION

48.1 The Authority shall, not later than twenty (20) Working Days following the earlier of the Expiry Date and the Termination Date (in relation to all matters covered by this clause 48.1 other than the transfer of the ISO Containers pursuant to clause 48.1.1) or not later than twenty (20) Working Days following the Expiry Date (in relation to the transfer of the ISO Containers pursuant to clause 48.1.1), serve upon the Contractor a notice (a "**Transfer Notice**") requiring the Contractor, upon the payment of any amounts owing to the Contractor under clause 47 and/or pursuant to clause 48.1.2 (as appropriate) to:

48.1.1 deliver and vest or procure the vesting in to the Authority (or in such third party as the Authority may nominate) of the legal and beneficial ownership to all or any of the ISO Containers, the Authority Plant and Equipment and Reverting Assets not in the ownership of the Authority at the Services Commencement Date, together with such intellectual property rights as may be necessary to operate and maintain the same;

48.1.2 deliver and vest or procure the vesting in the Authority (or in such third party as the Authority may nominate) of the legal and beneficial ownership in such specified Contractor Asset(s) as the Authority may nominate which are used at an Authority Site solely in connection with the Authority Site Services and are not Reverting Assets upon the payment by the Authority of the market value for such Contractor Asset(s), such market value to be adjusted (by amortising the Capital Expenditure over the Design Life on a straight

line basis) to reflect any Capital Expenditure (whether directly or through the relevant Contract Rate(s)) made by the Authority in such Contractor Asset pursuant to clause 21 (including without limitation, in the case of Shared Usage Assets, any reconciliation payment due to the Authority pursuant to clause 47.4);

48.1.3 (provided that the Contractor has secured a right of novation in favour of the Authority in accordance with clauses 17.9.1 and 17.9.2) novate each Building Contract and (to the extent reasonably practicable) Professional Appointment in respect of which the relevant Authority Site Works have not been Completed as at the date of termination **PROVIDED THAT** any such novation shall be without prejudice to any pre-existing right of the Contractor to claim against the Building Contractor in accordance with the terms of the Building Contract; and

48.1.4 to the extent permitted under the relevant Sub-Contract, assign to the Authority (or to such third party as the Authority may nominate) the benefit of any Sub-Contract entered into in connection with the Authority Site Works and/or Authority Site Services (but excluding for the avoidance of doubt the EfW Waste Supply Agreement and any Finance Lease),

and the Contractor shall (subject to the remainder of this clause 48) promptly comply with such Transfer Notice.

48.2 In the event that any Building Contract has not been novated to the Authority pursuant to clauses 48.1.3 within twenty (20) Working Days of receipt by the Contractor of notification pursuant to clause 48.1, the Contractor shall, upon the request and at the expense of the Authority (except where the termination is a consequence of a Contractor Default, in which event the enforcement shall be at the expense of the Contractor), enforce such right of novation against the Building Contractor referred to in clause 48.1.3.

48.3 The Authority shall have an exclusive licence (at no additional cost to the Authority) to use all the Contractor Assets and Leased Assets used for the provision of the Authority On-Site Services until the expiry of the time for serving notice under clause 48.1.

- 48.4 With effect from the earlier to occur of the Termination Date or the Expiry Date, the Authority shall have an exclusive licence (at no additional cost to the Authority) to use any Reverting Assets and Authority Plant and Equipment not already in the ownership of the Authority until the date of payment of any amounts owing to the Contractor under clause 47 and subsequent transfer of the legal and beneficial ownership of the relevant Contractor Assets, Authority Plant and Equipment and Reverting Assets into the name of the Authority or its nominee.
- 48.5 Upon the service of a notice under clause 48.1, the Authority shall have an exclusive licence (at no additional cost to the Authority) to use any such Contractor Assets as are used for the provision of the Authority On-Site Services specified in such notice until the date of payment of any amounts owing to the Contractor pursuant to clause 48.1.2 and subsequent transfer of the legal and beneficial ownership of the relevant Contractor Asset(s) into the name of the Authority or its nominee.
- 48.6 The Contractor undertakes that it shall not remove, and shall ensure that no Contractor Party removes, any Contractor Asset or Leased Asset which could be the subject of a Transfer Notice from any of the Authority Sites and the Feathers Wharf Site prior to the expiry of the period for serving a Transfer Notice or, following the service of such notice, any Contractor Asset or Leased Asset which is listed in the Transfer Notice. Upon such notice being served the Contractor shall procure that the benefit of all material documentation, including, without limitation, guarantees, warranties and service agreements relating to the Contractor Assets and Leased Assets transferred to the Authority pursuant to clause 48.1, is assigned to the Authority (or such third party as the Authority may nominate) to the extent practicable. To the extent that any such rights are non-assignable, the Contractor shall hold the benefit of such rights on trust for the Authority and shall give to the Authority the right to enforce such rights in the name of the Contractor, **PROVIDED THAT** the Authority shall indemnify the Contractor from all Direct and Indirect Losses arising out of the enforcement of such rights.
- 48.7 Any assets or rights which are to be transferred or assigned under clause 48 shall be transferred or assigned free from all charges, mortgages, pledges, liens, encumbrances or other securities in favour of third parties.
- 48.8 If the Authority does not serve a notice under clause 48.1 in respect of a Contractor Asset or Leased Asset, the relevant Contractor Asset or Leased Asset shall be made

available for collection by the Contractor at any reasonable time within forty (40) Working Days of the Termination Date and if not removed within that period may be sold (in relation to Contractor Assets) or otherwise disposed of by the Authority and the Authority shall be the exclusive agent of the Contractor empowered to sell all such Contractor Assets. In selling any such Contractor Assets, the Authority shall use its reasonable endeavours to obtain the market value of such Contractor Assets and secure the sale as soon as reasonably practicable. Prior to the sale of any such Contractor Assets, the Authority shall notify the Contractor of the proposed sale price. In the event that the Contractor believes the sale price does not represent the market value of the relevant Contractor Asset the matter shall be referred to the Dispute Resolution Procedure and the sale process suspended.

48.9 Within ten (10) Working Days of the sale of any such Contractor Asset pursuant to clause 48.8, the Authority shall pay to the Contractor an amount equal to the sale price of the relevant Contractor Asset less the reasonable expenses of the Authority incurred in connection with the sale.

48.10 At any time in the final three (3) years prior to the Expiry Date, or in respect of the ASS Services only during any of the Wind-Down Period, the three (3) year notice period under clause 10.10, the period set out in the counter-notice under clause 40.10, or the notice period under clause 46, the Authority may, at its absolute discretion, undertake a re-tendering process (the "**Process**") on the following basis:

48.10.1 the purpose of the Process shall be to consider whether the Authority should enter into a new agreement for the continued provision of the relevant Services or some of the relevant Services by the Contractor or another party. The Process may, at the Authority's discretion, entail competitive tendering through the procurement procedures applicable to public authorities from time to time including the equivalent of an advertisement in the Official Journal of the European Communities or any successor publication;

48.10.2 a primary consideration in the Process shall be to establish the most economically advantageous method for procuring the provision of the relevant Services or some of the relevant Services;

48.10.3 the procedure to be followed shall be decided upon by the Authority before commencing the Process;

48.10.4 as part of the Process, the Contractor shall give the Authority full access to such of its records and books of account as it shall reasonably request (subject always to the provisions of clauses 55 and 56) and shall permit third parties duly authorised by the Authority reasonable access to inspect and view the Authority Sites and the Feathers Wharf Site, subject to the provisions of clause 28; and

48.10.5 if, as a result of the Process the Authority decides to appoint a third party in place of the Contractor, and the ASS Contract has not been terminated at that point in time, the Authority shall notify the Contractor of this decision by service of a notice of substitution ("**Notice of Substitution**").

48.11 If termination has occurred pursuant to clause 45 the Authority shall reimburse to the Contractor its reasonable costs and expenses incurred in complying with this clause 48. In all other circumstances the Contractor shall bear its own costs incurred under all parts of this clause 48 including without limitation all fees, costs or other expenses payable so as to enable the Contractor to perform its obligations under this clause 48.

48.12 Where the Authority has served a Notice of Substitution in accordance with clause 48.10.5 six (6) months or more prior to the Expiry Date or the Termination Date, the Contractor shall (and shall procure that any Sub-Contractors engaged in the provision of the Authority Site Services) co-operate in the period prior to the Expiry Date or Termination Date (as appropriate) to ensure an orderly and efficient transition from the provision of the relevant Services or some of the relevant Services by the Contractor to their provision by the Authority or such other person as the Authority shall nominate.

48.13 Where the Authority has served a Notice of Substitution in accordance with clause 48.10.5 less than six (6) months prior to the Expiry Date or Termination Date then, with effect from the Expiry Date or Termination Date (as the case may be) the Contractor shall (and shall use its reasonable endeavours to ensure any Sub-Contractors engaged in the provision of the Authority Site Services) co-operate for a period of up to two (2) months after the Expiry Date or Termination Date (as the case may be) to ensure an orderly and efficient transition from the provision of the Authority Site Services or some of such Authority Site Services by the Contractor to their provision by the Authority or such other person as the Authority shall nominate

PROVIDED THAT any material expenditure incurred by the Contractor or any of its Sub-Contractors in complying with this clause 48.13 shall be for the account of the Authority.

48.14 Where the ASS Contract terminates other than pursuant to clause 45 and the provisions of clauses 48.12 and 48.13 do not apply, the Contractor shall (and shall use its reasonable endeavours to ensure any Sub-Contractors engaged in the provision of the Authority Site Services) co-operate for a period of up to two (2) months after the Termination Date to ensure an orderly and efficient transition from the provision of the Authority Site Services or some of such Authority Site Services by the Contractor to their provision by the Authority or such other person as the Authority shall nominate **PROVIDED THAT** any material and reasonable and proper costs incurred by the Contractor or any of its Sub-Contractors in complying with this clause 48.14 shall be for the account of the Authority.

48.15 At any point in time in the two (2) years prior to the Expiry Date the Authority shall be entitled to require that the Contractor procures the completion by an independent contractor jointly appointed by the Contractor and the Authority of a final survey of the Authority Assets to assess whether they have been maintained by the Contractor so that:

48.15.1 the Authority Assets comply with clauses 16.4 and 16.5; and

48.15.2 (in addition) the Authority Plant and Equipment complies with the terms of Schedule 12,

PROVIDED THAT reasonable levels of maintenance are undertaken prior to the Expiry Date.

48.16 Subject to clause 48.17, the cost of the final survey shall be borne by the Authority.

48.17 If the final survey shows that the Contractor has not complied with or is not complying with its obligations under clauses 16.4, 16.5, and/or Schedule 12, the Contractor shall:

48.17.1 reimburse to the Authority the cost of the final survey; and

48.17.2 carry out such rectification and/or maintenance work prior to the Expiry Date as is necessary to bring the condition of the Authority Assets up to the

standard they would have been in if the Contractor had complied with its obligations under clauses 16.4, 16.5, and Schedule 12.

48.18 Without prejudice to the results of the final survey, the Parties shall agree a maintenance schedule to cover the final two (2) years prior to the Expiry Date, in order to ensure that, as at the Expiry Date, the Authority Assets comply with clause 16.5 and, in addition, the Authority Plant and Equipment complies with the requirements of Schedule 12.

48.19 If and to the extent that the Contractor fails to carry out the rectification and/or maintenance work required either as a result of the final survey or as agreed pursuant to clause 48.18 within the specified periods, the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's reasonable expense, and where appropriate set off such amounts from the payments due pursuant to clause 29.

48.20 Following the Expiry Date or (if earlier) the Termination Date:

48.20.1 the Contractor shall give (and, to the extent the Environment Agency licences are held in the name of a Sub-Contractor, shall procure that the relevant Sub-Contractor gives) all reasonable assistance to the Authority in connection with the transfer of the Environment Agency licences held by the Contractor or any Sub-Contractor in relation to the Authority Sites and the Feathers Wharf Site (the "**EA Licences**") to the Authority or (at the discretion of the Authority) the Authority's nominee (the "**EA Licence Transferee**") **PROVIDED THAT** if the Authority shall not nominate a nominee within six (6) months of the Expiry Date or (if earlier) the Termination Date, the Contractor may require that the Authority be the EA Licence Transferee;

48.20.2 the reasonable costs of the Contractor in complying with clause 48.20.1 shall be met by the Authority other than where the transfer follows a termination under clause 41, in which event such costs shall be for the account of the Contractor;

48.20.3 pending the transfer of the EA Licences pursuant to clause 48.20.1, the EA Licence Transferee shall act under the Contractor's EA Licences in such manner as the Parties may agree from time to time; and

48.20.4 the Authority shall indemnify the Contractor against any Direct Losses and Indirect Losses which the Contractor may incur as a result of the acts or omissions of the EA Licence Transferee whilst acting under the Contractor's EA Licences pursuant to clause 48.20.3.

49. GROSS-UP ON AUTHORITY DEFAULT TERMINATION

49.1 If any amount of compensation payable by the Authority pursuant to clause 47.1.2 (a "**Compensation Payment**") is subject to a Relevant Tax Liability payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been had the payment not been subject to Tax, taking account of any Relief in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject (other than where such relief, allowances, deduction setting off or credit is available to the Contractor solely on account of being part of a group of companies for Tax purposes).

49.2 For the purposes of this clause 49:

49.2.1 "**Relief**" shall mean any relief, allowance, deduction setting off or credit in computing profits or tax or a credit against, or right to repayment of, tax granted by or pursuant to any legislation for tax purposes;

49.2.2 a "**Relief derived from the ASS Contract**" is a Relief which arises in connection with the carrying out of the Authority Site Works and/or the provision of Authority Site Services and includes any Relief arising as a consequence of the distribution of any amount obtained in respect of the carrying out of the Authority Site Works and/or the provision of the Authority Site Services (other than a Compensation Payment) by the Contractor (whether by way of interest, dividend or other distribution, repayment, reduction or redemption of capital or indebtedness or return of assets or otherwise); and

49.2.3 the Contractor shall be regarded as having a "**Relevant Tax Liability**" in respect of a Compensation Payment to the extent that:

49.2.3.1 it has a liability for tax in consequence of or in respect of a Compensation Payment ("**Actual Liability**"); or

49.2.3.2 it would have had a liability for tax within clause 49.2.3.1 above but for the utilisation of a Relief other than a Relief derived from the ASS Contract ("**Deemed Liability**").

- 49.3 In determining whether the Contractor has a Relevant Tax Liability by reason of a Compensation Payment, it should be assumed that any Reliefs derived from the ASS Contract which are available to the Contractor (or would have been so available but for a surrender by the Contractor of such Reliefs by way of group or consortium relief) for offset against the Compensation Payment, or against tax in relation to the same, have been so offset to the maximum extent possible.
- 49.4 The Contractor shall keep the Authority fully informed of all negotiations with the Inland Revenue in relation to any Relevant Tax Liability in respect of a Compensation Payment. The Contractor shall not agree, accept or compromise any claim, issue or dispute relating to such Relevant Tax Liability without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed. The Authority may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct the Contractor to resist, appeal, defend or otherwise dispute the Relevant Tax Liability in respect of the Compensation Payment, provided that the cost of any such dispute (including any interest or penalties incurred) shall be at the Authority's expense. Where any resistance, appeal, defence or other mode of dispute results in a more beneficial position in relation to the Relevant Tax Liability, an adjustment will be made to the amount payable under clause 49 to reflect such outcome.
- 49.5 Any increase in the amount of a Compensation Payment which is payable under clause 49 shall be paid on the later of five (5) Working Days after a demand for such increase (together with evidence in sufficient detail for the Authority to satisfy itself of the Relevant Tax Liability and its calculation) is made by the Contractor and:
- 49.5.1 in the case of an Actual Liability, five (5) Working Days before the date on which the relevant tax must be paid to the tax authority in order to avoid incurring interest and penalties; and
- 49.5.2 in the case of a Deemed Liability, five (5) Working Days before the date on which tax which would not have been payable but for the utilisation of the relevant Relief must be paid in order to avoid incurring interest or penalties and, for the purposes of determining when the Relief would otherwise have

been utilised, Reliefs shall be regarded as utilised in the order in which they arise.

- 49.6 The Authority shall have the right to pay the amount payable under clause 49 direct to the Inland Revenue in satisfaction of the relevant tax due by the Contractor.

PART V - GENERAL

50. STATUTORY RESPONSIBILITIES

Without prejudice to the Contractor's remedies under this Agreement, nothing in this Agreement shall fetter or constrain the Authority from exercising its statutory powers or performing its statutory duties.

51. LIMITATION OF CONSTITUENT COUNCIL LIABILITY

- 51.1 The liability of a Constituent Council to the Contractor in respect of Misdelivered Waste under contract, tort or otherwise shall, subject to clause 51.2, be subject to the Default Contract Rate Compensation Cap.
- 51.2 When a Constituent Council Misdelivers Authority Waste and this leads to the termination of the EfW Waste Supply Agreement in circumstances where the Contractor would be entitled to claim from the Constituent Council in respect of the losses arising out of such termination, the liability of the Constituent Council under contract, tort or otherwise in relation to such Misdelivery shall under no circumstances be greater than the Authority Default Termination Sum.
- 51.3 If, in breach of clauses 51.1 and/or 51.2, the Contractor recovers more than the Default Contract Rate Compensation Cap or the Authority Default Termination Sum (as the case may be), the Contractor shall, within five (5) Working Days of the date on which the compensation is received, remit the excess above the Default Contract Rate Compensation Cap or the Authority Default Termination Sum (as the case may be), together with any accrued interest, back to the Constituent Council.
- 51.4 For the avoidance of doubt, both the overall amount of, and the individual elements within, the Default Contract Rate Compensation Cap and the Authority Default Termination Sum shall be capable of adjustment by agreement between the Authority and the Contractor without the prior consent of any Constituent Council **PROVIDED ALWAYS** that the Default Contract Rate Compensation Cap and the Authority Default Termination Sum shall be the same for both the Authority and the Constituent Councils.
- 51.5 For the avoidance of doubt, the limitations on liability set out in this clause 51 shall apply only in relation to the Misdelivery of Authority Waste and shall not apply to any liability any Constituent Council may incur to the Contractor under other

contractual arrangements, tortious relationships or otherwise, including, by way of example and without limitation, in relation to physical damage occasioned by the Constituent Council on the assets of the Contractor in the course of delivering Authority Waste to the relevant Authority Site.

52. REPRESENTATIVES

- 52.1 Details of the Contractor's Representative and the General Manager are set out in Schedule 11.
- 52.2 The Parties acknowledge that the individuals fulfilling the functions of the Contractor's Representative and the General Manager are essential to the fulfilment of the Parties' obligations under this Agreement. In the event that any Contractor's Representative or the General Manager is removed or replaced for any reason the Authority or Contractor (as the case may be) shall give as much notice as reasonably practicable of its intention to replace such individual, and shall use reasonable endeavours to appoint an appropriately qualified and experienced replacement. Until notice of a subsequent appointment shall have been given by either Party to the other Party the Parties shall be entitled to treat as the Contractor's Representative or General Manager (as applicable) the last person identified as such in accordance with this clause 52.
- 52.3 Each Party shall forthwith give notice in writing to the other of any person(s) authorised to act for any period as the Contractor's Representatives or the General Manager (as applicable). Any deputy shall be a person of seniority, and shall be deemed to have the same authority as that of his appointor.
- 52.4 The Contractor's Representative and the General Manager shall be contactable for emergencies by the Authority or the Contractor (as the case may be) for the whole period referred to in the Output Specification and the Method Statement.
- 52.5 Any notices, information, instructions or other communication given or made to the Contractor's Representative, the General Manager or their respective deputies shall be deemed to have been given or made to the Contractor or Authority (as appropriate).
- 52.6 The General Manager shall be deemed authorised to act generally for the Authority and the Contractor's Representative shall be deemed authorised to act generally for the Contractor in relation to this Agreement subject to any exclusions notified in

writing by the Authority to the Contractor and the Contractor to the Authority (respectively).

53. LIAISON PROCEDURE

53.1 The Contractor and the Authority hereby agree to liaise with each other during the Contract Period in accordance with this clause to facilitate communication between the Parties and accordingly the more efficient delivery of the Services in accordance with this Agreement.

53.2 The Liaison Procedure set out in this clause 53 shall be applied by the Contractor and the Authority in relation to all matters arising under this Agreement other than Disputes.

53.3 Within one (1) month of the Agreement Date a committee (the "**Liaison Committee**") shall be established and shall consist of the following persons:

53.3.1 the General Manager and/or a representative nominated by the General Manager; and

53.3.2 the Contractor's Representative and/or a representative nominated by the Contractor's Representative.

53.4 The Contractor and the Authority shall be entitled to change any of their respective nominated representatives from time to time by giving written notice of such change to the Contractor and the Authority (as applicable) as soon as reasonably practicable and prior to any meeting of the Liaison Committee.

53.5 The Authority and the Contractor shall each use its reasonable endeavours to ensure that:

53.5.1 persons suitably qualified to consider the matters on any agenda circulated pursuant to clause 53.5.4 attend the relevant Liaison Committee meetings;

53.5.2 meetings of the Liaison Committee are called at least once every three (3) months;

53.5.3 additional meetings of the Liaison Committee are called at reasonable notice upon the request of either Party;

- 53.5.4 an agenda of any proposed Liaison Committee meeting is prepared and circulated in sufficient time prior to any meeting to enable all Liaison Committee members to attend the meeting well prepared;
- 53.5.5 minutes are taken of Liaison Committee meetings and a report (based on the minutes) is prepared ("**Liaison Committee Report**") setting out in detail all matters discussed by the Liaison Committee at any Liaison Committee meeting and, in particular, indicating any matters which have been discussed and agreed and/or disagreed. Should any matter be disagreed, the Liaison Committee Report should indicate what steps the Liaison Committee propose to take to settle the relevant matter, including whether the recommendation of the Liaison Committee is that the matter should be referred to the Dispute Resolution Procedure; and
- 53.5.6 Liaison Committee Reports are circulated within five (5) Working Days of any Liaison Committee meeting to the Liaison Committee members and to such additional persons as may be proposed by the Authority and/or the Contractor.

54. ASSIGNMENT

54.1 The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) (other than in respect of the whole of the Agreement) to any person other than any public body (being a single entity) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement, the Property Agreements, the Belvedere Lease and the Belvedere Sub-Lease being:

54.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

54.1.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement, the Property Agreements, the Belvedere Lease and the Belvedere Sub-lease;
or

54.1.3 any other public body whose obligations under this Agreement, the Property Agreements, the Belvedere Lease and the Belvedere Sub-lease are

unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement.

- 54.2 Subject to clauses 54.3 and 54.4, and subject always to the provisions of the Finance Direct Agreement the Contractor shall not assign, under let, charge, sell, bargain or otherwise deal in any way with the benefit of this Agreement in whole or in part except with the prior written consent of the Authority.
- 54.3 The provisions of clause 54.2 do not apply to the grant of any security for any loan made to the EfW Operator under the Financing Agreements.
- 54.4 Nothing in this Agreement shall prohibit the Contractor from providing or procuring the provision of the Works or the Services from a subcontractor (to the extent approved under clause 17 (where applicable)), provided that, subject to clause 13 of the Finance Direct Agreement, the Contractor shall remain primarily and directly liable for the Contractor's obligations under this Agreement.

55. AUDIT ACCESS

For the purposes of the examination and certification of the Authority's accounts and/or any examination pursuant to any Law to that effect of the economy, efficiency and effectiveness with which the Authority has used its resources the Authority's auditor may examine and take copies of such documents as he may reasonably require pursuant to any Law, including, without limitation, the information referred to in clause 57.5, and which are owned, held or otherwise within the control of the Contractor (who shall procure that any person acting on its behalf who has such documents and/or other information shall also provide access) and may require the Contractor to produce such oral or written explanation as he considers necessary. For the avoidance of doubt, the Contractor shall not be required to disclose any information or documentation where to do so would require the Contractor to breach a duty of confidentiality owed to a third party other than the Authority unless required to do so by Law.

56. CONFIDENTIALITY

56.1 Confidential Information

56.1.1 The Parties agree that the provisions of this Agreement shall, subject to clause 56.1.2 below, not be treated as Confidential Information and may be disclosed without restriction.

56.1.2 Clause 56.1.1 above shall not apply to provisions of this Agreement designated as Commercially Sensitive Information and listed in Part 1 of Appendix 3 to this Agreement which, subject to clause 56.2 below, be kept confidential for the periods specified in that Part.

56.1.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of such Confidential Information.

56.2 Clause 56.1 shall not apply to:

56.2.1 any disclosure of information by either Party that is reasonably required by persons engaged in the exercise of its rights and the performance of its obligations under this Agreement including without limitation for the purposes of:

56.2.1.1 the design, construction, financing and operation of the EfW Facility or obtaining or varying the terms any Necessary Consents in relation to the Authority Sites, the Feathers Wharf Site and the EfW Facility;

56.2.1.2 the operation of the Residual Value Agreement with the EfW Operator;

56.2.1.3 the retendering of this Agreement, the ASS Contract and/or the EfW Contract upon an early termination of any of the foregoing;

56.2.1.4 in circumstances where there is a partial termination of this Agreement, the negotiation and implementation of any New

ASS Contract, New EfW Contract and/or Interface Agreement; or

- 56.2.1.5 as otherwise specifically provided for under the terms of this Agreement;
- 56.2.2 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
- 56.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
- 56.2.4 any disclosure which is required by any law (including any order of a court of competent jurisdiction), any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 56.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 56.2.6 any disclosure of information to any Affiliate of the Contractor or any such Affiliate's professional advisers;
- 56.2.7 any disclosure by the Authority 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 any proposed new contractor, its advisers and lenders, should the Authority decide to retender this Agreement following its termination;
- 56.2.8 any registration or recording of Necessary Consents and property registration required;
- 56.2.9 any disclosure of information by the Authority to any department, office or agency of the Government;
- 56.2.10 any disclosure by the Authority of any document related to this Agreement to which it is a party and which the Contractor (acting reasonably) has agreed with the Authority contains no Commercially Sensitive Information;

56.2.11 any disclosure for the purpose of:

- 56.2.11.1 the examination and certification of the Authority's or the Contractor's accounts;
- 56.2.11.2 any examination pursuant to the Audit Commission Act 1998; or
- 56.2.11.3 any examination in relation to the Authority's Best Value Duty;
- 56.2.11.4 (without prejudice to the generality of clause 56.2.4 and subject to clauses 56.9 to 56.14 inclusive) compliance with the FOIA and/or the Environmental Information Regulations; and

56.2.12 any disclosure to a Relevant Sub-Contractor (and/or their professional advisers) of information arising from or relating to any Dispute the subject matter of which is the same or substantially the same (in whole or in part) as the subject matter of a Sub-Contract Dispute, including all evidence (oral or written), submissions (oral or written, directions, orders and decisions in respect thereof.

56.3 Where the disclosure is permitted under clause 56.2, other than clauses 56.2.4, 56.2.8, 56.2.9, 56.2.10 and 56.2.11, the recipient of the information shall be made subject to the same obligation of confidentiality as that contained in this Agreement.

56.4 For the purposes of the Audit Commission Act 1998, the Audit Commission and/or the auditor it has appointed to the Authority 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 Agreement.

56.5 The Contractor shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement

otherwise than for the purpose of this Agreement, except with the written consent of the Authority such consent not to be unreasonably withheld or delayed.

- 56.6 The Contractor shall note and facilitate the Authority's compliance with the Code of Practice on Access to Government Information (1994). In the event that the Authority is required to provide information to a person as a result of a request made to it under the Code, the Authority shall adhere to the requirements of the Code in disclosing information relating to this Agreement and the Contractor.
- 56.7 The Parties acknowledge that the auditor appointed by the Audit Commission has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports in the public interest.
- 56.8 Nothing in this clause shall prevent either Party from using, in the course of its normal business, any techniques, ideas or know-how gained during the preparation or performance of this Agreement to the extent that this does not result in a disclosure of Commercially Sensitive Information.

56.9 Freedom of Information

The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 56.10 to 56.15 (inclusive) below.

- 56.10 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall transfer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five Working Days of receiving a Request for Information and the Contractor shall:

56.10.1 provide the Authority with a copy of all such Information in the form that the Authority requires within 10 Working Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

56.10.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in

section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

56.11 Following notification under clause 56.10 and up until such time as the Contractor has provided the Authority with all of the Information specified in paragraph 56.10.2 the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

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

56.11.2 whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

56.12 In the event of a request from the Authority pursuant to clause 56.10 above, the Contractor shall as soon as practicable, and in any event within five Working Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in section 3 of the Fees Regulations ("**Appropriate Limit**") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Working Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

56.13 The Contractor acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Public Authorities' Functions under part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:

56.13.1 without consulting with the Contractor; or

56.13.2 following consultation with the Contractor and having taken their views into account,

provided always that where clause 56.13.1 above applies, the Authority shall in accordance with recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

56.14 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least six years from the date it is acquired and shall permit the Authority to inspect such Information as requested from time to time.

57. CONTRACTOR'S RECORDS

57.1 For the purpose of monitoring the performance of the ASS Contract, the Contractor shall maintain and produce a full record of all incidents relating to health, safety and security which occur during the Contract Period and shall have the record available for inspection by the Authority upon reasonable notice, and shall present a report to the Authority as and when requested upon reasonable notice.

57.2 The Contractor shall maintain and keep up to date an asset register in respect of the Authority Assets, and shall keep such other records relating to the provision of the Authority Site Services to the Authority Sites and the Feathers Wharf Site as the Authority may reasonably require having regard to the cost to the Contractor of maintaining and providing such records, and shall make them available to the Authority upon reasonable notice.

57.3 All records referred to in this clause 57 shall be retained for no less than a period of six (6) years after the end of the calendar year to which such records relate.

57.4 The Contractor shall free of charge disclose to the Authority and shall free of charge allow the General Manager or his nominee to inspect and take away copies of all

such information relating to the Authority Site Works and/or the Authority Site Services (including without prejudice to the generality of the foregoing accounts and records) as the Authority shall reasonably require in order to satisfy itself that the provisions of this Agreement are being observed and performed and/or in order to facilitate the operation of the ASS Contract.

57.5 The Contractor shall secure access by the Authority to records held by the EfW Operator and any relevant Landfill Operator in relation to the following:

57.5.1 weighbridge data;

57.5.2 duty of care transfer documentation;

57.5.3 gas emission data; and

57.5.4 recycling and recovery data.

57.6 All information referred to in this clause 57 and disclosed pursuant to this clause is subject to the ongoing obligations set out in clause 56.

58. PUBLICITY

58.1 At all of the Authority Sites and the Feathers Wharf Site the Contractor shall, subject to clause 58.3 and to any Necessary Consents, at its own expense erect a sign the form and content of which shall be approved by the Authority (such approval not to be unreasonably withheld or delayed) advertising that services on behalf of the Authority are being carried out at such Authority Site or the Feathers Wharf Site.

58.2 All containers and vehicles used predominantly or exclusively for carrying Authority Waste or the remnants of Authority Waste on the public highway shall, subject to clause 58.3, bear signwriting displaying the use thereof on behalf of the Authority, such signwriting first to be approved by the Authority, such approval not to be unreasonably withheld or delayed.

58.3 The Authority shall have the right to:

58.3.1 grant dispensation to the requirements of clauses 58.1 and 58.2; and

58.3.2 require the removal of all or any advertising erected or displayed pursuant to clauses 58.1 and 58.2.

- 58.4 The Contractor recognises the need to safeguard the reputation of the Authority and agrees that it shall not, in connection with its formal and informal communications, by its negligent acts or omissions bring the name of the Authority into disrepute **PROVIDED THAT** the Authority may not bring a claim in relation to a breach of this clause 58.4 where it has approved any such communication pursuant to clause 58.5.
- 58.5 Neither Party shall without the prior consent of the other Party (such consent not to be unreasonably withheld or delayed) issue any public statement about matters concerning or arising from this Agreement other than the fact that the Contractor is a party to this Agreement, unless any such statement is required by any Law, any order of a court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of Law. For the avoidance of doubt, the provisions of this clause 58.5 shall not apply to any information relating to this Agreement which is permitted to be disclosed pursuant to clause 56.2.

59. DATA PROTECTION

- 59.1 In relation to all Personal Data, the Contractor shall at all times comply with the Data Protection Act as a data controller if necessary, including maintaining a valid and up to date registration or notification under the Data Protection Act covering the data processing to be performed in connection with the Authority Site Services.
- 59.2 The Contractor and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Authority Site Services, and shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 59.3 The Contractor shall not disclose Personal Data to any third parties other than:
- 59.3.1 to employees, Sub-Contractors and EfW Subcontractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Services; or
- 59.3.2 to the extent required under a court order,

PROVIDED THAT disclosure under clause 59.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this

clause 59 and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data it or a Sub-Contractor or EfW Subcontractor is required to make under clause 59.3.2 as soon as practicable upon becoming aware of such a requirement.

59.4 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 take reasonable steps to ensure the reliability of staff having access to the Personal Data.

59.5 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor, the Sub-Contractors and EfW Subcontractors referred to in clause 59.4. Within twenty (20) Working Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the Data Protection Act.

59.6 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this clause 59 by the Contractor and/or any act or omission of any Sub-Contractor.

60. ENTIRE AGREEMENT

60.1 This Agreement (including, without limitation and for the avoidance of doubt, Variation 8 (for the purposes of clause 5.2.1 of which it is agreed that its term has been extended to 31 December 2012), Variation 9 and Variation 10, all of which it is agreed relate to the ASS Contract only), taken together with :

60.1.1 the Property Agreements;

60.1.2 the Finance Direct Agreement; and

60.1.3 the Residual Value Agreement,

constitutes the entire understanding between the Parties in relation to its subject matter and supersedes all prior representations, communications, negotiations and undertakings concerning the subject matter of this Agreement.

60.2 Each of the Parties acknowledge that:

60.2.1 it did not enter into any of the Agreement, the First Amended Agreement or the Second Amended Agreement, and does not enter into this Third Amended Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether or not a party to any of the Agreement, the First Amended Agreement, the Second Amended Agreement or this Third Amended Agreement) except those expressly repeated or referred to in this Third Amended Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Third Amended Agreement; and

60.2.2 clause 60.2.1 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Third Amended Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Third Amended Agreement.

61. SURVIVORSHIP CLAUSE

61.1 Subject to clause 61.2, and save as otherwise expressly provided in this Agreement, termination of this Agreement shall not affect the continuing rights and obligations of the Authority and the Contractor under any provision of this Agreement as is expressed to survive termination, or which is reasonably necessary to survive termination in order to give effect to the intent of the provisions of this Agreement.

61.2 The rights and obligations of the Authority and the Contractor under clauses 58.4 and 58.5 shall terminate four (4) years after the earlier of the Termination Date and the Expiry Date.

62. INDEPENDENT CONTRACTOR

62.1 The Contractor shall at all times be an independent contractor, and nothing in this Agreement shall be construed (and the Contractor shall not, subject to clauses 58.1 and 58.2, hold out its relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between the Authority and the Contractor or any of the Contractor's or sub-contractors' employees.

62.2 The Contractor has not and shall in no circumstances hold itself out as having the power to make, vary, discharge or waive any regulation of any kind.

63. VARIATIONS OF THIS AGREEMENT

Without prejudice to the rights and powers of the General Manager under this Agreement and except as may be expressly provided no deletion from, addition to or variation of this Agreement shall be valid or of any effect unless agreed in writing and signed by the Parties.

64. SEVERANCE

If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

65. COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses in relation to the preparation, execution and implementation of this Agreement, except where expressly provided to the contrary and except for any award of costs or expenses by a competent court.

66. COMPETITION ACT 1998

66.1 Where any Relevant Authority declares any provision ("**Provision**") of this Agreement to be invalid or otherwise raises any lawful objection to the same, including but not limited to under EC or UK competition rules, the Parties agree to discuss the objections of the Relevant Authority in good faith and with a view to amending or replacing the Provision so as to be acceptable to such Relevant Authority.

66.2 Notwithstanding clause 69, should the Parties fail to agree amendments to or replacements of any Provision within fifteen (15) Working Days after the Party who has the benefit of the Provision ("**Provision Beneficiary**") serves written notice on the other Party requiring amendment or replacement of the Provision, the Provision Beneficiary may serve written notice on the other Party specifying, with immediate effect, amendments to or a replacement of the Provision which would be acceptable to such Relevant Authority, whilst preserving for the Provision Beneficiary as much as possible of the benefit of the provision or provisions concerned, and clause 67 (Further Assurance) shall have effect.

67. FURTHER ASSURANCE

Each Party agrees to do all further acts and things and execute and deliver all instruments as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

68. THIRD PARTY RIGHTS

68.1 Subject to clause 68.2, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.

68.2 Subject to clause 51.4, each of the Constituent Councils shall have the right under the Contracts (Rights of Third Parties) Act 1999 directly to enforce the provisions of clause 51.

69. WAIVER

69.1 The failure of the Authority or the Contractor to insist on strict performance of any provision of this Agreement or the failure of the Authority or the Contractor to exercise any right or remedy to which it is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

69.2 A waiver of any rights of remedy arising from a breach or disagreement shall not constitute a waiver of any right or remedy arising from a subsequent breach.

69.3 No waiver of any of the provisions of this Agreement shall be effected unless it is expressly stated to be a waiver and communicated to the Contractor or the Authority (as the case may be) in writing.

69.4 Notwithstanding any breach of this Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

70. SERVICE OF NOTICES

70.1 Any notice, consent or other communication given under this Agreement shall be in writing in the English language and shall be served by sending the same by pre-paid recorded delivery post or fax or by delivering the same by hand.

70.2 Until notified otherwise all notices, consents or other communications under this Agreement shall be sent to the persons, addresses and/or fax numbers as provided in Schedule 11 (Representatives), and shall be deemed to have been served as set out below, and in proving the service of the same it shall be sufficient to prove, in the case of a letter, that such letter was properly stamped, addressed and placed in the post and, in the case of fax, that such fax was duly dispatched to a fax number notified for such purpose and a valid transmission report confirming good receipt was generated. In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

70.2.1 if delivered personally, when left at the relevant address referred to above;

70.2.2 if sent by recorded delivery post, two days after posting it; and

70.2.3 if sent by fax, at the time of despatch.

70.3 Any notice given under or in connection with this Agreement shall be regarded as properly served when:

70.3.1 in the case of a notice to the Contractor it is delivered by hand or by post to the Contractor at the address set out in Schedule 11 or if it is sent by fax when received at the fax number set out in Schedule 11, in each case marked for the attention of the Contractor's Representative; or

- 70.3.2 in the case of a notice to the Authority, if it is delivered by hand or by post to the Authority at the address set out in Schedule 11 or if it is sent by fax when received at the fax number set out in Schedule 11, in each case marked for the attention of the General Manager.
- 70.4 No Authority Default Termination Notice or Contractor Default Termination Notice may be served by fax.
- 70.5 In the case of any successor in title to the Authority then the reference in clause 70.2 to the address stated in this Agreement shall be a reference to such address as may be set out from time to time by the Authority in a notice in writing given to the Contractor from time to time.
- 70.6 If the day of service of any notice is not a Working Day or service takes place after 5:00 pm on a Working Day then the notice shall be deemed to be served on the following Working Day.

71. HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

The Project applies similar principles to the private finance initiative. This Agreement is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of paragraphs 4 and 6 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Parties acknowledge that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon this Agreement shall not affect the Parties' rights or obligations under this Agreement.

72. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

- 72.1 The Contractor hereby consents to the issue by the Authority of a certificate under section 3 of the Local Government (Contracts) Act 1997 in respect of this Agreement.
- 72.2 The provisions of this clause 72.2 are the "**relevant discharge terms**" in relation to this Agreement for the purposes of the Local Government (Contracts) Act 1997. If, on an application for judicial review or an audit review relating to this Agreement, a determination or order on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997) is made with the result that this Agreement, Schedule 15 or clause 3.5 of this Agreement does not have effect or is otherwise unenforceable then:

72.2.1 the making of the determination or order shall be treated:

72.2.1.1 as if it were an Authority Default in relation to which the Contractor has elected to terminate the Agreement and to which the notice requirements in clauses 45.1 to 45.3 inclusive do not apply; and

72.2.1.2 as if it were an EfW Authority Default in relation to which the Contractor had served an EfW Authority Default Termination Notice and in relation to which the 20 Working Day rectification period had expired;

72.2.2 the Termination Date and EfW Termination Date respectively shall be the date on which the determination or order is made;

72.2.3 clauses 47, 48, 49 and paragraphs 17 and 18 of Schedule 15 shall apply;

72.2.4 Not Used; and

72.2.5 the Contractor shall be paid by the Authority a sum equivalent to the aggregate amounts of compensation payable by the Authority to the Contractor pursuant to :

72.2.5.1 in relation to the ASS Contract, clauses 47.1.2 and 47.2; and

72.2.5.2 in relation to the EfW Contract, paragraph 18 of Schedule 15;

on the date falling twenty (20) Working Days after 1 April in the year following the occurrence of the Termination Date and EfW Termination Date pursuant to clause 72.2.2.

73. LAW AND JURISDICTION

This Agreement shall be governed by, and construed and performed in accordance with, the laws of England, and subject to the exclusive jurisdiction of the courts of England.

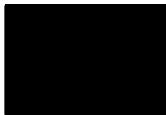
IN WITNESS WHEREOF this Deed has been duly executed and delivered the day and year first above written.

THE COMMON SEAL of WESTERN)
RIVERSIDE WASTE AUTHORITY was)
hereunto affixed in the presence of:)
)
)
)

EXECUTED as a deed by CORY)
ENVIRONMENTAL LIMITED acting by:)
)

Director

Director/Secretary



SCHEDULE 1

DEFINITIONS



11/15/2023 10:00:00 AM

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, including the Recitals, the Schedules, and the Appendices, unless the context shall otherwise require:

"2017 Senior Debt" means the financing provided by the Senior Lenders under the Senior Financing Agreements as at the Second Amended Agreement Date;

"2018 Base Senior Debt Termination Amount" means, subject to paragraph 33.5 of Schedule 15:

- (a) all amounts outstanding at the EfW Termination Date, including interest and Default Interest accrued as at that date, from the EfW Operator to the Senior Lenders and in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and
- (b) all amounts including costs of early termination of inflation, interest rate and/or currency hedging arrangements and other breakage costs, payable by the EfW Operator to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing) or, in the case of early termination of hedging arrangements only, as a result of termination of this EfW Contract, subject to the EfW Operator 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 2018 Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts held by or on behalf of the EfW Operator on the EfW Termination Date;
- (ii) any amounts claimable on or after the EfW Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of inflation, interest rate and/or currency hedging arrangements and other breakage costs, payable by the Senior Lenders to the EfW Operator as a result of prepayment of amounts outstanding in respect of Permitted

Borrowings (other than in respect of Additional Permitted Borrowing) or, in the case of early termination of hedging arrangements only, as a result of termination of this EfW Contract; and

- (iv) all other amounts received by the Senior Lenders on or after the EfW Termination Date and before the date on which any compensation is payable by the Authority to the Contractor in relation to the EfW Contract as a result of enforcing any other rights they may have;

"2018 Financial Model" means the model attached at Appendix U at the Third Amended Agreement Date, relating to the Initial Financing Agreements;

"2018 Revised Senior Debt Termination Amount" means, subject to paragraphs 33.3 to 33.5 (Changes to Financing Agreements) of Schedule 15:

- (a) all amounts outstanding at the EfW Termination Date, including interest and Default Interest accrued as at that date, from the EfW Operator to the Senior Lenders and in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and
- (b) all amounts, including costs of early termination of inflation, interest rate and/or currency hedging arrangements and other breakage costs, payable by the EfW Operator 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 hedging arrangements only, as a result of termination of the EfW Contract, subject to the EfW Operator 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 2018 Revised Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts held by or on behalf of the EfW Operator on the EfW Termination Date;
- (ii) any amounts claimable on or after the EfW Termination Date in respect of Contingent Funding Liabilities;

- (iii) all amounts, including costs of early termination of inflation, interest rate and/or currency hedging arrangements and other breakage costs, payable by the Senior Lenders to the EfW Operator as a result of a 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 hedging arrangements only, as a result of termination of the EfW Contract;
- (iv) all other amounts received by the Senior Lenders on or after the EfW Termination Date and before the date on which any compensation is payable by the Authority to the EfW Operator as a result of enforcing any other rights they may have; and
- (v) all APB Distributions;

"**Abandoned Vehicle**" means any vehicle collected by or on behalf of a Constituent Council under the Refuse Disposal (Amenity) Act 1978 and delivered to the Contractor;

"**Abandoned Vehicle Management Fee**" means the Base Contract Rate for the management fee for processing an Abandoned Vehicle as set out in Appendix 1 of the Payment Mechanism, as adjusted from time to time in accordance with the provisions of this Agreement;

"**Acceptance Tests**" has the meaning set out in clause 6.4.1;

"**Acquired Rights Directive**" means Directive 77/187/EEC;

"**Actual Liability**" has the meaning set out in clause 49.2.3.1;

"**Actual Value**" means in relation to an item of Capital Expenditure:

$$\left(\frac{\text{Capex} * \text{Term}}{\text{Design Life}} \right)$$

where:

Capex means the relevant Capital Expenditure; and

Term means the period (expressed in years to 4 decimal places) from the date upon which the item of Capital Expenditure

becomes operational to (and including) the Expiry Date,

PROVIDED THAT if the Design Life is less than the Term, the Design Life shall be deemed to equal the Term;

"Additional CA Site Works" means:

- (a) drainage replacement works at the entrance to the Smugglers Way Site; and
- (b) the restoration of the Feathers Wharf Site to the standard required by the Feathers Wharf Lease and any applicable planning conditions, to the reasonable satisfaction of the Parties;

"Additional EfW Annual Reserved Capacity" has the meaning given to it in clause 7.1;

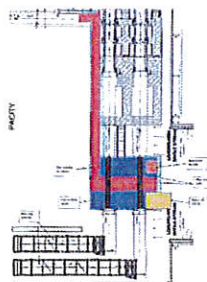
"Additional MRF Contract Price" means the contract price of the Additional MRF Works;

"Additional MRF Works" means a pre-pre-sort system, sampling low level walls, a portacabin in the sampling area, an inspection bay on the CA Site and other ancillary works as outlined below:

- **Pre-Pre sort Design**

The construction of a new pre-pre-sort area to facilitate the removal of contrary items (WEEE, Textiles and Residual Waste) before they enter the main MRF process.

Indicative Design



- **Ancillary Additional MRF Works**

- **Dust Management Programme**

PVC Strip Curtains, Flex Walls and new and improved dust plant filter bags will be installed to aid dust capture in and around the main

dust generators to improve the dust management programme within the facility to reduce the impact of associated dust settlement and risks related to fire safety.

o **Access and Maintenance Platforms**

Permanent access platforms to enable maintenance and inspection will be installed in accordance with health and safety legislation

o **Integrated Control System**

Integration works are required to the PLC (Programmable Logic Controller) system to incorporate the new Pre-pre sort area.

o **Fire System decommission/re-commission**

The Fire system requires decommissioning and then re-commissioning on completion of the pre-pre-sort 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 Authority) in excess of the amount of principal scheduled under the Senior Financing Agreements at the Third Amended Agreement Date to be outstanding at that date (provided that commitments of up to [REDACTED] under Facility C (a revolving facility) may be utilised in full and repaid and redrawn or replaced by a Qualifying Facility C Replacement Facility, in each case at any time and without constituting Additional Permitted Borrowing), 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 neither the Common Security Trustee nor the RRRL Security Trustee is in material breach of its obligations under paragraph 11.4(c) (Miscellaneous) of the Finance 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 EfW Qualifying Variation; or

- (ii) outstanding from time to time as a result of any drawing under the Senior Finance Agreements as entered into at the Third Amended Agreement Date, disregarding any subsequent amendment;
- (iv) used directly or indirectly to repay, refinance or otherwise substitute any or all of the New Subordinated Debt; or
- (iv) outstanding from time to time as a result of any amendment to the Senior Finance Agreements in respect of which the Authority has agreed that its liabilities on termination may be increased pursuant to paragraph 33.5.1 of Schedule 15,

shall not be counted as Additional Permitted Borrowing;

"Additional Permitted Borrowings Limit" means an amount equal to [REDACTED] of the Original Senior Commitment;

"Additional Senior Debt" means any Senior Debt outstanding or projected to be outstanding in excess of the level within the Base Case at the same point in time;

"Affected Party" means a Party unable to comply with its obligations under this Agreement as a result of the occurrence of a Force Majeure Event;

"Affiliate" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and **"holding company"** and **"subsidiary"** shall have the meaning given to them in section 1159 of the Companies Act 2006;

"Agent" means HSBC Bank PLC in its capacity as Senior Facilities Agent for and on behalf of the Senior Finance Parties (as such terms are defined in the Facility Agreement);

"Agreed Design Proposal" means a Design Proposal with which the Contractor is bound to comply pursuant to paragraph 6 of Schedule 4;

"Agreed Form" means in relation to any document, the form of the document agreed between the Parties for the purpose of this Agreement and initialled on their behalf for identification;

"**Agreed Sites**" means the Sites identified as such in Performance Schedule 20 to Part Three of the ASS Method Statement;

"**Agreement Date**" means 30 May 2002;

"**Ancillary Documents**" means each of the EfW Waste Supply Agreement, the EfW Construction Subcontract, the EfW Project Management Subcontract and any agreement between the EfW Operator and any Affiliate of the EfW Operator relating to the operation and/or maintenance of the EfW Facility, as the same may be amended or replaced from time to time;

"**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;

"**Applicable Waste Default Payment**" means the payment calculated in accordance with paragraph 4 of Appendix 8 to Part Six of the ASS Method Statement in respect of the slow turnaround of Constituent Council Party vehicles delivering Applicable Waste Types to the Authority Sites;

"**Applicable Waste Types**" means those types of Authority Waste identified in paragraph 1 of Appendix 8 to Part Six of the ASS Method Statement;

"**Asbestos Waste**" means Authority Waste consisting of white or blue bonded or compressed asbestos;

"**ASS Authority Default Termination Sum**" has the meaning set out in Schedule 2;

"**ASS Authority Waste Compensation Cap**" means, in relation to each tonne of Authority Waste denied to the ASS Contractor at the Authority Sites:

- (a) during the ASS Interim Period, the amount equal to [REDACTED] as defined and calculated in accordance with the paragraph 3.3 of the Payment Mechanism; and,
- (b) during the Final Period, the amount equal to [REDACTED] as defined and calculated in accordance with the paragraph 3.2 of the Payment Mechanism;

"**ASS Co-Mingled Recyclables Compensation Cap**" means, in relation to each tonne of Authority Waste denied to the ASS Contractor at the Authority Sites:

- (a) during the ASS Interim Period, the amount equal to [REDACTED] as defined and calculated in accordance with the paragraph 3.3 of the Payment Mechanism; and
- (b) during the Final Period, the amount equal to [REDACTED] as defined and calculated in accordance with the paragraph 3.2 of the Payment Mechanism;

"**ASS Contract**" means this Agreement to the extent that it relates to the Authority Site Works and/or the Authority Site Services or such replacement contract for the provision of the Authority Site Services as may be entered into by the Authority pursuant to clause 46.5;

"**ASS Contractor**" means the Contractor in its capacity as the Authority's counterparty to the ASS Contract;

"**ASS Default Points**" means default points arising from breaches of the ASS Method Statement;

"**ASS Interim Period**" means the period from the First Amended Agreement Date until 23:59 hours on the date immediately preceding the EfW Commissioning Date;

"**ASS Method Statement**" means the method statement set out in Appendix B(1);

"**ASS Non-Payment Default Sum**" means, in relation to any Contract Year, an amount equal to [REDACTED];

"**ASS Operator**" means any first-tier Sub-Contractor appointed by the Contractor to undertake some or all of the Authority Site Services and/or Authority Site Works from time to time;

"**ASS Primary Sub-Contract**" means the Sub-Contract between the Contractor and any ASS Operator for the provision of part or all of the Authority Site Works and/or Authority Site Services;

"**ASS Replacement Authority Transfer Station Services**" means the services necessary to transfer, transport and dispose of General Waste in the circumstances

where it is not possible to transfer General Waste onto the river through the Authority Transfer Stations and such inability to transfer is not caused by:

- (a) a Force Majeure Event; or
- (b) a breach of the EfW Contract or the Interface Agreement (where applicable) by the EfW Contractor or Replacement EfW Contractor (as appropriate);

"ASS Third Party Waste Compensation Cap" means, in relation to each tonne of Third Party Waste denied to the ASS Contractor at the Authority Sites:

- (a) during the ASS Interim Period, the amount equal to [REDACTED] as defined and calculated in accordance with the paragraph 3.3 of the Payment Mechanism; and
- (b) during the Final Period, the amount equal to [REDACTED] as defined and calculated in accordance with the paragraph 3.2 of the Payment Mechanism;

"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 EfW Operator, shall include Holdco and each of the Shareholders;

"Auditor" means the person appointed by the Audit Commission pursuant to Section 3 of the Audit Commission Act 1998;

"Authority Assets" means the Authority Sites, the Authority Plant and Equipment and the Reverting Assets;

"Authority Buildings" means the single-storey offices of the Authority immediately adjacent to north-west corner of the Smugglers Way Site and the walkway crossing the Smugglers Way Site **PROVIDED THAT** the walkway shall cease to be part of the Authority Buildings upon the earlier to occur of:

- (a) the adoption of the walkway by a highway authority; and
- (b) the opening of the walkway to the public;

"Authority CA Site" means each of the Cringle Dock CA Site and the Smugglers Way CA Site;

"Authority Default" means, in relation to the ASS Contract only, any of the following events:

- (a) a failure by the Authority to make payment of any amount of money exceeding the ASS Non-Payment Default Sum relating to the Authority Site Services that is due and payable by the Authority under this Agreement within twenty (20) Working Days of a formal written demand by the Contractor, where the amount fell due and payable at least one month prior to the date of service of the written demand **PROVIDED THAT** where an amount is the subject of an application under the Dispute Resolution Procedure, for the purposes of this sub-clause (a) such amount shall not be deemed to be due and payable to the Contractor until the date upon which a Final Determination in favour of the Contractor in relation to such amount has been made pursuant to Schedule 13; or
- (b) a breach by the Authority of its obligations under this Agreement, other than a breach by the Authority of any of clauses 13.1.1 and/or 13.1.2, which either alone or when taken together with other breaches substantially frustrates or renders it impossible for the Contractor to perform its obligations under the ASS Contract by preventing the Contractor from effective use of either or both of the Authority Transfer Stations (and, in relation to the Interim Services only, (as a consequence) the River Thames for waste transportation purposes) for a continuous period of two (2) months or for an aggregate period of four (4) months in any rolling twelve (12) month period; or
- (c) an expropriation, sequestration or requisition of a material part of the Contractor Assets and/or the Authority Assets by the Authority or other Relevant Authority which substantially frustrates or renders it impossible for the Contractor to perform its Authority Site Service obligations under this Agreement by preventing the Contractor from effective use of either or both of the Authority Transfer Stations (and, in relation to the Interim Services only (as a consequence) the River Thames for waste transportation purposes) for a continuous period of two (2) months; or
- (d) an expropriation, sequestration or requisition of shares in the Contractor by the Authority or other Relevant Authority; or

- (e) the enactment of Legislation which has the effect of frustrating or rendering it impossible or unlawful for the Authority to perform its obligations under the ASS Contract; or
- (f) any breach(es) by the Authority of clauses 13.1.1 and/or 13.1.2 which either alone or when taken together with other breaches of such clauses:
 - (i) results in [REDACTED] or more in aggregate of the total tonnage of General Waste required to be Directed or made Available to the Contractor in any rolling two (2) year period being Misdirected or Unavailable; or
 - (ii) results in [REDACTED] or more in aggregate of the total tonnage of General Waste required to be Directed or made Available to the Contractor in any rolling three (3) year period being Misdirected or Unavailable;

"Authority Default Termination Notice" has the meaning set out in clause 45.1;

"Authority Default Termination Sum" means the ASS Authority Default Termination Sum plus the EfW Authority Default Termination Sum;

"Authority General Change in Law Risk" means, to the extent only that it affects an Authority Site, a Change in Law which is not an Authority Specific Change in Law Risk, which comes into effect after the Services Commencement Date and involves Capital Expenditure;

"Authority Insurer of Last Resort Period" means any period in relation to which the Authority agrees to act as insurer of last resort pursuant to paragraph 1.8 of Schedule 15;

"Authority Legislative Change Risk" means, in relation to the ASS Contract only, any Authority General Change in Law Risk and any Authority Specific Change in Law Risk **PROVIDED THAT** no Change in Law which alters the tonnage or composition of Authority Waste prior to its collection or delivery shall be capable of constituting an Authority Legislative Change Risk other than to the extent that:

- (a) (in relation to changes in tonnage of Authority Waste only) sub-clause (a)(viii) of the definition of Authority Specific Change in Law Risk applies;
or
- (b) (in relation to changes in tonnage and/or composition of Authority Waste) the Change in Law affects the obligations of the Constituent Councils in their capacity as waste collection authorities under the EPA;

"Authority Losses" means:

- (a) all Direct Losses suffered by the Authority; and
- (b) all Indirect Losses suffered by the Authority (which shall for this purpose include the Authority's loss of revenue) up to a maximum amount in aggregate of [REDACTED] in any rolling twelve (12) month period;

"Authority On-Site Services" has the meaning set out in paragraph (a) of the definition of "Authority Site Services";

"Authority Off-Site Services" has the meaning set out in paragraph (b) of the definition of "Authority Site Services";

"Authority Party" means any of the Authority, its contractors, sub-contractors of any tier or agents, or any director, officer or employee of any of the foregoing, but excluding, without limitation, any Contractor Party and the Constituent Councils in their capacity as waste collection authorities;

"Authority Plant and Equipment" means the Authority Plant and Equipment listed in Appendix E (in relation to the Smugglers Way Site) and Appendix F (in relation to the Cringle Dock Site) and any replacement plant and equipment and any such plant or equipment disposed of in accordance with this Agreement;

"Authority Policy" means a policy of the Authority other than any Best Value Performance Plan which the Authority is not legally obliged to impose on the Contractor, details of which as at the Agreement Date are contained in Appendix J;

"Authority Project Document" means a Project Document to which both the Authority and the Contractor are a party;

"Authority Refinancing Share" means [REDACTED];

"**Authority Representative**" means the General Manager, or such other person that the General Manager appoints from time to time to act generally or for specified purposes or specified periods as notified in advance to the Contractor in writing;

"**Authority's Restructuring Share**" means the Relevant Proportion of the Tax Benefit which is payable to the Authority upon the occurrence of an Equity Restructuring;

"**Authority Share**" means:

- (a) in relation to the operational expenditure and/or Actual Value of Capital Expenditure in relation to any Shared Usage Asset or Shared Usage Cost, and ignoring any usage prior to the Services Commencement Date:
 - (i) the proportion the Historic Utilisation of such Shared Usage Asset or Shared Usage Cost for Authority Waste bears to the total Historic Utilisation of such Shared Usage Asset for the provision of waste management services in general (including to the Authority under the terms of this Agreement) or Shared Usage Cost over the immediately preceding five (5) years; or
 - (ii) in relation to Shared Usage Assets and Shared Usage Costs where the mechanism set out in sub-clause (b)(i) would not reasonably reflect the Authority's future use or cost allocation in relation to such Shared Usage Asset or Shared Usage Cost or is not applicable because the relevant Shared Usage Asset or Shared Usage Cost is new, the Authority's fair and reasonable share having regard to the extent of historic, actual and projected third party use of such Shared Usage Asset and/or the extent of the Authority's historic and projected share of such Shared Usage Cost both prior to and including the Expiry Date,

PROVIDED THAT where the Shared Usage Asset is a landfill site owned or operated by the Contractor or any Affiliate of the Contractor, the Authority Share shall be reflected solely through an adjustment to the applicable Contract Rates pursuant to clause 21.10.1, and if the landfill site is owned or operated by a person other than the Contractor or any Affiliate of

the Contractor, the Contractor shall pass the increased gate fee through to the Authority by an increase in the Contract Rates; and

- (b) in relation to any Sole Usage Asset or Sole Usage Cost, one hundred per cent (100%) of both Capital Expenditure and operational expenditure;

"Authority Site" means each of the Smugglers Way Site, the Smugglers Way CA Site, the Cringle Dock Site and the Cringle Dock CA Site;

"Authority Site Licences" means, in relation to an Authority Site, all Necessary Consents relevant to such Authority Site from time to time;

"Authority Site Services" means:

- (a) the Services undertaken within, at or adjacent to the boundaries of any or all of the Authority Sites, the Feathers Wharf Site and/or the Constituent Council CA Sites, including without limitation the management of traffic entering or exiting an Authority Site or the Feathers Wharf Site and/or the loading and/or unloading of vehicles, containers and/or barges (but for the avoidance of doubt excluding the berthing and unberthing of barges), for which purposes the process of loading or unloading shall commence when the crane spreaders are successfully engaged on a container and end when the crane spreaders are successfully disengaged (the **"Authority On-Site Services"**);
- (b) the Transportation Services and the Off-Site Interim Services (the **"Authority Off-Site Services"**);
- (c) the ASS Replacement Authority Transfer Station Services; and
- (d) the performance and execution of all other work, matters, things and the supply of goods and materials, by or on behalf of the Contractor as are necessary or required in accordance with this Agreement including, without limitation, the service requirements set out in the Output Specification,

in each case in accordance with the ASS Contract (including, without limitation, the ASS Method Statement) but excluding the Authority Site Works, the EfW Works and the EfW Services;

"**Authority Site Services Third Party Claim**" has the meaning set out in clause 33.7;

"**Authority Site Sub-Contract**" means any Sub-Contract entered into for the provision of any Authority Site Service, including without limitation, the ASS Primary Sub-Contract;

"**Authority Site Works**" means the obligations under this Agreement relating to the planning, design and construction of the MRF Works, each of the CA Site Works and the Cranes;

"**Authority Smugglers Way CA Site Works Cost Share**" has the meaning set out in clause 6B.15;

"**Authority Specific Change in Law Risk**" means, in relation to the ASS Contract only, the Authority Share of:

- (a) any Change in Law the terms of which apply expressly to:
 - (i) the Authority Site Services and not to similar waste management services; or
 - (ii) the Contractor and not to other persons; or
 - (iii) waste disposal/management contractors and not to other persons; or
 - (iv) Not used;
 - (v) Not used;
 - (vi) Not used;
 - (vii) the holding of shares in companies whose main business is providing a service the same as or similar to the Authority Site Services ; or
 - (viii) alter the boundaries of any Constituent Council or reduce or increase the number of Constituent Councils resulting both in:
 - (A) a net variation of more than forty-six thousand two hundred (46,200) tonnes per annum in the aggregate amount of Authority Waste Directed or made Available to the

Contractor (such variation to be deemed conclusively to be calculated in relation to Change in Law which alters the boundaries of any Constituent Council by pro rating the total number of households within the relevant Catchment Area before and after the boundary change(s) to the aggregate historic tonnage of Authority Waste Directed or made Available to the Contractor over the twelve (12) months immediately preceding such Change in Law **PROVIDED THAT** the movement of households between Constituent Councils shall be ignored); and

(B) a reduction in the annual aggregate tonnage of Authority Waste Directed or made Available to the Contractor to below four hundred and fifteen thousand eight hundred (415,800) tonnes or an increase in the annual aggregate tonnage of Authority Waste Directed or made Available to the Contractor to above five hundred and eight thousand two hundred (508,200) tonnes; or

(ix) (during the ASS Interim Period only) effect a change to the cost of transporting Authority Waste by river except where caused directly by the act or default of any Contractor Party;

(b) (during the ASS Interim Period only) any change to a Necessary Consent becoming operative after the Agreement Date which effects a change to the cost of transporting Authority Waste by river except where caused directly by the act or default of any Contractor Party;

"Authority Termination Liability" means the Authority's liability to pay compensation to the Contractor in accordance with paragraphs 18, 19, 20, 21 or 22 of Schedule 15, including without limitation pursuant to a rescheduling of the Senior Debt repayments;

"Authority Transfer Station" means each of the transfer stations at Smugglers Way and Cringle Dock (but, for the avoidance of doubt, excluding the Smugglers Way CA Site and the Cringle Dock CA Site), and **"Authority Transfer Stations"** means both such transfer stations;

"Authority Transferring Employees" means any of the staff employed by the Authority details of which are set out in Appendix G who transfer to the Contractor or any of its Sub-Contractors as a result of the implementation of this Agreement at any time pursuant to the TUPE Regulations or the Acquired Rights Directive. For the avoidance of doubt, Authority Transferring Employees do not include any staff employed by a third party and who briefly become employees of the Authority solely by virtue of the operation of the TUPE Regulations or the Acquired Rights Directive pursuant to the implementation of this Agreement but includes Replacement Employees pursuant to clause 25.4;

"Authority Waste" means:

- (a) save to the extent excluded by virtue of the application of clause 13.2, all Waste collected by or on behalf of the Constituent Councils in their capacities as waste collection authorities under the EPA;
- (b) all Waste delivered by or on behalf of registered charities to the Contractor as sanctioned by the Authority from time to time;
- (c) all Waste delivered by the public to any CA Site; and
- (d) (where the context allows) Abandoned Vehicles;

"Availability Period" has the meaning set out in the Senior Financing Agreements;

"Available" means, in relation to CA Site Waste only, made available by the Authority to the Contractor pursuant to clause 13.1.2;

"Base Case" means the Financial Model (as updated from time to time in accordance with the terms of Schedule 15) for the purpose, inter alia, of calculating the EfW General Waste Rate;

"Base Case Senior Debt Margin" means the margin payable on the outstanding 2017 Senior Debt under the Senior Financing Agreements as at the Second Amended Agreement Date;

"Base Contract Rates" means each of the rates for disposal of types of Authority Waste set out in Appendix 1 to the Payment Mechanism and expressed as 1 April 2007 prices;

"Base Data" has the meaning set out in clause 30.1;

"Base Senior Debt Termination Amount" means the lower of the 2018 Base Senior Debt Termination Amount and, subject to paragraph 33.5 of Schedule 15, the following:

- (a) all amounts outstanding at the EfW Termination Date comprising principal, interest and Default Interest accrued as at that date, from the EfW Operator to the Senior Lenders and in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), **PROVIDED THAT** such amounts are no greater than that set out in row 140 of the sheet "FinStatementQ" of the Base Case at the EfW Termination Date; and
- (b) the estimated costs of early termination of interest rate hedging arrangements calculated at the EfW Termination Date based upon the notional amount outstanding at the EfW Termination Date using the scheduled amortisation profile from the EfW Termination Date, and fixed coupon rate, as set out in rows 4 to 17 of the Model Summary Sheet included in Appendix X as a result of termination of this EfW Contract (for the avoidance of doubt excluding any interest rate hedging arrangements relating to Additional Permitted Borrowing), subject to the EfW Operator and the Senior Lenders mitigating all such costs to the extent reasonably possible; and
- (c) amounts calculated as the make whole costs for Facility B1 (Floating) and B2 (Fixed) in cells D44 and D45 respectively of the Model Summary Sheet in Appendix X by entering the EfW Termination Date in cell D37 of the Model Summary Sheet within Appendix X,

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 held by or on behalf of the EfW Operator on the EfW Termination Date;
- (ii) any amounts claimable on or after the EfW Termination Date in respect of Contingent Funding Liabilities;

- (iii) gains accruing from the early termination of interest rate hedging arrangements based upon the national amount and scheduled amortisation profile and fixed coupon rate as set out in rows 4 to 17 of the Model Summary Sheet included in Appendix X as a result of termination of this EfW Contract (for the avoidance of doubt excluding any interest rate hedging arrangements relating to Additional Permitted Borrowing), subject to the EfW Operator and the Senior Lenders maximising all such gains to the extent reasonably possible; and
- (iv) all other amounts received by the Senior Lenders on or after the EfW Termination Date and before the date on which any compensation is payable by the Authority to the Contractor in relation to the EfW Contract as a result of enforcing any other rights they may have;

"Battery Waste" means Authority Waste consisting of lead acid batteries from motor vehicles, accepted at CA Sites, in accordance with the ASS Method Statement;

"Beddington Lane Landfill Site" means the landfill site located at Beddington Lane, west of Croydon (Ordnance Survey map reference: TQ 290 660);

"Bellhouse Landfill Site" means the landfill located at Colchester, Essex (Ordnance Survey map reference TL94802240);

"Belvedere Agreement for Lease" means the agreement between the Authority and the EfW Operator to enter into the Belvedere Lease and Belvedere Sub-Lease dated the First Amended Agreement Date;

"Belvedere Lease" means the lease granted to the Authority by Riverside Resource Recovery Limited on the First Amended Agreement Date over the land buildings plant machinery apparatus and equipment at Norman Road Belvedere in the London Borough of Bexley;

"Belvedere Site" means the land demised to the Authority under the Belvedere Lease;

"Belvedere Sub-Lease" means the sub-lease over the Belvedere Site granted to the EfW Operator by the Authority on the First Amended Agreement Date;

"**Belvedere Surplus Land**" means the land edged blue on Drawing No.127A dated 5 June 2008 attached as Appendix K;

"**Beneficiary**" has the meaning set out in clause 36.1;

"**Best Value Duty**" means the duty imposed on the Authority by Part 1 of the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time pursuant to, or in connection with, Part 1 of the Local Government Act 1999;

"**Best Value Performance Plans**" means the best value performance plans (as defined in the Local Government Act 1999) which are required to be provided by the Authority for each financial year in accordance with section 6 of the Local Government Act 1999;

"**Best Value Review**" means the review of services which is required to be conducted by the Authority in accordance with section 5 of the Local Government Act 1999;

"**Bi-Annual Conditions Survey**" has the meaning set out in clause 16.7;

"**Building Contract**" means a building contract or building contracts (including any installation contract) between the Contractor or ASS Operator and any Building Contractor for the carrying out of the Authority Site Works, including without limitation the Civils Works Contract and the Plant Supply and Installation Contract;

"**Building Contractor**" means the Contractor's or ASS Operator's counterparty under a relevant Building Contract, including without limitation the Civils Works Contractor and the Plant Supply Contractor;

"**Bulk Bays**" means the bays in which bulk deliveries of source segregated green waste, inert waste, scrap metal, clean timber and WEEE items are stored;

"**Bulk Bay Costs**" means (without double counting) all reasonable costs and expenses incurred by the Contractor in carrying out and completing the Bulk Bay Works which shall include, without limitation:

- (a) all costs associated with the demolition and removal of all existing facilities at the Cringle Dock Site which will not be required following the exercise of the Bulk Bay Option; and

- (b) the cost of production of all necessary design documents for the Bulk Bay Works;
- (c) all amounts properly payable to any third party in relation to the Bulk Bay Works, to include the cost of dealing with any Historic Pollution within and in the immediate vicinity of the footprint of the Cringle Dock Site;
- (d) the cost of utility connection necessary for construction or operation of the Bulk Bays and the costs arising as a result of any delay to the construction timetable caused by late utility connection, save to the extent that costs arising as a direct result of any such delay are due to a delay caused by the act or omission of any Contractor Party (which for these purposes shall exclude the utility company undertaking the connection works);
- (e) the cost associated with obtaining, and subsequently meeting any requirements of, any Necessary Consents;
- (f) the cost of additional site investigation works, to the extent not otherwise contained within this definition;
- (g) legal fees incurred by the Contractor in connection with the development of the Bulk Bays including in particular, fees incurred in connection with the drafting and negotiation of any agreements for the Bulk Bay Works, any required collateral warranties and associated documentation;
- (h) other ancillary or related costs incurred directly in relation to the Bulk Bay Works, subject to the Contractor obtaining the Authority's prior written approval to such costs (not to be unreasonably withheld or delayed);
- (i) any other claims made pursuant to any contract in respect of the Bulk Bay Works, save to the extent such claims are due to the breach by the Contractor of the terms of this Agreement or any such contract in respect of the Bulk Bay Works or due to the breach by the Authority of the terms of the Agreement or any Property Agreement (which claims shall be borne by the Party in breach);
- (j) all costs incurred in effecting and maintaining all insurances taken out in connection with the Bulk Bay Works;

- (k) (in relation to the period commencing on 29 September 2012) rental payments under the Feathers Wharf Lease; and
- (l) (in relation to the period commencing on 29 September 2012) business rates payable in relation to the Feathers Wharf Lease,

provided that in relation to any variations under the contracts for the Bulk Bay Works, any increases to the contract price referred to in paragraph (c) and any related additional costs or expenses incurred or claims referred to in paragraph (i) above shall not be taken into account in calculating the Bulk Bay Costs unless either:

- (i) the Authority has given its prior written approval to such variation or claim settlement (not to be unreasonably withheld or delayed, provided that it shall be deemed to be unreasonably for the Authority to withhold or delay its approval to any claim settlement where such amounts are agreed or determined under the relevant contract to be properly due); or
- (ii) the value of any individual variation or claim settlement does not exceed [REDACTED] and, in aggregate with other previous variations and claim settlements, the cumulative value of all variations and claim settlements does not exceed [REDACTED].

"Bulk Bay Excess Costs" means all Bulk Bay Costs incurred by the Contractor to the extent that such costs exceed a sum equal to [REDACTED];

"Bulk Bay Option" means the Authority option referred to in clause 6C.2 to require the Contractor to develop the Bulk Bays at the Cringle Dock Site;

"Bulk Bay Services" means the ASS Services relating to the provision and operation of Bulk Bays;

"Bulk Bay Works" means works at the Cringle Dock Site necessary to give effect to the Bulk Bay Option and develop the Bulk Bays;

"Bulk Recyclables" means Authority Waste consisting of source segregated recyclable materials of one commodity type delivered in bulk either loose or bagged being Mixed Paper, Mixed Cans, Mixed Glass, Colour Separated Glass, Textiles, Clean Timber, Scrap Metal, Green Waste and Inert Waste;

"**By-Product**" means any by-product derived from Authority Waste (including, without limitation, recyclable materials);

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

"**CA Site**" means each Authority CA Site and Constituent Council CA Site;

"**CA Site Outline Design**" means the outline design specification for the CA Site Works as set out in the planning application number 2009/1239, permitted by Wandsworth Council on 9 July 2009;

"**CA Site Planning Condition Budget**" means [REDACTED];

"**CA Site Waste**" has the meaning set out in sub-clause (c) of the definition of Authority Waste;

"**CA Site Works**" means:

- (a) in relation to the Smugglers Way CA Site, the Works to be undertaken or procured by the Contractor in accordance with Appendices 2 and 6 of Part Six of the ASS Method Statement;
- (b) in relation to the Cringle Dock CA Site, the Works to be undertaken or procured by the Contractor in accordance with Appendices 1 and 6 of Part Six of the ASS Method Statement; and
- (c) in relation to the Vale Street CA Site, the Works to be undertaken or procured by the Contractor in accordance with Appendices 5 and 6 of Part Six of the ASS Method Statement;

"**Catchment Area**" means the geographical borough boundaries of the Constituent Councils as at the Agreement Date as identified in the plans at Appendix L;

"**CDM Regulations**" means (as applicable) the CDM Regulations 1994, the CDM Regulations 2007, the CDM Regulations 2015 or any replacement for the CDM Regulations 2015 from time to time;

"**CDM Regulations 1994**" means the Construction (Design and Management) Regulations 1994;

"**CDM Regulations 2007**" means the Construction (Design and Management) Regulations 2007;

"**CDM Regulations 2015**" means the Construction (Design and Management) Regulations 2015;

"**CEL Ongoing Business**" means (subject to compliance with the Ringfencing Terms) all of the business of the Contractor and its Subsidiaries from time to time, other than the issued share capital of the Contractor;

"**CEL Site**" means a site owned and/or operated by the Contractor or any Affiliate of the Contractor;

"**CEL Shares**" means (subject to compliance with the Ringfencing Terms) the entire issued share capital of the Contractor and its Subsidiaries;

"**Change in Costs**" means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the EfW Operator and/or any EfW Operator Subcontractor to the extent passed through to the EfW Operator (without double counting) in relation to the EfW Works and/or the EfW Services, including, as relevant, the following:

- (a) the costs of continued employment of, or making redundant, staff who are no longer required;
- (b) the costs of employing additional staff;
- (c) reasonable professional fees;
- (d) the costs to the EfW Operator 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 EfW Operator's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the EfW General Waste Rate;

- (e) the effects of costs on implementation of any insurance reinstatement, including any adverse effect on the insurance proceeds payable to the EfW Operator (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (f) operating costs, or life cycle, maintenance or replacement costs;
- (g) Capital Expenditure (or, in the case of a Relevant Event which is an EfW Qualifying Change in Law, Capital Expenditure for which the Authority is responsible);
- (h) the costs required to ensure continued compliance with the Financing Agreements;
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (j) EfW Direct Losses and EfW Indirect Losses, including reasonable legal expenses on an indemnity basis,

but excluding any EfW Contractor Losses;

"Change in Law" means the coming into effect after the First Amended Agreement Date of:

- (a) Legislation, other than any draft Legislation which at EfW Financial Close has been published:
 - (i) as a Government white paper or green paper, but excluding those papers listed in Schedule 6;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument;

and which, when it becomes Legislation, is in substantially the same form or has substantially the same effect as the draft Legislation published as at EfW Financial Close; or

- (b) any Guidance; or
- (c) any applicable judgement of a relevant court of law which:
 - (i) changes a binding precedent; or
 - (ii) sets a binding precedent which changes the generally accepted market practice in relation to the interpretation of Legislation (except to the extent excluded under sub-clause (a) above);

"**Change in Revenue**" means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the EfW Operator and/or any EfW Operator Subcontractor to the extent passed through to the EfW Operator in relation to the EfW Works and/or EfW Services, including third party income (without double counting);

"**Civils Works Contract**" means the contract to be entered into between the Contractor and the Civils Works Contractor for the carrying out of various civil works in relation to the development of the MRF;

"**Civils Works Contractor**" such party appointed by the Contractor under the terms of the Civils Works Contract with the consent of the Authority pursuant to clause 6.3;

"**Class A Vehicles**" has the meaning given in paragraph 8.1.1.1 of the Output Specification;

"**Class B Vehicles**" has the meaning given in paragraph 8.1.1.2 of the Output Specification;

"**Cleanaway**" means Cleanaway Limited (registered number 806128) whose registered office at the Agreement Date was The Drive, Warley, Brentwood, Essex, CM13 3BE;

"**Clean Timber**" means wood which meets the requirements of Quality Specification 7 in Part Five of the ASS Method Statement;

"**Clean-up Works**" means works, measures or operations (including investigation, remediation, monitoring or otherwise) on any of the Authority Sites or on any

adjacent site affected by any Authority Site which are necessary as a consequence of Historic Pollution including, without limitation, any works, measures or operations that the Contractor (by virtue of being the tenant or occupier of the site concerned or the holder of any Necessary Consents) is required by a Relevant Authority or any third party to undertake or the cost of which the Contractor and/or ASS Operator is required by a Relevant Authority or any third party to pay;

"**Client**" has the meaning set out in the applicable CDM Regulations;

"**Clinical Waste**" means Authority Waste consisting of Waste as defined in the Joint Health and Safety Advisory Committee Guidance, "Safe Disposal of Clinical Waste", dated October 1999;

"**CoL Agreement**" has the meaning set out in the Facility Agreement;

"**Collateral Warranty**" means each of the warranties of even date herewith entered into by the Authority, the Contractor and each Constituent Council, in the form set out in Schedule 5;

"**Colour Separated Glass**" means glass which meets the requirements of Quality Specification 1 in Part Five of the ASS Method Statement;

"**Co-mingled Recyclables**" means Authority Waste, delivered loose or in plastic bags, consisting of a mix of one or more of the following dry recyclables: paper, cardboard, glass bottles and jars, clear and coloured PET plastic, clear and coloured HDPE plastic, steel and aluminium cans and polycoat material;

"**Commercially Sensitive Information**" means the sub-set of Confidential Information listed in column 1 of Schedule 21, in each case for the period specified in column 2 of Schedule 21;

"**Commissioning Certificate**" means:

- (a) in relation to the MRF Works, the certificate to be issued by or on behalf of the Contractor or the ASS Operator upon the successful completion of the Acceptance Tests for the MRF Works; and
- (b) in relation to the CA Site Works, the certificate of practical completion issued by the Contractor's technical adviser appointed in relation to the CA Site Works;

"**Common Security Trustee**" means the security trustee for the External Creditors (as defined in the Intercreditor Agreement) from time to time, in relation to the Common Security Documents (as defined in the Finance Direct Agreement), which position as at the Third Amended Agreement is held by HSBC Corporate Trustee Company (UK) Limited;

"**Compensation Event**" means, in relation to the ASS Contract only:

- (a) any breach of the ASS Contract and/or any Property Agreement by the Authority or the execution of works on any Authority Site not forming part of this Agreement by any Authority Party **PROVIDED THAT** non-payment by the Authority shall not be capable of constituting a Compensation Event; and
- (b) the discovery of any Defect (ignoring for these purposes the costs of remediation of the relevant Defect to the extent that the Contractor has accepted responsibility for such costs pursuant to clause 16.13);

"**Compensation Payment**" has the meaning set out in clause 49.1;

"**Completion**" means:

- (a) in relation to an item of Authority Site Works, the issue of a Commissioning Certificate in relation to such Authority Site Works; and
- (b) in relation to the EfW Facility, 11 October 2011,

and "**Complete**" shall be construed accordingly;

"**Compliant Tender**" means any tender submitted by a Compliant Tenderer that meets the Qualification Criteria notified under paragraph 19.3.3 of Schedule 15;

"**Compliant Tenderer**" means a Suitable Substitute EfW Contractor who submits a Compliant Tender;

"**Confidential Information**" means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial

interests of any person, trade secrets, intellectual property rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and

(b) Commercially Sensitive Information;

"Constituent Council CA Site" means the Cremorne Wharf CA Site and the Vale Street CA Site;

"Constituent Council Co-Mingled Recycling Scheme" means any proposed arrangement for recycling Co-Mingled Recyclables which is the subject to a Constituent Co-Mingled Recycling Scheme Notice;

"Constituent Co-Mingled Recycling Scheme Notice" means any notice in writing served by a Constituent Council on the Authority pursuant to s48(3) of the EPA to the extent it relates to the Co-Mingled Recyclables;

"Constituent Council General Waste" means General Waste which is Delivered for disposal by the relevant Constituent Council;

"Constituent Council Officer's Certificate" means a certificate in the form set out in Schedule 3;

"Constituent Council Party" means any Constituent Council, its contractors, any sub-contractors of any tier or agents, or any director, officer or employee of any of the foregoing;

"Constituent Councils" means each of the London Borough of Wandsworth, the Royal Borough of Kensington and Chelsea, the London Borough of Hammersmith and Fulham and the London Borough of Lambeth, together with any successor or replacement body;

"Construction Contractor Collateral Warranty" means the form of collateral warranty attached as Schedule 20;

"Contingent Funding Liabilities" means the contingent or future liabilities to subscribe for equity or subordinated debt (if any) at the relevant time of:

(a) any person from time to time holding share capital in the EfW Operator or Holdco; and/or

- (b) any other parties providing equity or subordinated debt,

owed under any of the Financing Agreements to the EfW Operator, 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;

"Contracted Delivery Distance" means:

- (a) in the case of the London Borough of Hammersmith and Fulham, a weighted average distance of 4.34km, calculated on the assumption that eight per cent (8%) of that Constituent Council General Waste will be delivered to the Cringle Dock Site which is located 5.9 km (on a straight-line basis) from Hammersmith Tube Station (Ordnance Survey map reference TQ 233786) and ninety-two per cent (92%) of that Constituent Council General Waste will be delivered to the Smugglers Way Site which is located 4.2 km (on a straight-line basis) from Hammersmith Tube Station;
- (b) in the case of the Royal Borough of Kensington and Chelsea:
- (i) prior to the EfW Commissioning Date, a weighted average distance of 4.88km, calculated on the assumption that twenty-three per cent (23%) of that Constituent Council General Waste will be delivered to the Cringle Dock Site which is located 4.0 km (on a straight-line basis) from High Street Kensington Tube Station (Ordnance Survey map reference TQ 255794), fifty-seven per cent (57%) of that Constituent Council General Waste will be delivered to the Smugglers Way Site which is located 4.1 km (on a straight-line basis) from High Street Kensington Tube Station and twenty per cent (20%) of that Constituent Council General Waste will be delivered to the McGovern Transfer Station, which is located 8.1 km (on a straight-line basis) from High Street Kensington Tube Station; or
- (ii) following the EfW Commissioning Date, a weighted average distance of 4.08km, calculated on the assumption that twenty-three per cent (23%) of that Constituent Council General Waste will be delivered to the Cringle Dock Site which is located 4.0 km (on a straight-line basis) from High Street Kensington Tube Station (Ordnance Survey map reference TQ 255794) and seventy-seven per

cent (77%) of that Constituent Council General Waste will be delivered to the Smugglers Way Site which is located 4.1 km (on a straight-line basis) from High Street Kensington Tube Station;

(c) in the case of the London Borough of Lambeth:

(i) prior to the EfW Commissioning Date, a weighted average distance of 4.68km, calculated on the assumption that fifty-five per cent (55%) of that Constituent Council General Waste will be delivered to the Cringle Dock Site which is located 2.9 km (on a straight-line basis) from Brixton Tube Station (Ordnance Survey map reference TQ 312755), twenty-nine per cent (29%) of that Constituent Council General Waste will be delivered to the Smugglers Way Site which is located 5.4 km (on a straight-line basis) from Brixton Tube Station and sixteen per cent (16%) of that Constituent Council General Waste will be delivered to the Beddington Lane Landfill Site which is located 9.5 km (on a straight-line basis) from Brixton Tube Station; or

(ii) following the EfW Commissioning Date, a weighted average distance of 3,63km, calculated on the assumption that seventy-one per cent (71%) of that Constituent Council General Waste will be delivered to the Cringle Dock Site which is located 2.9 km (on a straight-line basis) from Brixton Tube Station (Ordnance Survey map reference TQ 312755) and twenty-nine (29%) of that Constituent Council General Waste will be delivered to the Smugglers Way Site which is located 5.4 km (on a straight-line basis) from Brixton Tube Station; and

(d) in the case of the London Borough of Wandsworth:

(i) prior to the EfW Commissioning Date, a weighted average distance of 3.30 km calculated on the assumption that fifteen per cent (15%) of that Constituent Council General Waste will be delivered to the Cringle Dock Site which is located 4.6 km (on a straight-line basis) from Wandsworth Prison (Ordnance Survey map reference TQ 268738), seventy per cent (70%) of that Constituent Council General Waste will be delivered to the Smugglers Way Site which is located

1.8 km (on a straight-line basis) from Wandsworth Prison and fifteen per cent (15%) of that Constituent Council General Waste will be delivered to the Beddington Lane Landfill Site which is located 9.0 km (on a straight-line basis) from Wandsworth Prison; or

- (ii) following the EfW Commissioning Date, a weighted average distance of 2.22km, calculated on the assumption that fifteen per cent (15%) of that Constituent Council General Waste will be delivered to the Cringle Dock Site which is located 4.6 km (on a straight-line basis) from Wandsworth Prison (Ordnance Survey map reference TQ 268738) and eighty-five per cent (85%) of that Constituent Council General Waste will be delivered to the Smugglers Way Site which is located 1.8 km (on a straight-line basis) from Wandsworth Prison;

"Contract Month" means each calendar month in a Contract Year **PROVIDED THAT:**

- (a) the first Contract Month shall comprise the period from (and including) the Services Commencement Date to (and including) 31 October 2002; and
- (b) the final Contract Month shall comprise the period from (and including) the first day of the relevant calendar month in which the Termination Date and/or the Expiry Date occurs to the earlier of the Termination Date and the Expiry Date;

"Contractor Asset" means any asset or right of which the Contractor or the ASS Operator is full legal and beneficial owner and which is necessary or expedient to enable the Authority, the Contractor or a successor contractor to carry out the Authority Site Works and/or provide the Authority Site Services in accordance with this Agreement, including without limitation:

- (a) any land or buildings;
- (b) any equipment (including, during the ASS Interim Period only, the tugs and barges);
- (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 Authority is full legal and beneficial owner;

"Contractor Default" means, in relation to the ASS Contract only, any of the defaults listed in clause 41.1;

"Contractor Default Termination Notice" has the meaning set out in clause 41.2;

"Contractor Default Termination Sum" has the meaning set out in Schedule 2;

"Contractor Employee" means any person employed by the ASS Contractor or by any Sub-Contractor and (whether directly or indirectly) involved with the provision of the Authority Site Services;

"Contractor Group" means the Contractor and its Affiliates taken together;

"Contractor Health and Safety Policies" means the health and safety policies set out in Appendix I, as amended from time to time in accordance with clause 24.2.1;

"Contractor Party" means, to the extent involved in the provision of the Authority Site Works and/or Authority Site Services, the Contractor in its capacity as the ASS Contractor, or any of its Sub-Contractors, or any director or employee of any of the foregoing;

"Contractor Plant and Equipment" means the plant, equipment, tools and other things used for the performance of the Authority Site Services (including for these purposes and for the duration of the Interim Period only, the tugs and river barges), but excluding the Authority Plant and Equipment and the ISO Containers; **"Contractor's Quotation"** has the meaning set out in clause 21.5;

"Contractor's Representative" means the representative from time to time of the Contractor for the purposes of this Agreement, initial details of whom are set out in Schedule 11;

"**Contractor's Share**" means the percentage figure corresponding to the amount of EfW Cumulative Capital Expenditure at the relevant time, as shown in the first column of the table set out below:

EfW Cumulative Capital Expenditure	Contractor's Share
██████████	100%
██████████	100% less the relevant EfW Authority Share

"**Contractor's Site Manager**" means the Contractor's Representative, or such other person that the Contractor's Representative appoints from time to time to act generally or for specified purposes or specified periods in relation to this Agreement as notified to the Authority in writing;

"**Contractor's Site Manager's Office**" means the office used by both the Contractor's Representative and the Contractor's Site Manager at the Smugglers Way Site;

"**Contract Period**" means the period from the Services Commencement Date until the earlier of:

- (a) in relation to the Authority Site Services, the Termination Date;
- (b) in relation to the EfW Services, the EfW Termination Date,

and (in relation to both the Authority Site Services and the EfW Services) the Expiry Date, unless extended by mutual agreement between the Parties;

"**Contract Rates**" means the Base Contract Rates, as adjusted from time to time in accordance with the provisions of this Agreement and, in particular, the Payment Mechanism;

"**Contract Year**" means each successive twelve (12) month period from 1 April to the following 31 March (inclusive) during the Contract Period **PROVIDED THAT:**

- (a) the first Contract Year shall comprise the period from (and including) the Services Commencement Date to (and including) 31 March 2003; and
- (b) the final Contract Year shall comprise the period from (and including) 1 April in that year to the earlier of the Termination Date and the Expiry Date;

"Cost" means any immediate and/or long term increase in the cost to the Contractor Group of carrying out the Works and/or providing the Services that would be consequent upon the implementation of a Variation;

"Crane" means each of the cranes required to be installed pursuant to Construction Schedule 4 of Part Four of the ASS Method Statement;

"Cremorne Wharf CA Site" means the Royal Borough of Kensington and Chelsea recycling/civic amenity site at Cremorne Wharf, Lots Road, Chelsea, London SW10 0QH;

"Cringle Dock CA Site" means the civic amenity site within the Cringle Dock Site;

"Cringle Dock Lease" means the lease of the Cringle Dock Solid Waste Transfer Station, Cringle Dock, Cringle Street, Battersea SW8 5BX entered into by the Parties on 12 July 2002 and as amended on the First Amended Agreement Date;

"Cringle Dock Site" means such real property in the ownership of the Authority as is demised to the Contractor under the Cringle Dock Lease;

"Critical Default" has the meaning given in clause 38.30;

"Critical Default Notice" means a Default Notice issued in respect of a Critical Default;

"Critical Repeat Default" has the meaning given in clause 38.32;

"Critical Repeat Default Notice" means a notice issued pursuant to clause 38.32 in the form set out in Part 2 of Schedule 9;

"CSRS" means Cory Ship Repair Services Limited (company number 04087659) whose registered office is at 2 Coldbath Square, London EC1R 5HL;

"CSRS Ongoing Business" means (subject to compliance with the Ringfencing Terms) all of the business of CSRS and its Subsidiaries from time to time, other than the issued share capital of CSRS;

"CSRS Shares" means (subject to compliance with the Ringfencing Terms) the entire issued share capital of CSRS and its Subsidiaries;

"Data Protection Act" means the Data Protection Act 1998;

"**Decision**" has the meaning set out in paragraph 1 of the Dispute Resolution Procedure;

"**Deductions**" means, subject to clause 29.6, undisputed Default Deductions, Slow Tonnage Payments, Diverted Tonnage Payments and/or Applicable Waste Default Payments incurred pursuant to the operation of clause 38, Parts Three and Four of the ASS Method Statement, the Payment Mechanism and/or the Collateral Warranties;

"**Deemed Liability**" has the meaning set out in clause 49.2.3.2;

"**Deemed New EfW Contract**" means an agreement on the same terms and conditions as the EfW Contract as at the EfW Termination Date, but with the following amendments:

- (a) if the EfW Contract is terminated prior to EfW Completion, then the EfW Target Completion Date shall be extended by a period to allow a New EfW Operator to achieve EfW Completion;
- (b) any accrued EfW Default Points shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled; and
- (c) the term of such agreement shall be for a period equal to the term from the EfW Termination Date to the Expiry Date;

"**Default**" means an unrectified Rectifiable Provisional Default or a Non-Rectifiable Provisional Default in respect of which a Default Notice is issued pursuant to clause 38.10;

"**Default Contract Rate Compensation Cap**" means:

- (a) in relation to the ASS Contract, the lesser of the Direct Losses suffered by the ASS Contractor and (as appropriate):
 - (i) the ASS Authority Waste Compensation Cap;
 - (ii) the ASS Third Party Waste Compensation Cap; and/or
 - (iii) the ASS Co-Mingled Recyclables Compensation Cap; and

- (b) in relation to the EfW Contract, the lesser of the Direct Losses suffered by the EfW Operator and (as appropriate):
 - (i) the EfW Authority Waste Compensation Cap; and/or
 - (ii) the EfW Third Party Waste Compensation Cap;

For which purposes:

- (A) in any EfW Contract Month, the destination of waste types to disposal points shall, prima facie, be deemed to be in accordance with the average pattern over the previous three (3) months in which there was no Misdirected, Misdelayed or Unavailable Authority Waste;
- (B) where there is Misdelayed Authority Waste in addition to Misdirected or Unavailable Authority Waste in any EfW Contract Month, the Misdirected and Unavailable Authority Waste shall be deemed to have been destined for the EfW Facility and the MRF in priority to the Misdelayed Authority Waste;
- (C) where more than one Constituent Council has Misdelayed Authority Waste in any EfW Contract Month, the Misdelayed Authority Waste shall be deemed to have been destined for the EfW Facility and the MRF pro rata to the quantities of Misdelayed Authority Waste Misdelayed by each relevant Constituent Council;
- (D) at the end of each EfW Contract Year, the Parties shall reconcile the tonnages of Misdirected, Misdelayed and Unavailable Authority Waste against the tonnages of Authority Waste actually processed at the EfW Facility and the MRF in that EfW Contract Year in accordance with paragraph 5.8 of the Payment Mechanism. The compensation paid by the Authority for Misdirected and/or Unavailable General Waste over the immediately preceding EfW Contract Year shall be adjusted (if appropriate) in accordance with paragraph 5 of the Payment Mechanism through the Invoice immediately following the settlement of such reconciliation between the Parties if any Misdirected, Misdelayed or Unavailable General Waste deemed to have been disposed of at the EfW Facility could not have been disposed of at the EfW Facility due to tonnages of General Waste in that EfW Contract Year actually disposed of at the EfW Facility equalling or

exceeding the EfW Contract Year Annual Reserved Capacity for that EfW Contract Year; and

- (E) for the avoidance of doubt, without prejudice to any liability the Authority may have to the Contractor in relation to Misdirected Waste, the Authority shall have no liability to the Contractor in respect of Misdelayed Authority Waste and no Constituent Council shall have any liability to the Contractor in respect of Misdirected or Unavailable Authority Waste;

"Default Deductions" has the meaning given in clause 38.42;

"Default Interest" 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;

"Default Interest Rate" means two per cent (2%) above the base rate of Barclays Bank plc from time to time;

"Default Notice" means a notice in the form set out in Part 2 of Schedule 9 and including the information required pursuant to clause 38.10;

"Defect" has the meaning set out in clause 16.12;

"Delivered" means General Waste delivered by any Constituent Council Party in compliance with the Power of Direction as exercised by the Authority pursuant to clause 13.1.1, and **"Delivery"** shall be construed accordingly;

"Delivery Point" means the location of the transfer station or other facility (which for the avoidance of doubt need not be operated or controlled by the Contractor itself) at which General Waste is to be delivered to the Contractor by or on behalf of the Constituent Council;

"Design" means:

- (a) the MRF Outline Design;
- (b) the CA Site Outline Design;
- (c) any design work required by any Variation; and
- (d) any other design work,

in each case as is necessary to facilitate Completion of the MRF Works and the CA Site Works and whether or not prepared before or after the Agreement Date;

"Design Life" means, in relation to the item of Capital Expenditure, its projected useful life (expressed in years to four (4) decimal places) as defined by the manufacturer of such item or such longer period as may be agreed between the Parties (such agreement not to be unreasonably withheld or delayed) upon evidence provided by the Contractor and such further evidence from the Contractor as the Authority may reasonably require;

"Design Proposal" has the meaning set out in paragraph 1.1 of Schedule 4;

"Detritus Waste" means Authority Waste collected by:

- (a) Constituent Council Party vehicles from Garchey Systems in the London Borough of Hammersmith and Fulham; and
- (b) any Constituent Council Party mechanical street sweeping and gully clearance operations which may be unavoidably wet and require de-watering prior to disposal as a result of its method of collection;

"Direct" means to direct Authority Waste to the Contractor pursuant to clause 13.1.1, and **"Directed"** shall be construed accordingly;

"Direct Losses" means (to the extent reasonably and properly incurred) all damage, losses (including loss of profit), liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services), proceedings, demands and charges, whether arising under statute, contract or common law, but excluding Indirect Losses, arising solely from the provision (or non-provision) of the Authority Site Works and/or Authority Site Services, save where used specifically in the context of the EfW Operator in which case they shall refer solely to those arising in the provision (or non-provision) of the EfW Works and/or EfW Services. In each case such Direct Losses shall be demonstrated to the reasonable satisfaction of the paying Party and shall be subject to the obligation of the claiming Party to mitigate pursuant to clause 37;

"Director's Certificate" means a certificate executed by an officer of the relevant company in the Agreed Form;

"Disclosed Data" means all data, documents, information and other materials of any nature whatsoever and which may have been supplied to the Contractor, its servants, agents or advisers by or for the Authority before the Agreement Date;

"Dispose" includes:

- (a) sale, assignment or transfer (including by way of lease or loan);
- (b) granting of an option or any other interest over;
- (c) creation or the allowing to subsist of any encumbrance;
- (d) creation of any trust or the conferring of an interest;
- (e) the entering into of any agreement, arrangement or understanding concerning the votes attached to, or the right to receive dividends or other return on capital in respect of;
- (f) the renunciation or assignment of any right to subscribe, receive or receive any interest in; and
- (g) any agreement, whether conditional or not, to do any of the acts described above, whether by one transaction or a series of transactions and whether at the same time or over a period of time;

"Dispute" has the meaning set out in the Dispute Resolution Procedure;

"Dispute Resolution Procedure" means the procedure set out in Schedule 13;

"Disputed Amount" has the meaning set out in clause 29.6;

"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 the Third Amended Agreement Date 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;

"Diverted Tonnage Default Notice" means a notice in the form set out in Part 3 of Schedule 9;

"Diverted Tonnage Payment" means the amount calculated in accordance with Appendix A of the relevant Collateral Warranty payable from time to time by the Contractor pursuant to the provisions of the Collateral Warranty and this Agreement;

"Diverted Waste" has the meaning set out in clause 39.8;

"DPA" means the Data Protection Act 1998;

"EA Licence" has the meaning set out in clause 48.20.1;

"EA Licence Transferee" has the meaning set out in clause 48.20.1;

"Economically Unavailable Insurance Proposition" has the meaning set out in paragraph 1.1 of Schedule 15;

"EEA" 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;

"EfW Adjusted Estimated Fair Value of the Tendered Assets" means the EfW Estimated Fair Value of the Tendered Assets, less an amount equal to the aggregate of:

- (a) where relevant any the EfW Post Termination Service Amounts paid to the Contractor (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set-off or deduct under clause 32 of the Agreement (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 EfW Operator on the date that the EfW Estimated Fair Value of the Tendered Assets is calculated;
- (ii) any insurance proceeds and other amounts owing to the EfW Operator (and which the EfW Operator is entitled to retain), to the extent not included in (i); and
- (iii) the EfW Post Termination Service Amounts (if a negative number),

to the extent that:

- (1) (i), (ii) and (iii) have not been directly taken into account in calculating the EfW Estimated Fair Value of the Tendered Assets; and
- (2) the Authority has received such amounts in accordance with the Agreement;

"EfW Adjusted Highest Compliant Tender Price" means the Highest Compliant Tender Price less the aggregate of:

- (a) any EfW Post Termination Service Amounts paid to the Contractor to date;
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set-off or deduct under clause 32 of the Agreement (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 EfW Operator on the date that the highest priced Compliant Tender is received;
- (ii) any insurance proceeds and other amounts owing to the EfW Operator, to the extent not included in (i); and
- (iii) the EfW Post Termination Service Amounts (if a negative number),

to the extent that:

- (1) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and
- (2) the Authority has received such amounts in accordance with the Contract;

"EfW Annual Reserved Capacity" means four hundred and twenty thousand (420,000) tonnes of General Waste per EfW Contract Year, as adjusted pursuant to paragraph 27.2 of Schedule 15;

"EfW Authority Change" means a change to the EfW Services or EfW Works requested by the Authority which the Contractor is obliged to implement under paragraph 6 (EfW Authority Changes) of Schedule 15;

"EfW Authority Default" means one of the following events:

- (a) a failure by the Authority to make payment of any amount of money exceeding the EfW Non-Payment Default Sum relating to the EfW Services that is due and payable by the Authority under this Agreement within twenty (20) Working Days of a formal written demand by the Contractor, where the amount fell due and payable at least one month prior to the date of service of the written demand **PROVIDED THAT** where an amount is the subject of an application under the Dispute Resolution Procedure, for the purposes of this paragraph (a) such amount shall not be deemed to be due and payable to the Contractor until the date upon which a Final Determination in favour of the Contractor in relation to such amount has been made pursuant to Schedule 13; or
- (b) a breach by the Authority of its obligations under the Agreement, the Belvedere Lease or the Belvedere Sub-Lease other than a breach by the Authority of any of clauses 13.1.1 and/or 13.1.2 of the Agreement, which

either alone or when taken together with other breaches substantially frustrates or renders it impossible for the Contractor to perform the EfW Services for a continuous period of two (2) months; or

- (c) an expropriation, sequestration or requisition of a material part of the EfW Operator's assets and/or either or both of the Authority Transfer Stations by the Authority or other Relevant Authority which substantially frustrates or renders it impossible for the Contractor to perform the EfW Services for a continuous period of two (2) months; or
- (d) an expropriation, sequestration or requisition of shares in the Contractor or EfW Operator by the Authority or other Relevant Authority; or
- (e) the enactment of Legislation which has the effect of frustrating or rendering it impossible or unlawful for the Authority to perform its obligations in relation to the EfW Services; or
- (f) any breach(es) by the Authority of clauses 13.1.1 and/or 13.1.2 of the Agreement which either alone or when taken together with other breaches of such paragraphs:
 - (i) results in [REDACTED] or more in aggregate of the total tonnage of General Waste required to be Directed or made Available to the Contractor in any rolling two (2) year period being Misdirected or Unavailable; or
 - (ii) results in [REDACTED] or more in aggregate of the total tonnage of General Waste required to be Directed or made Available to the Contractor in any rolling three (3) year period being Misdirected or Unavailable;

"**EfW Authority Default Termination Notice**" has the meaning given to it in paragraph 9.1 of Schedule 15;

"**EfW Authority Default Termination Sum**" has the meaning given to it in paragraph 18.1 of Schedule 15, adjusted (as appropriate) pursuant to paragraphs 18.3 and/or 18.5 of Schedule 15;

"EfW Authority Quotient Percentage" means the percentage calculated in accordance with paragraph 27.3 of Schedule 15;

"EfW Authority Share" means, to the extent relevant to the EfW Works and/or EfW Services only:

- (a) in relation to the EfW Services and/or EfW Works:
 - (i) prior to the EfW Commissioning Date, 71.8%; and
 - (ii) on and subsequent to the EfW Commissioning Date, the EfW Authority Quotient Percentage; and
- (b) in relation to the operational expenditure and/or Actual Value of Capital Expenditure in relation to any Shared Usage Asset or Shared Usage Cost, and ignoring any usage prior to the Services Commencement Date:
 - (i) the proportion the Historic Utilisation of such Shared Usage Asset or Shared Usage Cost for Authority Waste bears to the total Historic Utilisation of such Shared Usage Asset for the provision of waste management services in general (including to the Authority under the terms of this Agreement) or Shared Usage Cost over the immediately preceding five (5) years; or
 - (ii) in relation to Shared Usage Assets and Shared Usage Costs where the mechanism set out in sub-clause (b)(i) would not reasonably reflect the Authority's future use or cost allocation in relation to such Shared Usage Asset or Shared Usage Cost or is not applicable because the relevant Shared Usage Asset or Shared Usage Cost is new, the Authority's fair and reasonable share having regard to the extent of historic, actual and projected third party use of such Shared Usage Asset and/or the extent of the Authority's historic and projected share of such Shared Usage Cost both prior to and including the Expiry Date,

PROVIDED THAT where the Shared Usage Asset is a landfill site owned or operated by the Contractor or any Affiliate of the Contractor, the EfW Authority Share shall be reflected solely through an adjustment to the applicable Contract Rates pursuant to clause 21.10.1, and if the landfill site is

owned or operated by a person other than the Contractor or any Affiliate of the Contractor, the Contractor shall pass the increased gate fee through to the Authority by an increase in the Contract Rates;

"EfW Authority Waste Compensation Cap" means, in relation to each tonne of General Waste denied to the EfW Contractor at the Authority Transfer Stations, the first element of the calculation of $CC_{EFW} ((ARCY/12)*(B+A*C-V))$ as defined and calculated in accordance with paragraph 3.1 of the Payment Mechanism;

"EfW Best Value Change in Law" means an EfW Change in Law which comprises:

- (a) an order made by the Secretary of State in the exercise of powers conferred upon him by section 4 of the Local Government Act 1999 the substance of which amounts to a change in a performance standard or a change in the definition of or details of a performance indicator (as opposed to a change in the description of a performance indicator);
- (b) a direction made by the Audit Commission in the exercise of powers conferred upon it by sections 44 and 46 of the Audit Commission Act 1998 which in substance is similar to an order referred to in (a) above;
- (c) Guidance issued by the Secretary of State or Audit Commissioner or other competent authority in respect of (a) or (b) above;

"EfW Business" means the design, financing, construction, operation and maintenance of the EfW Facility;

"EfW Change" means any EfW Authority Change or EfW Contractor Change;

"EfW Change in Law" means the coming into effect after the First Amended Agreement Date of:

- (a) Legislation, other than any Legislation which on the First Amended Agreement Date has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;

- (iii) in a draft statutory instrument; or
- (iv) as a proposal in the Official Journal of the European Communities,

PROVIDED THAT any Legislation to the extent that it both comes into effect after the First Amended Agreement Date and is listed in Schedule 6 shall be deemed to be an EfW Change in Law;

- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

"EfW Commissioning Date" means the date of EfW Completion;

"EfW Compensation Date" means either:

- (a) if paragraph 19.3 of Schedule 15 applies, the earlier of:
 - (i) the date that the New EfW Contract is entered into; and
 - (ii) the date on which the Authority pays the EfW Adjusted Highest Compliant Tender Price to the EfW Operator, or
- (b) if paragraph 19.4 of Schedule 15 applies, the date that the EfW Adjusted Estimated Fair Value of the Tendered Assets has been agreed or determined;

"EfW Compensation Event" means a breach by the Authority of any of its obligations under the EfW Contract, the ASS Contract insofar as it prevents the EfW Contractor from fully performing the EfW Works and/or the EfW Services, the Belvedere Lease or Belvedere Sub-Lease;

"EfW Completion" has the meaning set out in paragraph (b) of the definition of "Completion";

"EfW Construction Subcontract" means the turnkey construction contract for the EfW Works between the EfW Operator and the EfW Construction Subcontractor;

"EfW Construction Subcontractor" means Von Roll Environmental Technology Limited in its capacity as a counterparty to the EfW Construction Subcontract or any

replacement counterparty appointed to carry out the relevant works under the EfW Construction Subcontract;

"EfW Contract" means this Agreement insofar as it relates to the EfW Works and/or the EfW Services;

"EfW Contract Month" means each successive calendar month in an EfW Contract Year provided that:

- (a) the first EfW Contract Month shall comprise the period from (and including) the EfW Commissioning Date to (and including) the last day in the calendar month in which EfW Completion occurs; and
- (b) the final EfW Contract Month shall comprise the period from (and including) the first day of the relevant calendar month in which the EfW Termination Date and/or the Expiry Date occurs to the earlier of (and including) the EfW Termination Date and the Expiry Date;

"EfW Contract Year" means each successive twelve (12) month period from 1 April to the following 31 March (inclusive) following the EfW Commissioning Date **PROVIDED THAT:**

- (a) the first EfW Contract Year shall comprise the period from (and including) the EfW Commissioning Date to (and including) the following 31 March; and
- (b) the final EfW Contract Year shall comprise the period from (and including) 1 April in that year to (and including) the earlier of the EfW Termination Date and the Expiry Date;

"EfW Contract Year Annual Reserved Capacity" has the meaning set out in paragraph 27.4 of Schedule 15;

"EfW Contractor" means the Contractor in its capacity as the Authority's counterparty to the EfW Contract;

"EfW Contractor Change" means a change in the EfW Services and/or EfW Works proposed by the Contractor and agreed to by the Authority in accordance with paragraph 7 of Schedule 15;

"Efw Contractor Default" means, in relation to the Efw Contract only, one of the following events:

- (a) a breach by the Contractor of the Efw Services which materially and adversely affects the performance or fulfilment of the Authority's statutory duties from time to time in its capacity as a Waste Disposal Authority;
- (b) an Event of Incapacity occurs in relation to the Contractor;
- (c) an Event of Incapacity occurs in relation to the Efw Operator;
- (d) a breach by the Contractor of its obligations in clause 54 of the Agreement (Assignment) occurs in relation to the Contractor's rights in respect of the Efw Contract;
- (e) the abandonment of the Efw Services;
- (f) the abandonment of the Efw Works for a continuous period in excess of 6 months;
- (g) a failure to achieve Efw Completion by the Efw Latest Works Completion Date;
- (h) following the Efw Commissioning Date, General Waste in an amount equal to or less than [REDACTED] of the Efw Contract Year Annual Reserved Capacity (or, if the amount of General Waste is less than the Efw Contract Year Annual Reserved Capacity, the total tonnage of General Waste Delivered or made Available to the Contractor during such period) is incinerated either at the Efw Facility or at a suitable alternative energy from waste facility in each of two (2) consecutive Efw Contract Years;
- (i) following the Efw Commissioning Date, General Waste in an amount equal to or less than [REDACTED] of the Efw Contract Year Annual Reserved Capacity (or, if the amount of General Waste is less than the Efw Contract Year Annual Reserved Capacity, the total tonnage of General Waste Delivered or made Available during such period) is incinerated either at the Efw Facility or at a suitable alternative energy from waste facility in each of three (3) consecutive Efw Contract Years;

- (j) the Contractor has, in any rolling three (3) month period, accrued [REDACTED] or more EfW Default Points under clause 38.36;
- (k) the Contractor has, in any rolling twelve (12) month period, accrued [REDACTED] or more EfW Default Points under clause 38.36; or
- (l) the Contractor fails to honour a call for payment of a sum in excess of the EfW Non-Payment Default Sum in relation to the EfW Services properly made by the Authority in accordance with the terms of this Agreement within 20 Working Days, **PROVIDED THAT** where an amount is the subject of an application under the Dispute Resolution Procedure, for the purposes of this paragraph (l) such amount shall not be deemed to be due and payable to the Authority until the date upon which a Final Determination in favour of the Authority in relation to such amount has been made pursuant to Schedule 13;

"**EfW Contractor Default Termination Notice**" means a notice served pursuant to paragraph 11.1 of Schedule 15 which complies with the requirements of paragraph 11.2 of Schedule 15;

"**EfW Contractor Losses**" means (other than EfW Waste Supply Pass-Through Losses) 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, in each case incurred by the EfW Contractor (or any Affiliate of the EfW Contractor) in its or their capacities, as appropriate, as counterparty to the EfW Contract or as a waste supplier to the EfW Facility (which for these purposes shall not include any waste collection activities undertaken by the EfW Contractor or any Affiliate of the Contractor);

"**EfW Contractor Notice of Change**" has the meaning given to it in paragraph 7.1 of Schedule 15;

"**EfW Contractor Party**" means to the extent involved in providing EfW Works or EfW Services:

- (a) the EfW Contractor;
- (b) an officer, employee or agent of the EfW Contractor, or any Affiliate of the EfW Contractor and any officer, employee or agent of such a person;

- (c) any EfW Subcontractor or subcontractor of the EfW Contractor of any tier and any of their officers, employees or agents; and
- (d) any person on or at the Belvedere Site at the express or implied invitation of, or with the permission of, the EfW Contractor or EfW Operator (other than the Authority);

"EfW Contractor's Employees" means any person employed by the EfW Contractor or by any sub-contractor of the EfW Contractor who is involved (whether directly or indirectly) with the provision of the EfW Services and shall include all the EfW Operator's Employees;

"EfW Cumulative Capital Expenditure" means the aggregate of:

- (a) all Capital Expenditure that has been incurred as a result of each EfW General Change in Law that has come into effect after EfW Completion; and
- (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of an EfW General Change in Law under paragraph 8;

"EfW Default Points" means the total aggregate default points under clause 38.36 of the Agreement relating to EfW Performance Failures;

"EfW Design Capacity" means five hundred and eighty-five thousand (585,000) tonnes of Waste per annum;

"EfW Direct Losses" means EfW Losses other than EfW Indirect Losses;

"EfW Discriminatory Change in Law" means an EfW Change in Law, the terms of which apply expressly to:

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

"EfW Estimated Change in Project Costs" means in respect of any Relevant Event the aggregate of any Change in Costs and/or Change in Revenue (as relevant), **PROVIDED THAT**, in relation to an EfW Compensation Event by virtue of which

the EfW Operator is denied Authority Waste and/or Third Party Waste, the Authority's liability in relation to each such tonne of denied tonnage shall not exceed the lower of:

- (a) the Direct Losses of the EfW Operator; and
- (b) the EfW Authority Waste Compensation Cap and/or the EfW Third Party Waste Compensation Cap (as appropriate);

"EfW Estimated Fair Value of the Tendered Assets" means the amount determined in accordance with paragraph 19.4 of Schedule 15 that a third party would pay as the aggregate market value of the RRRL Undertaking and the Deemed New EfW Contract;

"EfW Facility" means the energy from waste plant and associated infrastructure to be constructed at Norman Road, Belvedere, Bexley, Kent;

"EfW Financial Close" means the date on which the conditions precedent to the availability of senior funding of the EfW Facility were either satisfied or waived, and is the same date as the **"First Amended Agreement Date"**;

"EfW Financier" has the meaning attributed to **"Senior Lender"** below;

"EfW Force Majeure Event" means the occurrence after the date of the First Amended Agreement of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions or breach of the Contractor or its subcontractors of any tier, except where such actions of the Contractor constitute solely the receipt or treatment by the Contractor of General Waste (containing nuclear, chemical or biological contamination) in accordance with the EfW Contract; or
- (c) pressure waves caused by devices travelling at supersonic speeds; or
- (d) the suspension of both the Lighterage Business and the EfW Business due to the occurrence of an Economically Unviable Insurance Proposition in the circumstances set out in paragraph 1.3.3 of Schedule 15;

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

"**EfW Force Majeure Option**" means the option granted to the Contractor pursuant to paragraph 14.10 of Schedule 15;

"**EfW Force Majeure Option Longstop Date**" means the earlier to occur of:

- (a) 1 October 2017; and
- (b) the initial occurrence of the EfW Force Majeure Event (whether or not declared by either Party as an EfW Force Majeure Event at the time) which results in the termination of the EfW Contract pursuant to paragraph 14 (Termination for Force Majeure) of Schedule 15;

"**EfW Force Majeure Termination**" means a termination pursuant to paragraph 14.5 of Schedule 15;

"**EfW Force Majeure Termination Sum**" means the sum calculated in accordance with paragraph 20.2 of Schedule 15;

"**EfW General Change in Law**" means an EfW Change in Law which is not an EfW Discriminatory Change in Law, an EfW Specific Change in Law or an EfW Best Value Change in Law;

"**EfW General Waste Rate**" has the meaning set out in the Payment Mechanism;

"**EfW Indirect Losses**" means loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or any consequential loss or indirect loss of any nature;

"**EfW Group**" means those entities over which and over whose assets the Common Security Trustee and/or the RRRL Security Trustee has been granted, or is entitled to be granted, a security interest;

"**EfW Insurances**" means the insurances listed in Schedule 6 to the Facility Agreement as at the First Amended Agreement Date as follows:

- (a) Section "All Risks Insurance" (Part IIA 1), Delay in Start Up Insurance (Part IIA, 2) (but excluding loss of profit), Third Party Liability Insurance

(Part IIA, 3), Marine Cargo Insurance (Part IIA, 4), Marine Cargo DSU Insurance (Part IIA, 5) (but excluding loss of profit);

- (b) Property Damage "All Risks" Insurance (Part IIB, 1), Business Interruption Insurance (Part IIB, 2) (but excluding loss of profit), Third Party Liability and Products Liability (Part IIB, 3); and
- (c) Marine Hull & Machinery (Part IIC, 1), Marine Protection and Indemnity (Part IIC, 2), Employes' Liability Insurance (Part IIC, 3), Motor Liability Insurance (Part IIC, 4), and other insurances required by law;

"EfW Insurance Relief Event" means the suspension of either the Lighterage Business or the EfW Business (but not both) by the EfW Operator following the occurrence of an EfW Uninsurable Risk, in accordance with paragraphs 1.3.1 and 1.3.2 of Schedule 15;

"EfW Interim Delay Period" means, for the purposes of the Payment Mechanism only, the period commencing on the earlier of:

- (a) the date upon which the void space at the Mucking Landfill Site as specified in Planning Permission 06/0063/TTGCND dated 16 May 2007 is fully utilised by the Contactor as a result of the Contractor receiving waste other than Authority Waste at the Mucking Landfill Site between the First Amended Agreement Date and 1 January 2011 and is therefore unable to receive any further Authority Waste at the Mucking Landfill Site; and

- (b) 00.00 hours on 1 January 2011,

and expiring on the earliest of:

- (i) 23:59 hours on the day immediately preceding the EfW Commissioning Date;
- (ii) 30 June 2011; and
- (iii) the Termination Date;

"EfW Latest Works Completion Date" means the [REDACTED] anniversary of the First Amended Agreement Date, as such date may be varied pursuant to the terms of Schedule 15;

"EfW Losses" 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, but excluding all EfW Contractor Losses;

"EfW Method Statement" means the method statement set out in Appendix B(2);

"EfW Necessary Consents" means all permissions, consents, approvals, certificates, permits, licences and authorisations of a Relevant Authority required for the performance of any of the Contractor's obligations under the EfW Contract;

"EfW Non-Payment Default Sum" means, in relation to any EfW Contract Year, an amount equal to:



"EfW Obligations" means the obligations of the Contractor under the EfW Contract in relation to the EfW Works and/or the EfW Services;

"EfW Operator" means the owner of the EfW Business and the Lighterage Business from time to time, as at the First Amended Agreement Date being Riverside Resource Recovery Limited (registered number 03723386) whose registered office is at 2 Coldbath Square, London EC1R 5AX);

"EfW Operator's Employees" means any person employed by the EfW Operator or by any sub-contractor of the EfW Operator who is involved (whether directly or indirectly) with the provision of the EfW Services;

"EfW Operator Subcontractor" means the EfW Construction Subcontractor, the Electricity Offtaker and any other person engaged from time to time by the EfW Operator as may be permitted by the Agreement to perform or provide (or to procure the performance or provision of) the EfW Works and/or the EfW Services (or any of them), **PROVIDED THAT** the Contractor, in its capacities as counterparty to the EfW Contract and as waste supplier to the EfW Facility shall not be an EfW Operator Subcontractor;

"EfW Operator Subcontractor Breakage Costs" means EfW Losses that have been or will be reasonably and properly incurred by the EfW Operator as a direct result of the termination of the EfW Contract, but only to the extent that:

- (a) the EfW Losses are incurred in connection with the EfW Project and in respect of the provision of services or the completion of works, including:
 - (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such EfW Direct Losses being incurred;
 - (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 EfW Project;
 - (iv) redundancy payments; and
- (b) the EfW 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 EfW Operator and the relevant EfW Operator Subcontractor have taken all reasonable steps to mitigate the Losses;

"EfW Operator Subcontracts" means the contracts entered into between the EfW Operator and the EfW Subcontractors;

"EfW Performance Failure" means each EfW Method Statement performance failure;

"EfW Post Termination Service Amount" means for the purposes of paragraph 19.3 of Schedule 15, for the whole or any part of a month for the period from the EfW Termination Date to the EfW Compensation Date, the net amount that would have been payable in relation to the EfW Services in that month under the EfW Contract had the EfW Contract not been terminated together with third party revenue actually received by the Authority or its nominee in operating the Handback Assets (including complying with the EfW Waste Supply Agreement) in the month less an amount equal to the aggregate of:

- (a) the Rectification Costs incurred by either the Authority or the Constituent Councils in that month;

- (b) (where relevant) the amount by which the EfW Post Termination Service Amount for the previous month was less than zero; and
- (c) the costs incurred by the Authority or its nominee in carrying out its obligations under paragraph 19.3.7 of Schedule 15 in respect of the EfW Waste Supply Agreement and/or in operating and/or maintaining the Handback Assets and/or in generating any third party revenue in that month;

"EfW Project" means the design, engineering, financing, procurement, construction, commissioning, operation and maintenance of the EfW Facility and associated infrastructure together with the marketing of capacity at the EfW Facility and securing of contracts for the supply of waste;

"EfW Project Documents" means the agreements entered into by the EfW Operator for the performance of its obligations in connection with the EfW Contract, including without limitation the EfW Waste Supply Agreement, the Belvedere Agreement for Lease, the Belvedere Lease, the Belvedere Sub-Lease, the Finance Direct Agreement and the Residual Value Agreement;

"EfW Project Manager" means Fichtner Consulting Engineers Limited as project manager in respect of the EfW Works;

"EfW Qualifying Change in Law" means, in relation to the EfW Works and EfW Services only:

- (a) an EfW Discriminatory Change in Law;
- (b) an EfW Specific Change in Law;
- (c) an EfW Best Value Change in Law; and/or
- (d) an EfW General Change in Law which comes into effect after EfW Completion and which involves Capital Expenditure,

which was not foreseeable at the date of the First Amended Agreement;

- (e) any Legislation or Guidance coming into effect after the date of the First Amended Agreement, giving effect to any of those documents or policies listed in Schedule 6, to the extent that the same would have amounted to a

Qualifying Change in Law pursuant to paragraphs (a) to (d) above but for the fact that they are potentially or actually foreseeable; and

- (f) any change to the terms of a PPC Permit of the EfW Facility, other than where such change arises as a result of:
 - (i) the acts or omission of the Contractor or any EfW Contractor Party (not including acts or omissions undertaken in accordance with and to perform its obligations under the EfW Contract); or
 - (ii) any breach of the EfW Contract by the Contractor or any EfW Contractor Party;
- (g) an EfW Change in Law which:
 - (i) imposes on a Constituent Council a duty or obligation either:
 - (A) to recycle waste which, but for the EfW Change in Law would have been (as at the First Amended Agreement Date) General Waste, other than by Delivering this at the direction of the Authority;
 - (B) to recycle waste which, but for the EfW Change in Law, would have been (as at the First Amended Agreement Date) General Waste, by using a technology other than provided for in the Method Statement; or
 - (ii) permits a Constituent Council (in relation to disposal only) or imposes on a Constituent Council (in relation to disposal or treatment) a duty or obligation to:
 - (A) dispose of or treat waste which, but for the EfW Change in Law, would have been (as at the First Amended Agreement Date) General Waste, other than by Delivering this at the direction of the Authority;
 - (B) dispose of or treat waste which, but for the EfW Change in Law, would have been (as at the First Amended Agreement Date) General Waste, by using a technology other than one provided for in the Method Statement; or

- (iii) imposes on the Authority a duty or obligation to recycle, treat or dispose of any waste which, but for the EfW Change in Law, would have been (as at the First Amended Agreement Date) General Waste, by using a technology other than one provided for in the Method Statement;

and in each case this results in a reduction in the total overall tonnage of General Waste and Authority Waste (A) Directed and made Available by the Authority to the Contractor and (B) Delivered by the Constituent Councils to the Contractor (to the extent not Directed by the Authority pursuant to (A));

"EfW Qualifying Variation" means either:

- (a) a change in the EfW Works and/or the EfW Services in respect of which either an EfW Authority Notice of Change or an EfW Contractor Notice of Change has been served and in the case of:
 - (i) an EfW Authority Notice of Change, the Authority has confirmed the Estimate and, where the EfW Operator is not funding all or part of the required Capital Expenditure, the Authority has agreed to meet all of the remaining part (as appropriate) of such Capital Expenditure; and
 - (ii) an EfW Contractor Notice of Change, the change has been accepted by the Authority; or
- (b) an EfW Qualifying Change in Law,

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

"EfW Relief Event" means:

- (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 an EfW Force Majeure Event), earthquakes, riot and civil commotion;

- (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (c) any accidental loss or damage to:
 - (i) the EfW Facility, any lighterage asset or any roads or jetty servicing the EfW Facility; and/or
 - (ii) the turbine, boiler, air cooled condenser, 132 kV grid transformers and/or multi flue stack whilst in transit;
- (d) any accidental loss or damage to the EfW Works;
- (e) any failure or shortage of:
 - (i) power or fuel; or
 - (ii) transport not operated by the Contractor, the EfW Operator or any Subsidiary of the Contractor or EfW Operator (unless such transport failure is caused by a failure or shortage of power or fuel);
- (f) any blockade or embargo which does not constitute an EfW Force Majeure Event;
- (g) any:
 - (i) official or unofficial strike;
 - (ii) lockout;
 - (iii) go-slow; or
 - (iv) other dispute,

generally affecting the waste management, construction, electricity generation and/or haulage (including lighterage) industries or a significant sector of any of them, **PROVIDED THAT** the lighterage operations of the EfW Operator used in connection with the EfW Project shall not be deemed to constitute a significant sector of the lighterage industry; and
- (h) protestor action at or in the immediate vicinity of the EfW Facility;

- (i) the delivery of waste containing munitions, Hazardous Substance or human remains to the EfW Facility as a result of which Legislation or any Relevant Authority requires the Authority Sites, lighterage operation or EfW Facility to cease operations;
- (j) the discovery of fossils, antiquities, human remains, unexploded bombs or other ordnance requiring the suspension or alteration of the EfW Works for the purposes of complying with Legislation or any Necessary Consent;
- (k) (subject to the limitations set out in paragraph 1.5 of Schedule 15) an EfW Insurance Relief Event occurs; or
- (l) any circumstances beyond the control of the Contractor, its Sub-Contractors or any of the EfW Subcontractors which makes the transport of General Waste on the River Thames between Smugglers Way and Tilbury Dock by tugs and barges not reasonably possible;

unless any of the events listed in paragraphs (a) to (l) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any of the EfW Subcontractors;

"EfW Replacement Authority Transfer Station Services" means, where there is a breach of the EfW Contract or the Interface Agreement (where applicable) by the EfW Contractor or Replacement EfW Contractor (as appropriate), the services necessary to transfer, transport and dispose of General Waste in the circumstances where it is not possible to transfer General Waste onto the river through the Authority Transfer Stations, other than where such inability to transfer is caused by an EfW Force Majeure Event;

"EfW Service Period" means the period commencing at 00:00 hours on the EfW Commissioning Date and ending on the earlier of :

- (a) the Expiry Date; and
- (b) the EfW Termination Date;

and shall have the same meaning as **"Final Period"**;

"EfW Services" means, with effect from the EfW Commissioning Date, the River Transportation Services, the Replacement Transportation Services, the EfW

Replacement Authority Transfer Station Services, the treatment, disposal, and recovery of General Waste by means of incineration at the EfW Facility, and the treatment, disposal, recycling or recovery of physical products derived from General Waste following incineration, in each case in accordance with the terms of the EfW Contract (including, without limitation, the EfW Method Statement), together with those obligations which are directly associated therewith (including without limitation, the maintenance of the campsheds and Port of London Authority licences, but excluding the cranes and the Interim Services);

"EfW Shareholder" means any person from time to time holding share capital and/or subordinated debt in the EfW Operator or its Holding Company;

"EfW Specific Change in Law" means:

- (a) any EfW Change in Law which specifically refers to:
 - (i) the provision of any service the same as or similar to any EfW Service; or
 - (ii) the construction, operation and/or maintenance of premises for the provision of any service the same as or similar to any EfW Service; or
 - (iii) the holding of shares in companies whose main business is:
 - (1) the provision of any service the same as or similar to any EfW Service; or
 - (2) the construction, operation and maintenance of premises for the provision of any service for the provision of any service the same as or similar to any EfW Service,

it being understood by the Parties that for the purposes of this definition only, an EfW Service includes (a) the generation of energy, steam and/or heat from Permitted Waste, (b) the operation of a lighterage service, (c) the receipt, handling, transportation, storage, disposal or landfill of Permitted Waste; and (d) the treatment, disposal, recycling or recovery of physical products derived from Permitted Waste, **PROVIDED THAT** any EfW Change in Law which specifically refers to an energy recovery technology

other than that utilised by the EfW Operator but not to the technology utilised by the EfW Operator shall not be capable of constituting an EfW Specific Change in Law, for the purposes of which it is acknowledged by the Parties that, as at the First Amended Agreement Date the EfW Facility is not to be configured to utilise Combined Heat and Power technology; or

- (b) in relation to the EfW Facility only, any EfW Change in Law which specifically refers to emissions from industrial facilities; or
- (c) any EfW Change in Law that discriminates against the sale of electricity generated from an energy from waste plant; or
- (d) any Change in Law the terms of which apply expressly to alter the boundaries of any Constituent Council or reduce or increase the number of Constituent Councils resulting both in:

- (A) a net variation of more than [REDACTED] tonnes per annum in the aggregate amount of Authority Waste Directed or made Available to the Contractor (such variation to be deemed conclusively to be calculated in relation to a Change in Law which alters the boundaries of any Constituent Council by pro rating the total number of households within the relevant Catchment Area before and after the boundary change(s) to the aggregate historic tonnage of Authority Waste Directed or made Available to the Contractor over the twelve (12) months immediately preceding such Change in Law **PROVIDED THAT** the movement of households between Constituent Councils shall be ignored); and

- (B) a reduction in the annual aggregate tonnage of Authority Waste Directed or made Available to the Contractor to below [REDACTED] tonnes or an increase in the annual aggregate tonnage of Authority Waste Directed or made Available to the Contractor to above [REDACTED] tonnes;

"EfW Subcontracts" means the contract(s) entered into between the Contractor and the EfW Operator, together with the EfW Operator Subcontracts;

"**EfW Subcontractor**" means the EfW Operator and each EfW Operator Subcontractor;

"**EfW Switchover Date**" means, for the purposes of the Collateral Warranty, the EfW Commissioning Date;

"**EfW Target Completion Date**" means the date falling three (3) years from the First Amended Agreement Date, as such date may be varied pursuant to the application of paragraphs 3 (EfW Compensation Events), 4 (EfW Relief Events) and 15 (Termination for EfW Force Majeure) of Schedule 15;

"**EfW Termination Date**" means any date of early termination of the EfW Contract prior to the Expiry Date;

"**EfW Termination Date Discount Rate**" means a discount rate expressed as $[(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1]$

where:

"**real base case project IRR**" is 7.84%;

"**i**" is the agreed assumed forecast rate of increase in the indexation mechanism set out in Appendix 2.3B of the Payment Mechanism for the remaining term of the Agreement;

"**Gilt A**" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding 2017 Senior Debt as shown in the Base Case at the Second Amended Agreement Date; and

"**Gilt B**" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding 2017 Senior Debt as shown in the Base Case on the EfW Termination Date;

"**EfW Termination Sum**" means any compensation payable by the Authority to the EfW Operator on an early termination of the Contract under paragraphs 18 (Compensation on Termination for Authority Default), 19 (Compensation on Termination for EfW Contractor Default), 20 (Compensation on Termination for EfW Force Majeure), 21 (Compensation on Termination for EfW Corrupt Gifts

and Fraud), 22 (Compensation on Termination for Breach of Refinancing Provisions) (excluding the EfW Adjusted Highest Compliant Tender Price);

"**EfW Terms**" means the extent to which and the terms upon which the Authority will accept direct or indirect rights and/or obligations in relation to the EfW Project Documents;

"**EfW Third Party Waste Compensation Cap**" means, in relation to each tonne of Third Party Waste denied to the EfW Contractor at the Authority Transfer Stations, the second element of the calculation of $CC_{EFW} ((TT/12)*(ATG-G+E*C-V))$ as defined and calculated in accordance with paragraph 3.1 of the Payment Mechanism;

"**EfW Uninsurable Risk**" has the meaning set out in paragraph 1.1.5 of Schedule 15;

"**EfW Waste Supply Agreement**" means the agreement dated 31 July 2008 between the EfW Contractor and the EfW Operator for, inter alia, the supply of General Waste by the EfW Contractor to the EfW Operator;

"**EfW Waste Supply Pass-Through Losses**" means those damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges for which the Contractor, in its capacity as a conduit waste supplier to the EfW Operator under the EfW Waste Supply Agreement, is liable to any relevant upstream waste supplier to the EfW Facility (including, by way of example and without limitation, the City of London), but excluding for these purposes any upstream waste supplier which is an Affiliate of the Contractor;

"**EfW Works**" means the design, construction, testing, commissioning and completion of the EfW Facility;

"**Electricity Act Consent**" means the consent required under section 36 of the Electricity Act 1989 to construct and operate the EfW Facility;

"**Electricity Offtaker**" means any party with whom the EfW Operator contracts from time to time for the supply by the EfW Operator of electricity and/or steam;

"**ELV Directive**" means Directive 2000/53/EC on End-of-Life Vehicles;

"**Encumbrances**" means any mortgage, charge, pledge, lien, deposit by way of security, bill of sale, option, assignment (contingent or otherwise), right to acquire,

right of pre-emption or agreement for or obligation as to any of the same, or any other form of security or encumbrance or equity of any nature in favour of a third party;

"**Environment**" means all or any of the following media, namely the air (including without limitation the air within buildings and the air within other natural or man made structures above or below ground) water and land and any living organisms or systems supported by those media;

"**Environment Agency**" or "**EA**" means the Environment Agency or its successor in function;

"**Environmental Claim**" means any action, proceedings, demand or claim brought against the Contractor arising out of Historic Pollution;

"**Environmental Information Regulations**" means the Environmental Information Regulations 2004;

"**Environmental Law**" means all or any applicable Law with regard to the pollution or protection of the Environment or harm to or the protection of human health and safety or the health of animals or plants;

"**EPA**" means the Environmental Protection Act 1990;

"**Equity Restructuring**" means any arrangement occurring after EfW Financial Close which meets both the following criteria:

- (a) the arrangement directly or indirectly replaces any Risk Capital with Shareholder Debt; and
- (b) the full effect of the arrangement is not reflected in the calculation of a Refinancing Gain in relation to which the Authority is compensated pursuant to clauses 30.1 to 30.9 inclusive;

"**Equity Restructuring Provisions**" means paragraphs 30.10 to 30.17 inclusive of Schedule 15;

"**Estimated EfW Monthly Tonnage**" has the meaning set out in paragraph 5.1 of the Payment Mechanism;

"Estimated Project Cost Variation" means, in relation to clause 8, the aggregate of any estimated increased construction costs, operating costs and financing costs less the aggregate of any reduced construction costs, operating costs and financing costs, but excluding any Indirect Losses;

"Event of Incapacity" means, in relation to the Contractor or EfW Operator (as appropriate) (the **"Incapacitated Party"**):

- (a) a court makes an order that the Incapacitated Party be wound up or a resolution for a voluntary winding-up of the Incapacitated Party is passed (save that there shall be no Event of Incapacity in the case of a voluntary winding up solely for the purpose of amalgamation or reconstruction, if it can be demonstrated to the reasonable satisfaction of the Authority that the covenant of the Incapacitated Party shall be as strong after as it was before the reconstruction or amalgamation); or
- (b) 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 Incapacitated Party (save that there shall be no Event of Incapacity in the case of a scheme of arrangement for the purpose of amalgamation, reconstruction, merger or take-over if it can be reasonably demonstrated that the covenant of the Incapacitated Party shall be as strong after as it was before the amalgamation, reconstruction, merger or take-over); or
- (c) a receiver, administrator or administrative receiver is appointed over the whole or any material part of the assets of the Incapacitated Party;

"Excluded Third Party Claim" means any action, claim or demand by:

- (a) any Contractor Party to the extent that it arises in the course of or incidental to the performance by such Contractor Party of the Works and/or the Services, or the handling of third party waste at the Authority Sites and/or the Feathers Wharf Site, or the presence of such Contractor Party on any Authority Site and/or the Feathers Wharf Site; and/or
- (b) any sub-contractor of any tier of the Contractor involved directly in the provision of the Works and/or Services (including, without limitation, the EfW Operator and any contractual counterparty to the EfW Operator); and/or

- (c) any shareholder in the EfW Operator; and/or
- (d) the Senior Lender and any other person providing funding to the EfW Operator or otherwise in relation to the EfW Facility from time to time;

"**Excusing Cause**" means, in relation to the EfW Works and EfW Services only:

- (a) any breach of this Agreement and/or any Property Agreement by the Authority or the execution of works on any Authority Site and/or the Feathers Wharf Site not forming part of this Agreement by any Authority Party **PROVIDED THAT** non-payment by the Authority shall not be capable of constituting an Excusing Cause;
- (b) the discovery of any Defect (ignoring for these purposes the costs of remediation of the relevant Defect to the extent that the Contractor has accepted responsibility for such costs pursuant to clause 16.13);

"**Exempt Refinancing**" means:

- (a) any Refinancing that was fully taken into account in the calculation of the EfW General Waste Rate;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (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 the Third Amended Agreement Date;
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to EfW Operator Subcontracts;
 - (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/or amounts released from the Project Accounts during the Availability Period, each as defined in 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 agreed construction programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given;
 - (vii) changes to milestones for drawdown and/or amounts released from the Project Accounts during the Availability Period set out in the Senior Financing Agreements and which are given as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to it 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 Authority as part of any EfW Qualifying Variation under the EfW Contract;
 - (e) any sale of shares in the EfW Operator or Holdco by the EfW Shareholders or securitisation of the existing rights and/or interests attaching to shares in the EfW Operator or Holdco, provided that this paragraph (e) shall, in respect of Holdco, only apply for so long as Holdco holds 100 per cent of the issued share capital of the EfW Operator;
 - (f) (without prejudice to any liability that Holdco may incur pursuant to the Finance Direct Agreement) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing

Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements;

- (g) any Qualifying Bank Transaction; or
- (h) (without prejudice to any liability that Holdco may incur pursuant to the Finance Direct Agreement) any sale or transfer of any rights or interests under the New Subordinated Debt Agreement;

"Existing Conditions Survey" means each of the conditions surveys attached as Appendix C (Smugglers Way) and Appendix D (Cringles Dock) dated June 1993 and prepared by L. G. Mouchel & Partners;

"Expiry Date" means 4 October 2032;

"Facility" means any of the MRF and any CA Site;

"Facility Agreement" means the Senior Facilities Agreement so entitled and dated the Third Amended Agreement Date between, amongst others, the EfW Operator, the Contractor, Riverside (Thames) Limited, Cory Riverside (Holdings) Limited, CSRS, the Agent, the Common Security Trustee and the RRRL Security Trustee;

"Facility C" means the capex revolving loan facility made available to the EfW Operator pursuant to the Senior Financing Agreements;

"Facility C Senior Commitment" has the meaning set out in the Facility Agreement;

"Fair Value" means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale;

"Feathers Wharf Agreement for Lease" means the agreement for lease dated 30 May 2002 between the Parties (as amended);

"Feathers Wharf Lease" means the underlease of the land at The Causeway in the London Borough of Wandsworth known as Feathers Wharf/Institute Wharf, located at Smugglers Way, Wandsworth SW18 1JS, entered into by the Parties on the First Amended Agreement Date (and which has now expired);

"Feathers Wharf Site" means the land at The Causeway in the London Borough of Wandsworth known as Feathers Wharf/Institute Wharf, located at Smugglers Way, Wandsworth SW18 1JS, consisting of two sites and owned respectively by the London Borough of Wandsworth and the Authority (Ordnance Survey map reference TQ 2575 NE) demised to the Contractor pursuant to the Feathers Wharf Lease;

"Fees Regulations" means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, SI 200413244;

"Finally Determined" and **"Final Determination"** means finally determined by a Decision or court ruling pursuant to the Dispute Resolution Procedure, including for the avoidance of doubt the results of any appeal of any such Decision or court ruling;

"Final Period" means the period commencing at 00:00 hours on the EfW Commissioning Date and expiring on the earlier of:

- (a) the Expiry Date; and
- (b) the Termination Date;

and shall have the same meaning as **"EfW Service Period"**;

"Finance Direct Agreement" means the direct agreement entitled "Authority Direct Agreement" dated on or about the date of the Third Amended Agreement and made between the Authority, the EfW Contractor, the EfW Operator, Holdco, the Common Security Trustee, the Agent and the RRRL Security Trustee;

"Finance Lease" means a finance lease relating to any Leased Asset;

"Financial Model" means the computer spreadsheet model for the EfW Project as at the Second Amended Agreement Date, a copy of which is attached on disk as Appendix V;

"Financing Agreements" means all or any of the agreements or instruments entered into or to be entered into by the EfW Operator or any of its Associated Companies relating to the financing of the EfW Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the EfW Operator or any of its Associated Companies relating to the rescheduling of their indebtedness or any Refinancing);

"**First Amended Agreement**" means this Agreement as amended and restated on the First Amended Agreement Date;

"**First Amended Agreement Date**" has the meaning given to it in Recital G, and is the same date as "**EfW Financial Close**";

"**FOIA**" 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 in relation to such Act;

"**Force Majeure Event**" means any of the following events:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions or breach of the Contractor or its subcontractors of any tier, except where such actions of the Contractor constitute solely the receipt or treatment by the Contractor of Authority Waste (containing nuclear, chemical or biological contamination) in accordance with the ASS Contract; or
- (c) pressure waves caused by devices travelling at supersonic speeds; or
- (d) a Minimum Insurance Requirement Risk becomes an Uninsurable Risk other than by reason of the act or omission of the Contractor,

which directly causes either Party to be unable to comply with all or a material part of its obligations under the ASS Contract;

"**Force Majeure Period**" means the duration of the Force Majeure Event together with the period during which its effects are being remedied;

"**General Manager**" means the general manager of the Authority as notified in writing to the Contractor by the Authority from time to time, details of whom are set out in Schedule 11, and any deputy appointed by the General Manager for periods of absence of the General Manager and as notified to the Contractor in writing by the General Manager from time to time;

"**General Waste**" means Authority Waste delivered for disposal and MRF Rejects and MRF Residuals but excluding Other Authority Waste;

"**Good Industry Practice**" means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;

"**Greatness Landfill Site**" means the landfill located at Sevenoaks, Kent (Ordnance Survey map reference TQ536578);

"**Green Waste**" means Authority Waste as defined in Quality Specification 5 to Part Five of the ASS Method Statement;

"**Guarantee**" means the guarantee of the Contractor's obligations under the ASS Contract issued by the Guarantor in favour of the Authority pursuant to the terms of this Agreement, or such other replacement guarantee as is permitted in accordance with the Guarantee in respect of all liabilities accruing prior to, on or after the Third Amended Agreement Date;

"**Guarantor**" means Cory Riverside Holdings Limited (company number 06505376) whose registered office is at 2 Coldbath Square, London EC1R 5HL, or such other replacement guarantor as is permitted in accordance with the Guarantee;

"**Guidance**" means any applicable guidance or directions with which the Contractor is bound to comply by Law;

"**Handback Assets**" means, at the option of the Authority, and subject to the Ringfencing Terms, either:

- (i) the legal and beneficial ownership of the entire issued share capital of the EfW Operator and its Subsidiaries; or
- (ii) any or all (at the option of the Authority) of the assets, rights and interests held by the EfW Operator or any of its Subsidiaries to enable the Authority or a successor contractor to carry out the EfW Project including, without limitation:
 - (a) the freehold of the Belvedere Site;

- (b) the Belvedere Sub-Lease (unless terminated by the Authority);
- (c)
 - (i) any fixtures and fittings on the Belvedere Site; and
 - (ii) such interest in any other land (and any assets on such land) as may be held by the EfW Operator or any of its Subsidiaries and which is occupied by or on behalf of the EfW Operator for the purposes of the EfW Project from time to time;
- (d) all of the EfW Operator's (or any of its Subsidiaries') rights to and interest in any plant, machinery, equipment, vehicles, tugs and barges;
- (e) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how) relating to the EfW Project;
- (f) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred which are assignable);
- (g) the rights to any revenues and any other contractual rights, including without limitation any waste supply contracts and any electricity, residue, heat, ash or surge waste offtake contracts to the extent such are transferable or assignable;
- (h) any intellectual property rights;
- (i) (without limitation) all the ISO freight containers owned or used by the EfW Operator;
- (j) the Residual Value Agreement; and
- (k) the EfW Waste Supply Agreement,

save that, subject to the Ringfencing Terms, the Handback Assets shall not include the CEL Shares, the CSRS Shares, any part of the CEL Ongoing Business or any part of the CSRS Ongoing Business;

"Hazardous Household Waste" means Authority Waste which is household waste as defined by section 75(5) of the EPA and also hazardous waste as defined in Regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005;

"Hazardous Substances" means any hazardous, toxic, radioactive, noxious, corrosive, dangerous, flammable, oxidising or caustic substances, materials, waste or pollutants or effluents, contaminants, oils, solvents, petroleum and petroleum products whether in solid, liquid or gaseous form and whether alone or in combination with any other substance;

"Health and Safety File" has the meaning set out in the CDM Regulations 2015;

"Health and Safety Obligations" has the meaning set out in clause 24.1;

"Highest Compliant Tender Price" means the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, then the provisions of paragraph 19.3.16 of Schedule 15 shall apply;

"Historic Pollution" means pollution due to a release or the presence before the Services Commencement Date into or in the Environment or otherwise at, on, in or under any Authority Site of a substance which is capable of causing harm to or pollution of the Environment where that release or presence was made from or at any of the Authority Sites or any site adjacent to any of the Authority Sites prior to the Services Commencement Date;

"Historic Utilisation" means:

- (a) in relation to a Shared Usage Asset, the utilisation between the Services Commencement Date and the date upon which material expenditure in relation to the relevant Authority Legislative Change Risk is first reasonably incurred by the Contractor or in the absence of such expenditure such date as shall be agreed in writing by the Parties acting reasonably; and
- (b) in relation to a Shared Usage Cost, the aggregate value of such cost in the period between the Services Commencement Date and the date upon which the relevant Shared Usage Cost is altered by the Authority Legislative Change Risk;

"**Holdco**" means the holder(s) of the legal and beneficial interest in the entire issued share capital of the EfW Operator from time to time, as at the Third Amended Agreement Date being Cory Riverside (Holdings) Limited, a company incorporated in England and Wales (registered number 06505376) whose registered office is at 2 Coldbath Square, London EC1R 5HL;

"**Holdco Parent**" means the holder(s) of the legal and beneficial interest in the entire issued share capital of Holdco from time to time, as at the Third Amended Agreement Date being Cory Riverside Energy Holdings Limited, a company incorporated in England and Wales (registered number 10659741) whose registered office is at 2 Coldbath Square, London EC1R 5HL;

"**Holding Company**" has the meaning given to it in section 1159 of the Companies Act 2006;

"**Indemnifier**" has the meaning set out in clause 36.1;

"**Index**" means:

- (a) in relation to the Contract Rates, the composite indices set out in Appendices 1 and 2 of the Payment Mechanism; and
- (b) in relation to all other amounts, the Retail Prices Index (all items) excluding mortgage payments as published by the Office for National Statistics,

or (in each case) any replacement index or indices (as the case may be) or, if a replacement index or indices does not exist, such index or indices as may be agreed between the Parties, such agreement not to be unreasonably withheld or delayed;

"**Indexation**" means the application of the Index to monetary amounts in accordance with clause 30;

"**Indexation Year_n**" has the meaning set out in clause 30.1;

"**Indexed**" means adjusted annually in accordance with the provisions of clause 30;

"**Indirect Losses**" means (to the extent reasonably and properly incurred) loss of use, loss of production, loss of business opportunity, and any other consequential or indirect loss of any nature. In each case such Indirect Losses shall be demonstrated to

the reasonable satisfaction of the paying Party and shall be subject to the obligation of the claiming Party to mitigate pursuant to clause 37;

"**Inert Waste**" has the meaning set out in Quality Specification 4 of Part Five of the ASS Method Statement;

"**Information**" has the meaning given under section 84 of the Freedom of Information Act 2000;

"**Inherent Risk Claim**" means an action, claim or demand by a third party (other than an Excluded Third Party Claim) in relation to the Authority Site Services which arises solely from a risk inherent to:

- (a) the location of an Authority Site; or
- (b) any waste transfer, material reclamation and/or civic amenity function and any activities ancillary to those functions; or
- (c) the hours within which such Authority Site Services are required to be undertaken under the Output Specification,

and which would have arisen under any method by which such function was performed or such activity was undertaken **PROVIDED THAT** a risk shall not be treated as inherent if a method which would have required:

- (i) additional Capital Expenditure of less than [REDACTED], ignoring for these purposes any Capital Expenditure required for the Authority Site Works; or
- (ii) additional operational expenditure of less than [REDACTED] per annum, ignoring for these purposes any operational expenditure required for performing the Authority Site Services; or
- (iii) a change to the nature of the Services which is not a fundamental change,

would have avoided the risk arising and **PROVIDED FURTHER THAT** no claim shall be capable of being an Inherent Risk Claim where the claim arises out of a breach by the Contractor of its obligations under any Authority Project Document;

"**Initial Financing Agreements**" means the Financing Agreements as at the Third Amended Agreement Date;

"Insurance Undertaking" has the meaning given in the rules from time to time of the Financial Services Authority;

"Intellectual Property Rights" means any and all patents, trade marks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

"Intercreditor Agreement" means the intercreditor agreement dated on or about the Third Amended Agreement Date between (amongst others) the Contract, the EfW Operator, the Common Security Trustee and the RRRL Security Trustee;

"Interim New Mucking Period" means any period during which the Mucking Landfill Site has a valid and operational planning permission and PPC Permit, but expiring in any event on the earlier of:

- (a) 23:59 hours on the day immediately preceding the EfW Commissioning Date; and
- (b) the Termination Date;

"Interim Non-Mucking Period" means any period after 00.00 on 1 January 2008 during which the Mucking Landfill Site does not have a valid and operational planning permission or PPC Permit but expiring in any event on the earlier of:

- (a) 23:59 hours on the day immediately preceding the EfW Commissioning Date; and
- (b) the Termination Date;

but (for the purposes of the Payment Mechanism only), there shall not be an Interim Non-Mucking Period for the duration of the EfW Interim Delay Period;

"Interim Period" means the period commencing at 00:00 hours on the Services Commencement Date and expiring on the earlier of:

- (a) 23:59 hours on the day immediately preceding the expiry of Planning Permission APP/M1595/A/00/1035822 (granted by the Secretary of State on

appeal of 20 September 2001) in relation to the Mucking Landfill Site. For the avoidance of doubt this Planning Permission expires on 31 December 2007;

- (b) 23:59 hours on the day immediately preceding the EfW Commissioning Date; and
- (c) the Termination Date;

"Interim Services" means the Authority Site Services to be provided by the Contractor during the Interim Period, the Interim New Mucking Period, the Interim Non-Mucking Period or the EfW Interim Delay Period (as applicable), whether or not such periods occur prior to or during the Wind Down Period;

"Invoice" means an invoice in such form as the Parties shall agree (acting reasonably) from time to time;

"ISO Containers" means the first eight hundred and forty (840) ISO freight containers made available by the Contractor for the purposes of providing the Services;

"Judicial Review Period" means the expiry of the later of:

- (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; and
- (b) where such a challenge is initiated within the period in (a) the period up to and including the final determination or withdrawal of that challenge plus one week;

"Junior Debt" means all amounts outstanding at the EfW Termination Date under the Subordinated Finance Documents other than the New Subordinated Debt Agreement, and which, as at the Third Amended Agreement Date, equals zero;

"Landfill Agreement" means any agreement between the Contractor and/or the EfW Operator and the owner or operator of any landfill site at which Authority Waste or By-Products are to be deposited;

"**Landfill Operator**" means the Contractor's or EFW Operator's (as appropriate) counterparty under a Landfill Agreement;

"**Law**" means all Legislation and any applicable judgement of a relevant court of law which sets a binding precedent;

"**Lease**" means each of the Property Agreements;

"**Leased Asset**" means any asset which is leased by the Contractor or the ASS Operator from a third party from time to time by way of a Finance Lease for the carrying out of the Authority Site Works or the provision of the Authority On-Site Services;

"**Legislation**" means:

- (a) any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (b) any exercise of the Royal Prerogative; and
- (c) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"**Letter of Credit Issuing Bank**" means a London branch of Barclays Bank plc or such other bank or financial institution as may be notified to the Authority by the Contractor in writing and approved by the Authority **PROVIDED THAT** the Authority shall not be entitled to refuse to approve any bank or financial institution which is a Zone A OECD lender with a credit rating in respect of its long term debt securities of not less than Aa- (issued by Fitch);

"**Liaison Committee**" has the meaning set out in clause 53.3;

"**Liaison Committee Report**" has the meaning set out in clause 53.5.5;

"**Liaison Procedure**" means the liaison procedure set out in clause 53;

"**Lighterage Business**" means the transportation of Waste and physical products derived from Waste on the River Thames by the EFW Operator or its Subsidiaries, including without limitation the River Transportation Services;

"**Likely Transferring Contractor Employees**" has the meaning set out in clause 25.16.1;

"**Liquidation Rate**" has the meaning set out in clause 7.2.2;

"**Liquid Market**" means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute EfW Contractor) in the market for the RRRL Undertaking or similar businesses 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 the EfW Project and to which the EfW Contract may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

"**Load**" means the tonnage of Authority Waste delivered to the Contractor by the Constituent Council in each individual vehicle delivery at any Delivery Point (whether in a WRWA Principal Collection Vehicle or other Constituent Council Party vehicle);

"**LPFA Fund**" means that fund within the Local Government Pension Scheme which is administered by the London Pension Fund Authority;

"**Major Default**" has the meaning given in clause 38.23;

"**Major Default Notice**" means a Default Notice issued in respect of a Major Default;

"**Major Repeat Default**" has the meaning given in clause 38.25;

"**Major Repeat Default Notice**" means a notice issued pursuant to clause 38.25 or clause 38.28 in the form set out in Part 2 of Schedule 9;

"**Material Damage Insurance**" means the insurance policy requirements set out in paragraph 1 of Part 1 of Schedule 7 relating to material damage all risks insurance;

"**McGovern Transfer Station**" means the transfer station located at Brent Terrace, Brent (Ordnance Survey map reference: TQ233872);

"**Method Statement**" means (taken together):

- (a) the service delivery plans set out in Appendices B(1) and B(2) describing how the Contractor shall comply with the requirements of the Output Specification, of which plan Parts Three, Four, Five and Six only are contractually binding on the Contractor; and
- (b) the Waste Direction Protocol;

"**Minimum Insurance Requirement Risk**" means any risk required to be insured against by the Contractor in relation to the ASS Contract in accordance with clause 35 and paragraphs 1 (Material Damage Insurance) and 2 (Public Liability Insurance) of Part 1 of Schedule 7;

"**Minor Default**" has the meaning given in clause 38.15;

"**Minor Default Notice**" means a Default Notice issued in respect of a Minor Default;

"**Minor Repeat Default**" has the meaning given in clause 38.17;

"**Minor Repeat Default Notice**" means a notice issued pursuant to clause 38.17 or clause 38.20 in the form set out in Part 2 of Schedule 9;

"**Misdelivered**" means a failure by a Constituent Council, acting in its capacity as a waste collection authority under the EPA, to comply with its statutory obligations in connection with the Power of Direction **PROVIDED THAT** save for the purposes of the definition of Relevant Relief, Authority Waste shall not be deemed to have been Misdelivered if the Authority Waste is delivered to an Authority Site, an Agreed Site or any other Site agreed pursuant to Performance Schedule 20 to Part Three of the ASS Method Statement;

"**Misdirected**" means not Directed by the Authority to the Contractor in breach of clause 13.1.1;

"**Mixed Cans**" means steel and/or aluminium cans and/or aluminium foil in mixed loads which meet the requirements of Quality Specification 6 in Part Five of the ASS Method Statement;

"**Mixed Glass**" means glass of mixed colours which meets the requirements of Quality Specification 2 in Part Five of the ASS Method Statement;

"Mixed Paper" means mixed paper and/or cardboard which meet the requirements of Quality Specification 3 in Part Five of the ASS Method Statement;

"MRF" means the materials recovery facility to be located at the Smugglers Way Site;

"MRF Contract" means any contract or arrangement pursuant to which payments are made which form part of the MRF Contract Price;

"MRF Contract Price" means (without double-counting):

- (a) the Fee (as defined in the Project Manager's Appointment); and
- (b) the cost of production of the equipment supply engineering drawings to be used in the civil tender process; and
- (c) the cost of the noise and electricity consultant to be used in the civil tender process; and
- (d) the contract price under the Building Contracts for the MRF Works and the temporary Works to be undertaken at the Feathers Wharf Site in connection with the MRF Works, to include the cost of dealing with Historic Pollution within and in the immediate vicinity of the footprint of the MRF Works agreed to be as follows:

Civils Works Contract: [REDACTED] (not Indexed);

Plant Supply and Installation Contract: [REDACTED] (indexed as set out below);

The Plant Supply and Installation Contract price will be indexed if the works pursuant to the Plant Supply and Installation Contract have not begun within 3 months of the programmed date for completion of the Civils Works Contract. In such circumstances, the Contract Price Escalator in the Plant Supply and Installation Contract is based on the Monthly Bulletin of Indices published by the DTI;

- (e) the cost of utility connection and the costs arising as a result of any delay to the construction timetable caused by late utility connection, save to the extent that costs arising as a direct result of any such

delay are solely due to a delay caused by the act or omission of any Contractor Party (which for these purposes shall exclude the utility company undertaking the connection works);

- (f) for the avoidance of doubt, the acquisition cost of the mobile plant detailed in the "MRF - Plant and Equipment" section of Appendix 6 to Part 6 of the ASS Method Statement;
- (g) the cost associated with meeting the requirements of conditions 2, 3, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 18, 19 and 20 of the MRF Planning Permission (but not including any ongoing associated operational costs);
- (h) the cost of additional site investigation works as specified in the letter from Sue Jones of Cory Environmental to the Authority of 15 June 2007 attached in Appendix N and the confirmation letter from the Authority to the Contractor of 20 June 2007 attached as Appendix O, to the extent not otherwise contained within this definition;
- (i) legal fees incurred by the Contractor in connection with the MRF Works including in particular, fees incurred in connection with the drafting and negotiation of the Civil Works Contract, Plant Supply and Installation Contract, the Project Manager's Appointment, any required collateral warranties and associated documentation (save for the costs associated with the preparation and negotiation of this Deed of Variation);
- (j) other ancillary or related costs incurred directly in relation to the MRF Works, subject to the Contractor obtaining the Authority's prior written approval to such costs (not to be unreasonably withheld or delayed) and any other claims made pursuant to any Building Contract in respect of the MRF;
- (k) any other claims made pursuant to any Building Contract in respect of the MRF, save to the extent such claims are due to the breach by the Contractor of the terms of this Agreement or any such Building Contract in respect of the MRF Works or due to the breach by the

Authority of the terms of the Agreement or any Property Agreement (which claims shall be borne by the Party in breach); and

- (l) all costs incurred in effecting and maintaining the MRF Works Insurances,

provided that in relation to any variations under the Building Contracts for the MRF Works, any increases to the contract price referred to in paragraph (d) and any related additional costs or expenses incurred or claims referred to in paragraph (k) above shall not be taken into account in calculating the MRF Contract Price unless either:

- (i) the Authority has given its prior written approval to such variation or claim settlement (not to be unreasonably withheld or delayed, for the purposes of which "reasonableness" shall be determined solely by reference to what would be reasonable in the context of the relevant Building Contract); or
- (ii) the value of any individual variation or claim settlement does not exceed [REDACTED] and, in aggregate with other previous variations and claim settlements, the cumulative value of all variations and claim settlements does not exceed [REDACTED];

"MRF Contract Price Authority Cap" means [REDACTED] plus [REDACTED] of all costs incurred in cleaning up any Historic Pollution which arises during the course of, or as a result of, the MRF Works;

"MRF Contract Price Authority Percentage for the Additional MRF Works" has the meaning set out in clause 6.2.2;

"MRF Contract Price Authority Percentage for the MRF Works" has the meaning set out in clause 6.2.2;

"MRF Contract Price Contractor Percentage" has the meaning set out in clause 6.2.1;

"MRF Contract Price Excluded Elements" means the following:

- (a) capital costs associated with the provision of services to receive, process and/or dispose of commercial waste at the Feathers Wharf Site for the duration of the MRF Works provided that all capital costs incurred in relation

to the development of bulk bays within the site described in Appendix Q (Feathers Wharf Bulk Bays) shall be deemed not to be MRF Contract Price Excluded Elements or covered by this paragraph (a);

- (b) costs incurred by the Contractor in carrying out the retendering of the Plant Supply and Installation Contract;
- (c) all costs associated with making any application for the waste management licence to operate the MRF and the temporary Feathers Wharf Transfer Station; and
- (d) the capital cost of carrying out highways work, as required to comply with the MRF Planning Agreement, up to a limit of [REDACTED];

"MRF Contract Price Residual Elements" means the MRF Contract Price minus the cost of the MRF Contract Price Excluded Elements and the MRF Contract Price Specialist Elements;

"MRF Contract Price Specialist Elements" means the following:

- (a) the costs incurred in relation to purchasing the plastic sortation equipment; and
- (b) any other costs which the parties expressly agree in writing to treat as MRF Contract Price Specialist Elements;

"MRF Defect" has the meaning set out in clause 16A.1;

"MRF Defect Relief Period" means the period commencing on the date of Completion of the MRF and ending upon the date falling two (2) years from such date;

"MRF Outline Design" means the outline design specification for the MRF set out in Appendix 3 of Part Six of the ASS Method Statement;

"MRF Planning Agreement" means the Planning Agreement dated 31 August 2006 between The Mayor and Burgesses of London Borough of Wandsworth (1), Cory Environmental Limited (2), and Western Riverside Waste Authority (3) relating to the Smugglers Way Site;

"**MRF Planning Permission**" means the planning permission dated 31 August 2006 (application number 2003/2993) relating to the Smugglers Way Site;

"**MRF Rejects**" means the Authority Waste identified as such pursuant to Performance Requirement 4 of Performance Schedule 24 in the ASS Method Statement;

"**MRF Residuals**" has the meaning given in paragraph 2 of Appendix 7 to Part Six of the ASS Method Statement;

"**MRF Transfer Value Cap**" means an amount equal to the MRF Contract Price Contractor Percentage;

"**MRF Transfer Value Original Cap**" means [REDACTED] (Indexed from 1 September 2001 to the date of Completion of the MRF);

"**MRF Works**" means the Works to be undertaken or procured by the Contractor in accordance with Appendices 3 and 6 of Part Six of the ASS Method Statement;

"**MRF Works Insurances**" means the insurance policies set out in Appendix P;

"**Mucking Landfill Site**" means the landfill located at Thurrock, Kent (Ordnance Survey map reference TQ69008333);

"**Mucking Notice**" has the meaning set out in clause 11.3.3;

"**Mucking Response Notice**" has the meaning set out in clause 11.3.3

"**Mucking Waste**" means General Waste of types which would have been delivered to the Mucking Landfill Site but for its closure;

"**NAV**" means the net asset value (calculated in accordance with UK GAAP);

"**NAV Review Date**" has the meaning set out in clause 2.13;

"**Necessary Consents**" means all approvals, certificates, authorisations, permissions, building regulation approvals, licences, permits, regulations and consents necessary from time to time for the performance of any of the Contractor's obligations under the ASS Contract;

"**Net Average Price**" means the price per tonne of the Contractor's net revenue from the sale of all dry recyclables resulting from the MRF process during the relevant Contract Month, as determined in accordance with the methodology referred to in paragraph 14.1A of the Payment Mechanism;

"**Net Present Value**" 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;

"**Net Saving**" means in relation to a proposed Variation, the Saving minus the Cost to the extent that the Saving is larger than the Cost;

"**Neutral Position With Profit**" means, in relation to a Party suffering an event or circumstance, the overall financial position that such Party would have been in had the event not occurred or the circumstance not arisen (as the case may be) **PROVIDED THAT** to the extent that:

- (a) works and/or services (other than administrative services) are undertaken by the Contractor itself and/or any Affiliate of the Contractor, the Contractor shall be entitled to charge its costs plus a fair return on such works and/or services, bearing in mind the reasonable cost and risk associated with such works and/or services **PROVIDED THAT** where works and/or services are undertaken by an Affiliate of the Contractor, the Contractor shall pass-through such costs and fair return without charging any additional return beyond that received by its Affiliate; and/or
- (b) works and/or services are undertaken by a party other than one referred to in (a) above, the Contractor shall be entitled to recover (without double-counting):
 - (i) its reasonable costs and expenses (including those of its professional advisers) incurred in developing and implementing a process for tendering any work required to be carried out by any sub-contractor or agent;
 - (ii) its reasonable costs and expenses (including those of its professional advisers) in drafting, negotiating and entering into any contract pursuant to the development and implementation of the tender process referred to in sub-clause (i) above;

- (iii) the price payable by the Contractor to any sub-contractor and/or agent appointed by the Contractor to carry out the requisite works and/or provide the requisite services; and
- (iv) its reasonable costs plus a fair return in respect of it managing any sub-contractor and/or agent appointed to carry out the requisite works and/or provide the requisite services,

in both cases, such costs and fair return to be fully disclosed to the Authority together with such supporting evidence as the Authority may reasonably require;

"Neutral Position Without Profit" means, in relation to a Party suffering an event or circumstance, the overall financial position that such Party would have been in had the event not occurred or the circumstance not arisen (as the case may be)

PROVIDED THAT to the extent that:

- (a) works and/or services are undertaken by the Contractor itself and/or by any Affiliate of the Contractor the Contractor shall be entitled to recover only the cost to the Contractor and/or the Affiliate without any profit margin in respect of such works and/or services, including, without limitation, the cost to the Contractor and/or any Affiliate of providing any capital for the purposes of such works and/or services; and/or
- (b) works and/or services are undertaken by a party other than one referred to in (a) above, the Contractor shall be entitled to recover (without double-counting):
 - (i) its reasonable costs and expenses (including those of its professional advisers) incurred in developing and implementing a process for tendering any work required to be carried out by any sub-contractor or agent;
 - (ii) its reasonable costs and expenses (including those of its professional advisers) in drafting, negotiating and entering into any contract pursuant to the development and implementation of the tender process referred to in sub-clause (i) above;

- (iii) the price payable by the Contractor to any sub-contractor and/or agent appointed by the Contractor to carry out the requisite works and/or provide the requisite services; and
- (iv) on a non-profit basis, its reasonable costs in respect of it managing any sub-contractor and/or agent appointed to carry out the requisite works and/or provide the requisite services,

in both cases, such costs to be fully disclosed to the Authority together with such supporting evidence as the Authority may reasonably require;

"New ASS Contract" means any agreement to replace the ASS Contract upon an early termination of the ASS Contract;

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

- (a) if the EfW Services are terminated prior to EfW Completion, then the EfW Target Completion Date shall be extended by a period to allow a New EfW Contractor to achieve EfW Completion;
- (b) any accrued EfW Default Points shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled;
- (c) the term of such agreement shall be equal to the term from the EfW Termination Date until the Expiry Date; and
- (d) any other amendments which do not adversely affect the EfW Operator;

"New EfW Contractor" means the person who has entered or who will enter into the New EfW Contract with the Authority;

"New EfW Services Employee" means an employee who is employed by the Contractor (or any EfW Subcontractor) in the provision of the EfW Project after the First Amended Agreement Date, as applicable;

"New Scheme" has the meaning set out in clause 26.1.2;

"**New Subordinated Debt**" means the [REDACTED] loan between Holdco and the EfW Operator forming part of the Qualifying Refinancing occurring on and around the Second Amended Agreement Date (together with any interest accruing thereon and any direct or indirect refinance of, or other debt or security which is derived from or is a replacement for, the New Subordinated Debt from time to time);

"**New Subordinated Debt Agreement**" means the [REDACTED] loan agreement between Holdco and the EfW Operator dated on or around the Second Amended Agreement Date;

"**Nominated Additional EfW Annual Reserved Capacity**" has the meaning set out in clause 7.2;

"**Non-CEL Site**" means a site not owned and/or operated by the Contractor or any Affiliate of the Contractor;

"**Non-Rectifiable Default**" means a Performance Failure which is deemed incapable of rectification as identified in Parts Three and/or Four of the ASS Method Statement;

"**Notice Date**" means the later of the EfW Termination Date and (if applicable) the date that the EfW Adjusted Estimated Fair Value of the Tendered Assets is agreed between the Parties pursuant to paragraph 19.10 (No Retendering Procedure) of Schedule 15;

"**Notice of Substitution**" has the meaning set out in clause 48.10.5;

"**Notifiable Financings**" means any Refinancing described in paragraph (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 EfW Operator's or any Associated Company's ability to carry out any such arrangement;

"**Objection Default Notice**" has the meaning set out in clause 13A.4;

"**Objection Undertaking**" means the undertaking given by the Authority pursuant to clause 13A.1;

"**Objection Undertaking Commencement Date**" means 1 April 2013;

"**Objection Undertaking Default**" has the meaning set out in clause 13A.3;

"Objection Undertaking Default Remedy" means procuring that the Constituent Council(s) listed in the Objection Default Notice resumes deliveries of Co-Mingled Recyclables to the Contractor in accordance with this Agreement;

"Objection Undertaking Default Remedy Period" means five (5) Working Days from the date of service of the Objection Default Notice on the Authority pursuant to clause 13A.4;

"Objection Undertaking Period" means the period from (and including) the Objection Undertaking Commencement Date and ending on (and including) the Objection Undertaking Termination Date;

"Objection Undertaking Termination Date" means the earlier to occur of:

- (a) the date specified in a valid Objection Undertaking Termination Notice;
- (b) the Termination Date; and
- (c) the Expiry Date;

"Objection Undertaking Termination Notice" means a notice served by either Party pursuant to clause 13A.8;

"Off-Site Interim Services" means those Interim Services which are not performed within, or adjacent to, the boundaries of any or all of the Authority Sites, the Feathers Wharf Site and/or the Constituent Council CA Sites;

"Old Scheme" has the meaning set out in clause 26.6;

"Original Senior Commitment" means the amount committed under the Senior Financing Agreements as at the Third Amended Agreement Date;

"Other Authority Waste" means Tyre Waste, Inert Waste, Clinical Waste, Bulk Recyclables, Co-mingled Recyclables, Green Waste, Asbestos Waste, Detritus Waste, Hazardous Household Waste and Abandoned Vehicles;

"Output Specification" means the Authority's output specification set out in Appendix A;

"Overriding Relief Event" means (as applicable) a relief event identified in:

- (a) Performance Schedule 1 to Part Three of the ASS Method Statement, the application of which is set out in the fourth column of the table in Performance Schedule 1; or
- (b) Performance Schedule 1 of the EfW Method Statement, the application of which is set out in the fourth column of the table in Performance Schedule 1;

"**Outstanding Principal**" means the principal amount outstanding at the EfW Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Financing Agreements;

"**Party**" means one of the parties to this Agreement and the "**Parties**" means both the parties to this Agreement;

"**Pass-Through Terms**" means on an open book basis with no profit margin charged by the Contractor or any Affiliate of the Contractor;

"**Payment Mechanism**" means the payment mechanism set out in Schedule 8;

"**Pensbury Place Transfer Station**" means the transfer station located at Pensbury (Ordnance Survey map reference TQ29307630);

"**Pension Employee**" means an Authority Transferring Employee who is an active member of the LPFA Fund immediately prior to the Services Commencement Date;

"**Performance Failure**" means (as applicable):

- (a) a failure to perform or an omission in performing a part of the Services, as defined in the third column (entitled "**Performance Failure**") of the table at Performance Schedules 2-28 inclusive to Part Three of the ASS Method Statement or Performance Schedules 2-6 inclusive to the EfW Method Statement; and
- (b) a failure to carry out or an omission in carrying out the Works, as defined in the third column (entitled "**Performance Failure**") of the table at Performance Schedules 1-6 inclusive to Part Four of the ASS Method Statement;

"**Performance Schedule**" means any of:

- (a) Schedules 1-28 inclusive to Part Three and Schedules 1-6 inclusive of Part Four of the ASS Method Statement; and
- (b) Schedules 1-6 of the EfW Method Statement;

"Permitted Borrowing" means, without double counting, any:

- (a) advance to the EfW Operator under the Senior Financing Agreements (disregarding any amendments to the Senior Financing Agreements that have not been approved by the Authority);
- (b) Additional Permitted Borrowing;
- (c) interest and, in respect of the Senior Financing Agreements only (as entered into at the Third Amended Agreement Date, prior to any subsequent amendment), other amounts accrued or payable under the terms of such Senior Financing Agreements,

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

"Permitted Encumbrances" means:

- (a) any lien arising by operation of law in the ordinary course of trading and not as a result of default or omission by the Contractor or EfW Operator;
- (b) Encumbrances arising under the Security Documents;
- (c) any Encumbrance which comprises a retention of title on normal arm's length commercial terms imposed by a supplier of materials and equipment to the Contractor or EfW Operator in the ordinary course of trading and not as a result of default or omission by the Contractor or EfW Operator;
- (d) any Encumbrance on the barges existing on the First Amended Agreement Date by VTB Bank Europe; and
- (e) Encumbrances with the prior written approval of the Authority.

"Permitted Waste" means such Waste as the EfW Operator is permitted to process pursuant to PPC Permit BK0825UI dated 8 September 2003, as amended by Vartiaton Notice Number RP3432UT issued on 4 October 2007;

"Personal Data" means personal data (as defined in the Data Protection Act) which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;

"Planning Agreement" means an agreement pursuant to section 106 of the Town and Country Planning Act 1990, sections 38 and/or 278 of the Highways Act 1980 and/or section 111 of the Local Government Act 1972;

"Planning Permission" means:

- (a) any planning permission including any relevant Planning Agreement necessary to carry out the relevant Works in accordance with any applicable Law and the requirements of any relevant planning authority; and/or
- (b) (in respect of the EfW Facility only), the Electricity Act Consent;

"Planning Restrictions" has the meaning set out in clause 14.1C;

"Plant Supply and Installation Contract" means the contract to be entered into between the Contractor and the Plant Supply Contractor for the supply and installation of the main plant and equipment in relation to the development of the MRF;

"Plant Supply Contractor" means such party appointed by the Contractor under the terms of the Plant Supply and Installation Contract with the consent of the Authority pursuant to clause 6.3;

"Power of Direction" means the power of the Authority (currently pursuant to section 51(4)(a) of the EPA) to give directions to a Constituent Council as to whom and the places at which General Waste should be delivered;

"Power of Objection" means the power of the Authority pursuant to s48(4) of the EPA to object to any Constituent Council Recycling Scheme;

"PPC Permit" means a pollution prevention and control permit issued pursuant to the Pollution Prevention and Control (England and Wales) Regulations 2000;

"PPP" means the Public Private Partnership;

"**PPP Contractor**" means a person (including its subcontractor(s)) that has contracted with the Government, a local authority or other public or statutory body to provide services involving the use (whether by the person or its subcontractor(s)) of limited recourse or non-recourse finance to support the provision of the relevant service and/or associated assets;

"**Pre-Refinancing Equity IRR**" means the nominal, post tax blended equity internal rate of return calculated using the nominal cashflows set out in Appendix W for the period April 2008 to March 2013 and the post tax distributions projected by the Base Case as updated to reflect any Relevant Events occurring after the Second Amended Agreement Date (but not the historical performance of the EfW Project nor any changes to the assumptions within the Base Case regarding the future performance of the EfW Project) immediately prior to the Refinancing as set out in rows 95, 102, 103 and 105 of the sheet "FinStatementsQ" of the Base Case;

"**Principal Contractor**" means the person (who may change from time to time) appointed by the Contractor to undertake the role of "principal contractor" pursuant to the CDM Regulations 2015;

"**Principal Designer**" means the person (who may change from time to time) appointed by the Contractor to undertake the role of "principal designer" pursuant to the CDM Regulations 2015;

"**Principal Sub-Contract**" means each Building Contract, Authority Site Sub-Contract, Professional Appointment and any other Sub-Contract with an annual value in excess of [REDACTED], but excluding the MRF Contracts;

"**Principal Sub-Contractor**" means each counterparty to a Principal Sub-Contract;

"**Process**" has the meaning set out in clause 48.10;

"**Professional Appointment**" means each appointment of a member of the Professional Team, including without limitation the Project Manager's Appointment;

"**Professional Team**" means any project managers, architects, quantity surveyors, structural engineers, mechanical and electrical engineers and any other consultant or adviser employed or engaged by the Contractor or the ASS Operator in the preparation for or in connection with the carrying out of the Authority Site Works, including without limitation the Project Manager;

"Prohibited Act" means:

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

"Prohibited Party" means:

- (a) the Authority;
- (b) any other public body;
- (c) any person in which the Authority has, or immediately prior to the date of this Contract had, a material shareholding; or

(d) any person employed by or on behalf of any person referred to in paragraphs (a) to (c) above;

"Project" means the provision of the Works, the Services and the Residual Value Rights;

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

"Project Document" means this Agreement, the Property Agreements, the Collateral Warranties, the Sub-Contracts and the EfW Project Documents;

"Project Manager" means R.P.S. Planning and Development Limited, or such other party appointed by the Contractor under the terms of the Project Manager's Appointment with the consent of the Authority pursuant to clause 6.3;

"Project Manager's Appointment" means the contract dated 14 May 2007 between the Contractor and the Project Manager in relation to the development of the MRF;

"Property Agreements" means:

- (a) the Smugglers Way Lease;
- (b) the Cringle Dock Lease;
- (c) the Feathers Wharf Lease;
- (d) the Belvedere Lease; and
- (e) the Belvedere Sub-Lease;

"Proposed Mucking Deferment Date" has the meaning set out in clause 11.3.3;

"Protestor" means any person not entitled to be upon the Sites or adjacent areas and who is engaged in a protest action against the construction and/or operation of all or any part of the Works or against the construction or operation of materials recovery facilities, energy from waste facilities, transfer stations or landfill sites in general;

"Provision" has the meaning set out in clause 66.1;

"Provision Beneficiary" has the meaning set out in clause 66.2;

"Public Interest Disclosure Code" means the code set out in Appendix J to be circulated by the Contractor in compliance with its obligations under clause 25.20;

"Public Liability Insurance" means the insurance policy requirements set out in paragraph 2 of Part 1 of Schedule 7 relating to public liability insurance;

"Qualification Criteria" means the criteria that the Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with the procurement regulations) shall be:

- (a) the New EfW Contract and Sale and Purchase Agreement terms;
- (b) tenderers should have the financial ability to pay the capital sum tendered for the New EfW Contract and the RRRL Undertaking and the financial ability to deliver the EfW Works and/or the EfW Services (taken as a whole), as appropriate, for the price tendered;
- (c) the tenderers may only bid on the basis of a single capital payment to be made on the date of the New EfW Contract and the Sale and Purchase Agreement;
- (d) the tenderer (either itself or through its proposed EfW Subcontractors) is experienced in providing the EfW Works and/or EfW Services (taken as a whole), as appropriate, or similar services;
- (e) the technical solution proposed by the tenderers is capable of delivery and the tenderer (either itself or through its proposed subcontractors) is technically capable of delivery of the EfW Works and/or EfW Services (taken as a whole), as appropriate; and
- (f) any other tender criteria agreed by the Authority and the Contractor;

"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 2001/12/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 years) assets of at least £10 million (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 years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
 - (vi) an EEA or Swiss Insurance Undertaking;
 - (vii) a Regulated Collective Investment Scheme;
 - (viii) any Qualifying Institution; or
 - (ix) any other institution in respect of which the prior written consent of the Authority 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 EFW Operator or Holdco, whether by way of security or otherwise, in favour of:
- (i) any other Senior Lender;
 - (ii) any institution specified in paragraphs (b)(ii) to (vii) above;

- (iii) any Qualifying Institution; or
- (iv) any other institution in respect of which the prior written consent of the Authority has been given;

"Qualifying Facility C Replacement Facility" means a (fixed or revolving) facility which:

- (a) is in a maximum amount not exceeding [REDACTED];
- (b) has a term expiring not later than [REDACTED]; and
- (c) Is otherwise compliant with the assumptions relating to Facility C in the 2018 Financial Model;

"Qualifying Institution" means a Qualifying Lender as defined in the Facility Agreement;

"Qualifying Refinancing" means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

"RPS" means R.P.S. Planning and Development Limited;

"Rectifiable Contractor Default" has the meaning set out in clause 41.4;

"Rectifiable Provisional Default" means a Performance Failure which is deemed capable of rectification as identified in Parts Three and/or Four of the ASS Method Statement;

"Rectifiable Provisional Default Notice" means a notice issued pursuant to clause 38.1 in the form set out in Part 1 of Schedule 9;

"Rectification Costs" means an amount equal to the reasonable and proper costs incurred by the Authority and/or any Constituent Council in a particular month or part of a month in ensuring that the EfW Services are available, or in procuring services equivalent to any EfW Services required to be provided under the terms of the EfW Contract, **PROVIDED THAT** the costs which any Constituent Council may incur for the purposes of this definition shall be limited to those recoverable under the relevant Collateral Warranty or which would have been recoverable under such Collateral Warranty had the ASS Contract not terminated;

"Rectification Period" has the meaning given in clause 38.1.5;

"Rectification Programme" has the meaning given to it in paragraph 11.2.2.1 of Schedule 15;

"Refinancing" means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement or the New Subordinated Debt Agreement or any replacement of Facility C which is a Qualifying Facility C Replacement Facility);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement or the New Subordinated Debt Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Agreements (other than any Subordinated Financing Agreements or the New Subordinated Debt Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than any Subordinated Financing Agreements or the New Subordinated Debt Agreement) or the contracts, revenues or assets of the EfW Operator whether by way of security or otherwise; or
- (d) any other arrangement put in place by the EfW Operator or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting the EfW Operator's ability to carry out any of (a)-(c) above,

but shall not include any prepayment of the Senior Debt with the proceeds of sale of the Belvedere Surplus Land;

"Refinancing Gain" means collectively the Stage 1 Refinancing Gain, Stage 2 Refinancing Gain, Stage 3 Refinancing Gain, Stage 4 Refinancing Gain and Stage 5 Refinancing Gain;

"Regulated Collective investment Scheme" has the meaning given in the rules from time to time of the Financial Services Authority;

"Reinstatement Works" has the meaning set out in clause 35.16;

"Relevant Assumption" means the assumptions that the sale of the EfW Operator is on the basis that there is no default by the Authority, that the EfW Operator has access to and use of the Authority Transfer Stations for the transfer of General Waste and Third Party Waste to the EfW Facility until the Expiry Date, that the EfW Operator has determined the Belvedere Lease without penalty, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of the EfW Operator (including without limitation the existence of all EfW Necessary Consents, the existing contractual relationships and EfW Waste Supply Agreement, the operating performance of the EfW Facility and the energy markets) and the EfW Project is taken into account;

"Relevant Authority" means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person, of the government of the United Kingdom or of the European Union;

"Relevant Construction Date" means such of the Target Completion Dates as are affected by the occurrence of a Compensation Event, Relief Event or Force Majeure Event (as appropriate);

"Relevant Contractor Default" has the meaning set out in clause 42.1;

"Relevant Contractor Licensee" has the meaning set out in clause 39.7;

"Relevant Event" means an EfW Authority Change, EfW Qualifying Change in Law (but only to the extent it affects the EfW Operator), EfW Compensation Event or other matter as a result of which there may be an adjustment to the EfW General Waste Rate, in accordance with paragraph 29 (Financial Adjustment) of Schedule 15;

"Relevant Incident" has the meaning set out in clause 35.16;

"Relevant Payment" has the meaning set out in paragraph 1.8. of Schedule 15;

"**Relevant Person**" means an EfW Shareholder and any of its Affiliates;

"**Relevant Proceeds**" has the meaning set out in clause 35.17.3;

"**Relevant Proportion**" means [REDACTED];

"**Relevant Relief**" means, for the purposes of the Collateral Warranty and the calculation of Slow Tonnage Payments, Diverted Tonnage Payments and the Applicable Waste Default Payment pursuant to this Agreement, any Overriding Relief Event or Specific Relief, and the impact on the Authority Site Services of Misdelivered Authority Waste save to the extent that relief is denied pursuant to the terms of the Waste Direction Protocol;

"**Relevant Sub-Contractor**" has the meaning set out in the Dispute Resolution Procedure;

"**Relevant Tax Liability**" has the meaning set out in clause 49.2.3;

"**Relief**" has, for the purposes of clause 49, the meaning set out in clause 49.2.1;

"**Relief derived from the Agreement**" has, for the purpose of clause 49, the meaning set out in clause 49.2.2;

"**Relief Events**" means, in relation to the ASS Contract only, any of the following events, unless caused directly or indirectly by the wilful act or default of the Contractor or the ASS Operator or any breach by the Contractor of the terms of this Agreement:

- (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, Protestor action, riot and civil commotion; or
- (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services; or
- (c) any accidental loss or damage to any Site and/or any equipment or materials integral to the Works or any roads servicing any Site; or
- (d) any failure or shortage of power, fuel or transport; or

- (e) any blockade or embargo which does not constitute a Force Majeure Event;
or
- (f) any official or unofficial strike, lock-out, go slow or other dispute ("**Industrial Action**") generally affecting the waste management industry or a significant sector of it (whether or not affecting other sectors), but for the avoidance of doubt not including Industrial Action specific to any Site(s) or Industrial Action which affects only the employees of the Contractor or its Sub-Contractors; or
- (g) to the extent that a full site survey could not reasonably have discovered the same, the discovery at the EfW Facility site of fossils, antiquities, human remains and other archaeological findings; or
- (h) the discovery at the Authority Sites or the EfW Facility of unexploded bombs and/or other such ordnance; or
- (i) the carrying out at any Authority Site of any Clean-up Works and/or other works pursuant to clause 15.7.2; or
- (j) the removal from any Authority Site and/or the Feathers Wharf Site of Hazardous Substances brought onto such Authority Site and/or the Feathers Wharf Site by any Authority Party; or
- (k) the lack of segregated Waste in sufficient quantities to commission the MRF;
or
- (l) the discovery of adverse ground conditions at any Authority Site; or
- (m) the failure by the Authority to grant vacant possession to the Contractor of the Feathers Wharf Site on the Feathers Wharf Lease Commencement Date;
or
- (n) the denial of access to the Contractor to any part of the Feathers Wharf Site or the Contractor not reasonably being able to use the Feathers Wharf Site or any material part of it after the Feathers Wharf Lease Commencement Date by the actions or omissions of:
 - (i) any Authority Party, except to the extent such action is permitted by the terms of the Feathers Wharf Lease or this Agreement, or is a

direct result of a breach by the Contractor of any provision of this Agreement or the Feathers Wharf Lease;

- (ii) the London Borough of Wandsworth, its contractors, sub-contractors of any tier or agents, or any director, officer or employee of any of the same in connection with undertaking any condition survey on and/or any clean-up or carrying out of other works reasonably required as a result of or in consequence of historic pollution in respect of the Feathers Wharf Site and/or repairing the river walls on the Feathers Wharf Site and remedying any damage caused by the River Thames or the River Wandle resulting from any failure to maintain any river wall in repair on the Feathers Wharf Site;

"Repeat Code" means, in relation to a Rectifiable Provisional Default, Default or Repeat Default, the period set out in the fifth column of the Performance Schedule table in respect of the relevant Performance Failure commencing on the date and time of the Contractor's counter-signature of the relevant Default Notice or Repeat Default Notice (as the case may be);

"Repeat Default" means any or all of a Minor Repeat Default, a Second Minor Repeat Default, a Major Repeat Default, a Second Major Repeat Default and/or a Critical Repeat Default;

"Repeat Default Notice" means any or all of a Minor Repeat Default Notice, a Major Repeat Default Notice and/or a Critical Repeat Default Notice;

"Replacement ASS Contractor" means any replacement for the ASS Contractor following termination of the ASS Contract and procurement by the Authority of the Authority Site Works (to the extent not Completed) and Authority Site Services;

"Replacement EfW Contractor" means each and every New EfW Contractor or subcontractor of whatever tier who shall provide any works and/or service equivalent to the EfW Works and/or EfW Services or part thereof after the EfW Termination Date;

"Replacement EfW Services" means the works and/or services provided by the Replacement EfW Contractor after the EfW Termination Date;

"Replacement Employee" has the meaning given to it in clause 25.4;

"**Replacement Plan**" has the meaning set out in clause 35.16;

"**Replacement Scheme**" has the meaning set out in clause 26.4

"**Replacement Supplier**" has the meaning set out in clause 25.15.2;

"**Replacement Transportation Services**" means the services necessary to transport and dispose of General Waste in the circumstances of a failure of the River Transportation Services, irrespective of whether the General Waste is transferred to the EfW Facility or to a third party site;

"**Requests for Information**" shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;

"**Required Action**" has the meaning set out in clause 39.4;

"**Required Equipment**" has the meaning set out in clause 39.7;

"**Required Insurances**" means, in relation to the ASS Contract only, the Material Damage Insurance and the Public Liability Insurance covering the Minimum Insurance Requirement Risks;

"**Residual Value Agreement**" means the agreement dated the Second Amended Agreement Date and as amended and restated on the Third Amended Agreement Date between the Authority and the EfW Operator relating to the Residual Value Rights;

"**Residual Value Rights**" means the rights of the Authority following the Expiry Date to receive a royalty from the EfW Operator and/or to have General Waste processed by the EfW Facility, as set out in the Residual Value Agreement;

"**Restructured Equity**" means any Risk Capital which is the subject of an Equity Restructuring;

"**Reverting Asset**" means to the extent such assets have been supplied and/or installed and/or such works have been undertaken as at the expiry of the Contract Period each of:

- (a) the MRF and associated fixed equipment;

- (b) the Smugglers Way Site and the Cringle Dock Site improvement works (including the Cranes and mobile plant and machinery);
- (c) the CA Site improvement works;
- (d) the compactors and other fixed assets at the Smugglers Way Site and the Cringle Dock Site; and
- (e) other mobile plant and mobile equipment for the MRF and other containers for the Constituent Council CA Sites and the Authority CA Sites,

as required in accordance with Appendix 6 of Part Six of the ASS Method Statement and listed in the asset register maintained pursuant to clause 57.2, together with such further assets supplied and/or installed by the Contractor pursuant to clauses 33.7.3.2 and 47.5, the legal and beneficial ownership in which is either agreed to transfer or transfers by Law to the Authority;

"Reverting Employees" means has the meaning given to it in paragraph 2.3.1 of Schedule 15;

"Revised Co-Mingled Recycling Rate" means the Contract Rate for Co-Mingled Recyclables processed through the MRF or any other materials recovery facility (whether or not owned or operated by the Contractor), the Base Contract Rates for which are set out in Appendix 1 of the Payment Mechanism;

"Revised Design Proposal" has the meaning given in paragraph 5 of Schedule 4;

"Revised Senior Debt Termination Amount" means the lower of the 2018 Revised Senior Debt Termination Amount and, subject to paragraphs 33.3 to 33.5 (Changes to Financing Agreements) of Schedule 15, the following:

- (a) all amounts outstanding at the EfW Termination Date comprising principal, interest and Default Interest accrued as at that date, from the EfW Operator to the Senior Lenders and in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), **PROVIDED THAT** such amounts are no greater than that set out in row 140 of the sheet "FinStatementQ" of the Base Case at the EfW Termination Date; and
- (b) the estimated costs of early termination of interest rate hedging arrangements calculated at the EfW Termination Date based upon the notional amount

outstanding at the EfW Termination Date using the scheduled amortisation profile from the EfW Termination Date, and fixed coupon rate, as set out in rows 4 to 17 of the Model Summary Sheet included in Appendix X as a result of termination of this EfW Contract (for the avoidance of doubt excluding any interest rate hedging arrangements relating to Additional Permitted Borrowing), subject to the EfW Operator and the Senior Lenders mitigating all such costs to the extent reasonably possible; and

- (c) amounts calculated as the make whole costs for Facility B1 (Floating) and B2 (Fixed) in cells D44 and D45 respectively of the Model Summary Sheet in Appendix X by entering the EfW Termination Date in cell D37 of the Model Summary Sheet in Appendix X;

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 or the amounts below):

- (i) all credit balances on any bank accounts held by or on behalf of the EfW Operator on the EfW Termination Date;
- (ii) any amounts claimable on or after the EfW Termination Date in respect of Contingent Funding Liabilities;
- (iii) gains accruing from the early termination of interest rate hedging arrangements based upon the national amount and scheduled amortisation profile and fixed coupon rate as set out in rows 4 to 17 of the Model Summary Sheet included in the Base Case as a result of termination of this EfW Contract (for the avoidance of doubt excluding any interest rate hedging arrangements relating to Additional Permitted Borrowing), subject to the EfW Operator and the Senior Lenders maximising all such gains to the extent reasonably possible;
- (iv) all other amounts received by the Senior Lenders on or after the EfW Termination Date and before the date on which any compensation is payable by the Authority to the EfW Operator as a result of enforcing any other rights they may have; and
- (v) all APB Distributions;

"Ringfencing Terms" means the terms set out in paragraph 4 of Schedule 16;

"Risk Capital" means:

- (a) the ordinary share capital of the EfW Operator of [REDACTED] subscribed at EfW Financial Close by Holdco, and
- (b) the ordinary share capital of Holdco of [REDACTED] subscribed at EfW Financial Close by the Holdco Parent;

"River Transportation Services" means:

- (a) the maintenance and replacement of plant, equipment and supplies located at the Authority Transfer Stations but only to the extent necessary for the activities referred to in paragraphs (b) to (d) below;
- (b) the berthing of tugs and barges at the Authority Transfer Stations in accordance with Performance Schedule 5 to the EfW Method Statement to permit the unloading of empty containers and the reloading of containers of General Waste into the barges;
- (c) following the completion of the loading of containers onto the barges at the Authority Transfer Stations, the unberthing of the tugs and barges and the transportation of containers of General Waste by river from the Authority Transfer Stations to the EfW Facility or the Port of Tilbury unloading facility; and
- (d) following the completion of the unloading of containers of General Waste and reloading of empty containers onto the barges at the EfW Facility, the unberthing of the tugs and barges and the transportation of the containers by river from the EfW Facility or the Port of Tilbury to the Authority Transfer Stations,

for which purposes the process of loading or unloading shall commence when the crane spreaders are successfully engaged on a container and end when the crane spreaders are successfully disengaged;

"RPS Collateral Warranty" means the form of collateral warranty included as Schedule 3 to the Project Manager's Appointment;

"**RRRL Business**" means (subject to compliance with the Ringfencing Terms) all of the business of the EfW Operator and its Subsidiaries as at the EfW Termination Date, including the Handback Assets (including the EfW Waste Supply Agreement and the Residual Value Agreement) other than the issued share capital of the EfW Operator;

"**RRRL Ongoing Business**" means (subject to compliance with the Ringfencing Terms) all of the business of the EfW Operator and its Subsidiaries from time to time, other than the issued share capital of the EfW Operator;

"**RRRL Security Trustee**" has the meaning set out in the Finance Direct Agreement;

"**RRRL Shares**" means (subject to compliance with the Ringfencing Terms) the entire issued share capital of the EfW Operator and its Subsidiaries;

"**RRRL Undertaking**" means the RRRL Business or the RRRL Shares;

"**s106 Agreement**" means the agreement between The Mayor and Burgesses of the London Borough of Wandsworth, the Contractor and the Authority dated 31 August 2006.

"**Sale and Purchase Agreement**" means either:

- (a) an agreement between the Authority and/or the EfW Operator (as the case may be) and the New EfW Contractor for the acquisition of part or all of the RRRL Business (as appropriate to maximise the tender price); or
- (b) an agreement between the Authority and/or Holdco (as the case may be) and the New EfW Contractor for the acquisition of the RRRL Shares,

in each case on such terms as the Authority (acting reasonably) and the EfW Operator or Holdco (which in each case the Contractor shall procure to act reasonably) shall agree;

"**Saving**" means any immediate and/or long term reduction in the cost of providing the Authority Site Services to the Contractor Group that would be consequent upon the implementation of a Variation;

"**Schedule**" means a schedule to this Agreement;

"Scheduled Termination Payment Date" means:

- (a) in relation to a termination pursuant to clauses 41, 44, 45, or 46, the date falling twenty (20) Working Days after 1 April in the year following the occurrence of the Termination Date;
- (b) in relation to a termination pursuant to clauses 10, 11 or 40, the date falling twenty (20) Working Days from the Termination Date; and
- (c) in relation to the termination of the Agreement by effluxion of time, twenty (20) Working Days from the Expiry Date;

"Scrap Metal" means Authority Waste consisting of metal which meets the requirements of Quality Specification 8 in Part Five of the ASS Method Statement;

"Second Amended Agreement" means this Agreement as amended and restated on the Second Amended Agreement Date;

"Second Amended Agreement Date" has the meaning given to it in Recital I;

"Second Major Repeat Default" has the meaning given in clause 38.28;

"Second Minor Repeat Default" has the meaning given in clause 38.20;

"Security Documents" has the meaning set out in the Facility Agreement as at the Third Amended Agreement Date;

"Security Trustee" means, as appropriate, the Common Security Trustee and/or the RRRL Security Trustee in its/their capacity as security trustee(s) for the Senior Lenders under the Senior Financing Agreements;

"Senior Debt" means the financing provided by the Senior Lenders under the Senior Financing Agreements;

"Senior Debt Margin" means the margin payable on the outstanding Senior Debt under the Senior Financing Agreements from time to time;

"Senior Debt Rate" means the lowest of:

- (a) the non-default interest rate as defined in the Senior Financing Agreements prevailing at the time;

(b) the non-default interest rate as set out in row 31 of the "Debt Metrics" worksheet of the 2017 Financial Model; and

(c) such other lower rate as the Parties may agree;

"**Senior Financing Agreements**" means, save where expressly stated otherwise in this Agreement, the Initial Financing Agreements as amended (subject to paragraph 33.3 of Schedule 15 and the proviso set out below) with the prior written approval of the Authority **PROVIDED THAT**, as set out in, and for the purposes of, the definition of "Additional Permitted Borrowing" only, the prior written approval of the Authority to a change to the Senior Financing Agreements shall not be required for Outstanding Principal to qualify as Additional Permitted Borrowing;

"**Senior Lender**" means a person providing finance to the EfW Operator under the Senior Financing Agreements, and as otherwise referred to as the "**EfW Financier**";

"**Services**" means:

(a) the Authority Site Services; and

(b) the EfW Services;

"**Services Commencement Date**" means 5 October 2002;

"**Shared Usage Asset**" means:

(a) any Contractor Asset or Leased Asset used for the Authority Site Services, but not used exclusively for the Authority Site Services; and

(b) any landfill site used for the Authority Site Services and/or the EfW Services, but not used exclusively for the Authority Site Services and/or the EfW Services;

"**Shared Usage Cost**" means a cost incurred by any Contractor Party in connection with the provision of the Authority Site Services or (prior to the EfW Commissioning Date only) the River Transportation Services, but not solely in connection with the provision of such Services, whether in connection with a Shared Usage Asset or otherwise (for example, prior to the EfW Commissioning Date, the cost of a river transportation licence);

"**Shareholder**" means any person from time to time holding share capital in the Contractor or Holdco;

"**Shareholder Debt**" means any loan notes, loan stock or other subordinated indebtedness;

"**Site**" means any site used by the Contractor or any sub-contractor for the receipt, transfer, storage, delivery, disposal or processing of Authority Waste, whether or not owned or operated by the Contractor;

"**Site Waste Management Licence**" means the waste management licence issued by the Environment Agency for a Site;

"**Slow Tonnage Default Notice**" means a notice in the form set out in Part 4 of Schedule 9;

"**Slow Tonnage Payment**" means the amount calculated in accordance with Appendix B of the relevant Collateral Warranty payable from time to time by the Contractor pursuant to the terms of the Collateral Warranty and this Agreement;

"**Smugglers Way CA Site**" means the civic amenity site within the Smugglers Way Site;

"**Smugglers Way CA Site Works**" has the meaning set out in clause 6B.2;

"**Smugglers Way CA Site Works Cost**" means those costs expended in relation to the Smugglers Way CA Site Works up to a maximum of [REDACTED];

"**Smugglers Way CA Site Works Invoice**" has the meaning set out in clause 6B.16;

"**Smugglers Way Lease**" means the lease of the Western Riverside Solid Waste Transfer Station, Smugglers Way, Wandsworth SW18 1JS entered into by the Parties on 12 July 2002 and as amended on the First Amended Agreement Date;

"**Smugglers Way Site**" means the real property in the ownership of the Authority and demised to the Contractor under the Smugglers Way Lease;

"**Sole Usage Asset**" means:

- (a) any Authority Asset; and

(b) any Contractor Asset or Leased Asset used solely for the provision of the Authority Site Services;

"Sole Usage Cost" means any cost incurred solely in connection with the provision of the Authority Site Services;

"Specific Relief" means a relief identified in column 6 of the Performance Schedules (other than Performance Schedule 1 to Part Three of the ASS Method Statement and Performance Schedule 1 to the EfW Method Statement (as applicable));

"Stage 1 Refinancing Gain" means, with effect from the Second Amended Agreement Date, zero;

"Stage 2 Refinancing Gain" means, with effect from the Second Amended Agreement Date, zero;

"Stage 3 Refinancing Gain" means the greater of zero and $(E - C) - F$, where:

C 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 to reflect any Relevant Events occurring after the Second Amended Agreement Date (but not the historical performance of the EfW Project nor any changes to the assumptions within the Base Case regarding the future performance of the EfW Project and with Senior Debt Margins set at the Base Case Senior Debt Margin)) to be made to each Relevant Person over the remaining term of the EfW Contract following the Refinancing

E the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing other than any increase in the Authority Termination Liability at any time over the remaining term of the EfW Contract and using the Base Case as updated to reflect any Relevant Events occurring after the Second Amended Agreement Date (but not the historical performance of the EfW Project nor any changes to the assumptions within the Base Case regarding the future performance of the EfW Project)) to be made to each Relevant Person over the remaining term of the EfW Contract following the Refinancing

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

"Stage 4 Refinancing Gain" means the greater of zero and $(G - E) - H$, where:

E has the meaning given to this term in the definition of "Stage 3 Refinancing Gain"

G the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing other than any increase in the quantum of Senior Debt raised at the date of Refinancing and using the Base Case as updated to reflect any Relevant Events occurring after the Second Amended Agreement Date (but not the historical performance of the EfW Project nor any changes to the assumptions within the Base Case regarding the future performance of the EfW Project)) to be made to each Relevant Person over the remaining term of the EfW Contract following the Refinancing

H any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR to the extent that this has not already been achieved through adjustment made as part of the calculation of the Stage 3 Refinancing Gain;

"Stage 5 Refinancing Gain" means the greater of zero and $(I - G) - J$, where:

I the Net Present Value of the Distributions projected by the Stage 5 Refinancing Model immediately prior to the Refinancing to be made to each Relevant Person over the remaining term of the EfW Contract following the Refinancing

G has the meaning given to this term in the definition of "Stage 4 Refinancing Gain"

J any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR to the extent that this has not already been achieved through adjustment made as part of the calculation of the Stage 3 Refinancing Gain and Stage 4 Refinancing Gain;

"**Stage 5 Refinancing Model**" means the Base Case (updated to reflect Relevant Events occurring after the Second Amended Agreement Date) as amended to take account of a hypothetical Refinancing involving the raising of Additional Senior Debt against the cashflows arising solely from the improved Senior Debt terms post-Refinancing. For the avoidance of doubt, the Stage 5 Refinancing Model will retain all of the assumptions made within the Base Case in respect of future revenues and costs and will not include any Additional Senior Debt arising from the assumption of higher future revenues and/or lower future costs than those assumed within the Base Case;

"**Sterling**" means the lawful currency of England from time to time;

"**Sub-Contract**" means any contract (excluding any Third Party Arrangement) entered into by the Contractor or any sub-contractor to the Contractor in connection with the carrying out of the Authority Site Works and/or the provision of the Authority Site Services;

"**Sub-Contract Dispute**" has the meaning set out in the Dispute Resolution Procedure;

"**Sub-Contractor**" means any agent and any tier of sub-contractor (including any member of the Professional Team but excluding any sub-contractor appointed pursuant to a Third Party Arrangement) appointed by the Contractor or any sub-contractor to the Contractor to carry out or provide the whole or any part of the Authority Site Works and/or the Authority Site Services;

"**Subordinated Financing Agreements**" means any equity or subordinated loan documents referred to in the Senior Financing Agreements from time to time to the extent the same refer to the Junior Debt;

"**Subordinated Lender**" means a person providing finance under a Subordinated Financing Agreement;

"**Subsidiary**" has the meaning given to it in section 1159 Companies Act 2006;

"**Suitable Substitute EfW Contractor**" means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the EfW Contract; and
- (b) employing or engaging persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the EfW Obligations;

"Supermarket Trolley" means Authority Waste consisting of any shopping trolley and luggage trolley accepted by or on behalf of the Contractor for return to a retailer, as defined in Schedule 4 of the EPA;

"Take Over Certificate" means the certificate so named under the EfW Construction Subcontract to be issued by the EfW Project Manager;

"Target Completion Date" means:

- (a) in relation to the MRF Works, the date falling twenty six (26) months from the latest of:
 - (i) the earlier of the date upon which Planning Permission for the MRF is obtained and EfW Financial Close;
 - (ii) the Services Commencement Date, and
 - (iii) the date upon which a relevant Waste Management Licence or PPC Permit (as applicable) is granted for the MRF,(as such dates may be varied pursuant to the application of clauses 8, 9 and/or 10); and
- (b) in relation to each of the CA Site Works the date failing thirty-six (36) months from the latest of:
 - (i) where the Smugglers Way CA Site Permission is granted without any conditions which are not acceptable to either party, the date on which the Smugglers Way CA Site Permission is granted and the Judicial Review Period has expired; and
 - (ii) the date upon which all relevant PPC Permits have been granted for the relevant CA Site Works,

(as such dates may be varied pursuant to the application of clauses 8, 9 and/or 10);

"**Tax**" 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;

"**Tax Benefit**" has the meaning set out in paragraph 30.17.2 of Schedule 15;

"**Tax Period**" means any period in respect of which Taxation is assessed or charged on the applicable person;

"**Temporary Disposal Services**" has the meaning set out in clause 14.1C;

"**Tender Costs**" means the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;

"**Tender Process**" means the process by which the Authority requests tenders from any parties interested in acquiring the RRRL Undertaking and entering into New EfW Contracts and the Sale and Purchase Agreement, evaluates the responses from those interested parties and enters into a New EfW Contract with a new EfW Service provider, in accordance with paragraph 19.3 of Schedule 15;

"**Tender Process Monitor**" means a third party appointed by the Contractor under paragraph 19.3.5 of Schedule 15;

"**Termination Date**" means the date upon which the ASS Contract terminates other than by effluxion of time;

"**Textiles**" means Authority Waste consisting of any clothing, blankets, textile fragments, or shoes, which are free of contamination, and which are accepted by or on behalf of the Contractor for reprocessing;

"**Third Amended Agreement**" means this Agreement as amended and restated on the Third Amended Agreement Date;

"**Third Amended Agreement Date**" means the date upon which the conditions set out in clause 2 of the Amendment and Restatement Deed to which this Third Amended Agreement is appended as a schedule have either been satisfied or waived;

"**Third Party Arrangement**" has the meaning set out in 14.1B(C)(c);

"**Third Party Delivery Point**" means each of the McGovern Transfer Station and the Beddington Lane Landfill Site;

"**Third Party Transferring Employees**" means any employee of a third party employer which is contracted, or any employee of a third party employer which is within the same group of companies as a company which is contracted, as at the Agreement Date to provide services to the Authority which are the same or similar to any of the Services who transfers to the Contractor or any of its Sub-Contractors pursuant to the TUPE Regulations or the Acquired Rights Directive as a result of the implementation of this Agreement;

"**Third Party Waste**" means non-Authority Waste which is accepted or would have been accepted (as appropriate) by the Contractor at the Authority Sites, the Feathers Wharf Site and/or the Constituent Council CA Sites;

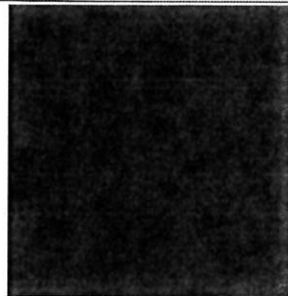
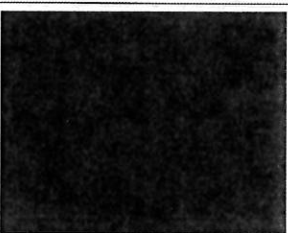


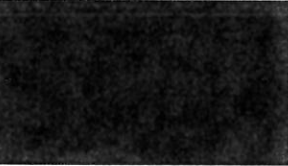
"**Threshold Equity IRR**" means 15%;

"**Top-up Letter of Credit**" has the meaning set out in clause 2.13;

"**Transfer Notice**" has the meaning set out in clause 48.1;

"**Transfer Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time (including without limitation as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014);

"**Transfer Value**" means the price paid for the Reverting Asset by the Contractor, (as adjusted to take into account the effects of any relevant Planning Permission or Necessary Consent), amortised on a straight line basis as set out in the following table (such value also to comprise the compensation payable under the Landlord and Tenant Act 1927 in respect of any improvements to the Authority Sites undertaken by the Contractor) **PROVIDED THAT** on or after the Expiry Date the Transfer Value for each of the Reverting Assets shall be deemed to be zero:

Reverting Asset	Value	Period for straight line amortisation
MRF and associated fixed equipment		<p>In relation to the MRF Works, ten (10) years from 1st July 2011.</p> <p>In relation to the Additional MRF Works, ten (10) years from the date of Completion of the Additional MRF Works.</p>
Authority Transfer Station and CA Site improvement works including the Bulk Bay Works		Eight (8) years from the date of Completion of the CA Site Works
Each Crane		Twenty (20) years from the date of commissioning of the relevant Crane
Compactors and other fixed assets at the Authority Transfer Stations		Zero (0) years from the Services Commencement Date
Mobile plant and mobile equipment for the MRF and other containers for the Constituent Council CA Sites and the Authority CA Sites		Ten (10) years from the date of delivery to the relevant Site as evidenced by the Contractor's asset register maintained pursuant to clause 57.2

"Transportation Services" means the transportation services in respect of Authority Waste operating between and/or from the Authority Sites, the Feathers Wharf Site

and/or the Constituent Council CA Sites, save to the extent that such services relate to the management of traffic entering or exiting an Authority Site or the Feathers Wharf Site and/or unloading of vehicles or containers at any of the Authority Sites, the Feathers Wharf Site or the Constituent Council CA Sites;

"**TUPE Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI No. 1794);

"**Tyre Waste**" means Authority Waste consisting of motor vehicle tyres delivered to Authority Sites or the Feathers Wharf Site by the Constituent Councils or members of the public;

"**Unavailable**" means in relation to CA Site Waste only, not made Available to the Contractor by the Authority in breach of clause 13.1.2;

"**Uninsurable Risk**" means, in relation to a Minimum Insurance Requirement Risk, either that:

- (a) insurance is not available in the worldwide insurance market from insurers of good repute and creditworthiness in respect of that risk; or
- (b) the insurance terms and/or conditions offered by insurers in respect of that risk are such that the risk is not generally being insured against in the worldwide insurance market with insurers of good repute and creditworthiness;

"**Unused Additional EfW Annual Reserved Capacity**" has the meaning set out in clause 7.2;

"**Utilities**" means all utilities which are from time to time required to be supplied under this Agreement to the Authority Sites, including (without limitation) sewage and foul water waste drainage, rain and other surface water drainage, waste disposal, electricity, water, heating oil, gas and telecommunications including all conduits, cables, ducting, tanks and all supporting media necessary for the continuous supply of the utilities;

"**Vale Street CA Site**" means the Lambeth Borough Council recycling/civic amenity site at Vale Street, West Norwood, London SE27;

"**Variation**" means any extension of, addition to, omission from or alteration to any of:

- (a) the Authority Site Works; or
- (b) the Authority Site Services; or
- (c) the Contract Rates relating to the Authority Site Services (other than in circumstances where an adjustment to the Contract Rates is expressly contemplated by the provisions of the ASS Contract without the need for a Variation);

"**Variation 8**" means the Variation entitled "Variation 8 - Authority Variation" dated 8 December 2006, the terms of which are attached as Appendix N;

"**Variation 9**" means the Variation entitled "Variation 9 - Authority Variation" dated 21 February 2007, the terms of which are attached as Appendix O;

"**Variation 10**" means the Variation entitled "Variation 10 - Contractor Variation" dated 8 December 2006, the terms of which are attached as Appendix P;

"**Variation Notice**" means a notice served under clause 21.1;

"**Variation Procedure**" means the procedure to effect a Variation as set out in clause 21;

"**VAT**" means any value added taxes;

"**Walbrook Wharf Site**" means the transfer station located at Upper Thames Street, London EC4R 3TD;

"**Waste**" means household, industrial and commercial wastes as defined in Section 75 of the EPA and any regulations made thereunder, to include detritus, but excluding liquid waste.

"**Waste Direction Protocol**" means the protocol, including the Emergency Plan, to be agreed between the Parties (acting reasonably) within three (3) months after the First Amended Agreement Date relating to the mechanics of directing the Authority Waste to the Agreed Sites and other Sites which the Contractor may reasonably

nominate from time to time in accordance with this Agreement, including this protocol and the ASS Method Statement;

"Waste Oil" means Authority Waste consisting of used motor oil, accepted at CA Sites, in accordance with the ASS Method Statement;

"Waste Supplier" means the Contractor in its capacity as waste supplier to the EfW Operator under the EfW Waste Supply Agreement, and any other supplier of Waste to the EfW Operator;

"Weighbridge" means any weighbridge under the control of the Contractor or the ASS Operator at the Authority Sites used in connection with the Services;

"Wind Down Period" has the meaning set out in clause 11.3;

"Wind Down Third Party Arrangement" has the meaning set out in clause 11.4C;

"Working Day" means any day (other than a Saturday, a Sunday or a Bank Holiday) on which clearing banks in the City of London are open during banking hours;

"Works" means the obligations under this Agreement relating to the planning, design and construction of the Authority Site Works and, subject to the provisions of this Agreement, those planning, design and construction works necessary for the Completion of the EfW Facility; and

"WRWA Principal Collection Vehicle" means any rear end loader or paladin vehicle with a load bearing capacity of five (5) tonnes or more which is used by or on behalf of a Constituent Council for the collection of Authority Waste, as designated by the Authority to the Contractor in writing from time to time.

SCHEDULE 8

PAYMENT MECHANISM

A. Definitions

For the purposes of this Agreement and, in particular, this Schedule, unless the context requires otherwise the following expressions shall have the following meanings:

"Abandoned Vehicle Disposal Cost" means all costs to the Contractor on a Cost Plus Basis of disposing of an Abandoned Vehicle processed in accordance with this Agreement.

"Abandoned Vehicle Payment" means the payment as calculated in accordance with paragraph 13.2.

"Abandoned Vehicle Storage Cost" means all costs to the Contractor on a Cost Plus Basis of storing an Abandoned Vehicle processed in accordance with this Agreement.

"Active Landfill Tax Rate" means the Landfill Tax Rate applicable to the disposal of material, other than a Qualifying Material, at the time the disposal is made.

"Actual EfW Capital Expenditure" shall have the meaning described in 8.2(b)

"Actual Energy Price" means in each EfW Contract Year the total Energy Revenue (expressed in pounds (£)) divided by the total energy units sold (kilowatt-hours) by the EfW Operator during that Contract Year **PROVIDED THAT** should the result of such calculations be a figure less than [REDACTED] (Indexed in accordance with Appendix 2.3B of this Payment Mechanism) then the result will be deemed to be [REDACTED] kilowatt-hour (Indexed in accordance with Appendix 2.3B of this Payment Mechanism).

"Actual Monthly Energy Price"	means in each EfW Contract Month the total Energy Revenue (expressed in pounds (£)) divided by the total energy units sold (kilowatt-hours) by the EfW Operator during that Contract Month PROVIDED THAT should the result of such calculations be a figure less than [REDACTED] (Indexed in accordance with Appendix 2.3B of this Payment Mechanism) then the result will be deemed to be [REDACTED] (Indexed in accordance with Appendix 2.3B of this Payment Mechanism).
"Appliance"	means refrigeration and air conditioning equipment, including, without limitation, domestic refrigerators and freezers.
"Appliance Disposal Cost"	means all costs to the Contractor on a Cost Plus Basis (including, without limitation, the costs associated with Stage 1 CFC Removal and/or Stage 2 CFC Removal) of disposing of Appliances in accordance with paragraph 13.1.
"Appliance Disposal Payment"	means the payment as calculated in accordance with paragraph 13.1.
"Appliance Storage Cost"	means all costs to the Contractor on a Cost Plus Basis of storing Appliances processed in accordance with paragraph 13.1.
"Appliance Transport Cost"	means all costs to the Contractor on a Cost Plus Basis of transporting Appliances processed in accordance with this Agreement.
"Applicable Indexation Mechanism"	means each indexation formula for a Base Contract Rate contained in Appendix 2 of this Schedule.
"Applicable Landfill Tax Rate"	means: <ul style="list-style-type: none">(a) in the case of the disposal of material other than Qualifying Material, the Active Landfill Tax Rate; and(b) in the case of disposal of Qualifying Material, the Inactive Landfill Tax Rate.

"Asbestos Waste Rate"	means the Contract Rate for Asbestos Waste, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Authority Energy Payment"	means the amount calculated in accordance with paragraph 6.5.
"Average Road Waste Gate Fee"	shall have the meaning in accordance with 9.1
"Average Third Party Gate Fee"	means the amount calculated in accordance with paragraph 7.2.
"Average Third Party Gate Fee Revision Notice"	means the amount calculated in accordance with paragraph 7.4
"Average Third Party Gate Fee Revised Estimate"	means the amount calculated in accordance with paragraph 7.4
"Base Contract Rate"	Has the meaning as contained in Appendix I.
"Battery Waste Rate"	means the Contract Rate for Battery Waste, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Budget Contingency"	shall have the meaning in accordance with 8.2(a)
"Bulk Recyclables"	means Authority Waste consisting of source segregated recyclable materials of one commodity type delivered in bulk either loose or bagged being Mixed Paper, Mixed Cans, Mixed Glass, Colour Separated Glass, Textiles, Clean Timber, Scrap Metal, Green Waste, Inert Waste, Large Domestic Appliances and Mixed WEEE.
"Bulk Recyclables Income"	means the amount obtained by the Contractor for the sale of the Bulk Recyclables as calculated in accordance with paragraph 14.2(d).
"Bulk Recyclables Payment"	means the payment as set out in paragraph 14.2.
"CA Site Transport Payment"	means the payment as calculated in accordance with paragraph 14.4.

- "Category" has the meaning given in paragraph 2.2.
- "Category Value" has the meaning given in paragraph 2.7.
- "Clean Timber Rate" means the Contract Rate for Clean Timber, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
- "Clinical Waste Rate" means the Contract Rate for Clinical Waste, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
- "Close of Primary Syndication" means the point at which the aggregate remaining commitments held by each Underwriter in respect of the EfW Project is no more than 10% of the total commitments to the EfW Project
- "Colour Separated Glass Rate" means the Contract Rate for Colour Separated Glass, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
- "Co-Mingled Recyclables Payment" means the payment as calculated in accordance with paragraph 14.1.
- "Co-Mingled Recyclables Rate" means the weight-related Contract Rates for Co-Mingled Recyclables processed through the MRF or any other materials recovery facility (whether or not owned or operated by the Contractor), the Base Contract Rates for which are set out in Appendix 1 of this Schedule.
- "Controlled Substances" has the meaning given in Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer.

"Cost Plus Items"

means:

- (a) Abandoned Vehicles;
- (b) Manufacturer Non-Collected Bottles;
- (c) Appliances; and
- (d) Manufacturer Collected Bottles.
- (e) CRTs

"Cost Plus Basis"

means in respect of the transport, storage, disposal and/or transfer for reprocessing of a Cost Plus Item (excluding costs covered by the Management Fee or the Abandoned Vehicle Management Fee (as the case may be)) the reasonable costs (calculated on a non-profit basis) incurred by the Contractor for the Services carried out as evidenced to the reasonable satisfaction of the Authority.

"Cremorne Wharf Co-Mingled
Recyclable Payment"

means the payment as calculated in accordance with paragraph 14.3.

"Cremorne Wharf Co-Mingled
Recyclable Rate"

means the Contract Rate for Cremorne Wharf Co-Mingled Recyclables as set out in Appendix 1 to this Schedule.

"Cremorne Wharf Transport Rate"

means the Contract Rate for the transport of CA Site Waste from the Cremorne Wharf CA Site to the Smugglers Way Site or the Cringle Dock Site or any Third Party Delivery Point in accordance with Performance Schedule 8 of Part Three of the ASS Method Statement, the Base Contract Rate for which is set out in Appendix 1 to this Schedule.

"CRT Payment"

means the payment as calculated in accordance with paragraph 13.7.

CRTs

means display screen items containing Cathode Ray Tubes collected for reuse or recycling, including, without limitation, some types of computer and television screens.

"Default Contract Rate Compensation
Cap"

means the amount calculated in accordance with paragraphs 3.1, 3.2 and 3.3.

"Detritus Waste Payment"	means the payment as calculated in accordance with paragraph 12.3.
"Detritus Waste Rate"	means the Contract Rate for Detritus Waste, the Base Contract Rates for which in respect of the Interim Period, any Interim New Mucking Period, the Interim Non-Mucking Period, or the EfW Interim Delay Period and the Final Period are set out in Appendix 1 to this Schedule.
"Detritus Waste Scale Down Rate"	means the percentage set out at and adjusted in accordance with paragraphs 12.3(a) to 12.3(c) inclusive.
"Diverted Waste Reconciliation"	has the meaning given in paragraph 12.1(c).
"EfW Annual Reserved Capacity"	Means 420,000 tonnes per annum as amended in accordance with Schedule 15 paragraph 27.2.
"EfW Contract Year Annual Reserved Capacity"	has the same meaning as Schedule 15 paragraph 27.4.1.
"EfW General Waste Payment"	Means the payment as calculated in accordance with paragraph 5.5 (post EfW Commissioning Date) and 5.6 (prior to EfW Commissioning Date).
"EfW General Waste Rate"	means the weight-related Contract Rates for EfW General Waste, the Base Contract Rates for which are set out in Appendix 1 of this Schedule.
"Energy Reconciliation"	has the meaning given in paragraph 6.6.
"Energy Reconciliation Amount"	has the meaning given in paragraph 6.6.
"Energy Revenue"	means the revenue received by the EfW Operator in respect of the sale of electricity and/or heat which, for the avoidance of doubt, shall include revenue received by the EfW Operator under any Power Purchase Agreement ("PPA") and/or Heat Purchase Agreement ("HPA") which would be negotiated by the EfW operator, subject to clause 6.1 with an off-take provider; plus any income received from trading the carbon benefits accrued via the operation of the EfW Facility.

"Energy Revised Estimate"	means the amount calculated in accordance with paragraph 6.2.
"Energy Revision Notice"	means the amount calculated in accordance with paragraph 6.2.
"Estimated EfW Monthly Tonnage"	has the meaning given in paragraph 5.1.
"Estimated Energy Price"	means the price agreed between the Parties pursuant to paragraph 5.1 as a genuine pre-estimate of the likely price payable for energy generated through the operation of the EfW Facility.
"Fluorescent Tube Payment"	means the payment as calculated in accordance with paragraph 13.6.
"Fluorescent Tube Rate"	means the Contract Rate for emptying a full container of fluorescent tubes, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"General Waste Payment"	means the payment as calculated in accordance with paragraph 5.1.
"General Waste Handling Payment"	means the amount calculated in accordance with paragraph 12.1.
"General Waste Reconciliation"	has the meaning given in paragraph 5.8(a).
"Green Waste Rate"	means the Contract Rate for Green Waste, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Handling Charge Payment"	means the payment calculated in accordance with paragraph 14.
"Hazardous Household Waste Rate"	means the Contract Rate for Hazardous Household Waste, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.

"Heat Purchase Agreements"	means Agreements between the EfW Operator and power off-take providers for the sale of heat generated at the EfW Facility.
"Inactive Landfill Tax Rate"	means the Landfill Tax Rate applicable to the disposal of a Qualifying Material at the time the disposal is made.
"Index Base"	means the indexation value attributable to each Category as set out in column 3 of each table in Appendix 2 of this Schedule.
"Inert Landfilled Waste"	means Inert Waste disposed of by the Contractor to landfill in accordance with Performance Requirement 2 of Performance Schedule 21 of Part Three of the ASS Method Statement.
"Inert Recycled Waste"	means Inert Waste disposed of by the Contractor to a reprocessor in accordance with Performance Schedule 21 of Part Three of the ASS Method Statement.
"Inert Waste Payment"	means the payment as calculated in accordance with paragraph 12.2.
"Inert Waste Rate"	means the weight-related Contract Rates for Inert Waste, the Base Contract Rates for which are set out in Appendix 1 of this Schedule.
"Landfilled General Waste"	means the General Waste disposed of by the Contractor to landfill in accordance with the ASS Method Statement or the EfW Method Statement as applicable.
"Landfilled General Waste Payment"	means the payment as calculated in accordance with paragraph 5.7.
"Landfilled General Waste Rate"	means the weight-related Contract Rates for Landfilled General Waste, the Base Contract Rates for which in respect of the Interim Period, Interim New Mucking Period, the Interim Non-Mucking Period, or the EfW Interim Delay Period and the Final Period are set out in Appendix 1 of this Schedule.

"Landfill Tax"	means the tax charged on a taxable disposal as defined in sections 39 and 40 of Part III of the Finance Act 1996 as modified or re-enacted from time to time.
"Landfill Tax Rate"	means the monetary amount at which Landfill Tax is set from time to time, in accordance with section 39 of and as set out at section 42 of Part III of the Finance Act 1996.
"Large Domestic Appliances"	means items including, without limitation, cookers, washing machines, dryers and dishwashers.
"Large Domestic Appliances Rate"	means the Contract Rate for Large Domestic Appliances, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Management Fee"	means the Contract Rate as set out in Appendix 1 of this Schedule, which covers the Contractor's costs in relation to Cost Plus Items (other than Abandoned Vehicles) of: (a) administration; and (b) providing the Authority Site Services.
"Manufacturer Collected Bottle"	means a pressurised cylinder that is collected, free of charge, from an Authority Site by the manufacturer of such cylinder or another responsible person.
"Manufacturer Collected Bottle Payment"	means the payment as calculated in accordance with paragraph 13.5.
"Manufacturer Non-Collected Bottle"	means a pressurised cylinder that is collected, not free of charge, from an Authority Site by the manufacturer of such cylinder or another responsible person.
"Manufacturer Non-Collected Bottle Disposal Cost"	means all costs to the Contractor on a Cost Plus Basis of processing and/or disposing of Manufacturer Non-Collected Bottles in accordance with this Agreement.
"Manufacturer Non-Collected Bottle Payment"	means the payment as calculated in accordance with paragraph 13.4.

"Market Flex"	Shall have the meaning as provided in Schedule 1.
"Mixed Cans Rate"	means the Contract Rate for Mixed Cans, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Mixed Glass Rate"	means the Contract Rate for Mixed Glass, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Mixed Paper Rate"	means the Contract Rate for Mixed Paper, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Mixed WEEE"	means small mixed waste electronic and electrical equipment including, without limitation toasters, irons, microwaves and electrical toys and tools.
"Mixed WEEE Rate"	means the Contract Rate for Mixed WEEE, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Monthly Service Charge"	means the gross amount payable by the Authority to the Contractor for the provision of the Services in a Contract Month as calculated in accordance with paragraph 4.2 (EfW Services) and 11.2 (Authority Site Services).
"Monthly Service Payment"	means the actual amount payable by the Authority to the Contractor for the provision of the Services in a Contract Month as calculated pursuant to paragraph 4.1 (EfW Services) and 11.1 (Authority Site Services).
"New Contract Rate"	means the amount calculated in accordance with paragraph 2.6.
"Non-Tonnage Items Payment"	means the payment calculated in accordance with paragraph 13.
"Obtainable Market Rate"	has the meaning given in paragraph 14.2(c).
"Other Waste"	means Clinical Waste, Tyre Waste, Hazardous Household Waste, Waste Oil, Battery Waste and Asbestos Waste.

"Other Waste Payment" means the payment calculated in accordance with paragraph 12.4.

"PRN Amount" means the element of the payment received by the Contractor for the sale of Bulk Recyclables which is expressly identifiable as being payment from the recycler in respect of:

- (a) packaging waste recovery notes (as defined in The Producer Responsibility Obligations (Packaging Waste) Regulations of March 1997); or
- (b) any replacement or other subsidy or credit,

that the Contractor has received or will receive in relation to the recycling of such Bulk Recyclables.

Power Purchase Agreements means agreements between the EfW Operator and an off-take counter party for the sale of power generated at the EfW Plant which will include the following elements net any discounts to reflect the administration and imbalance risk managed by the off-take provider:

- wholesale power price;
- Renewable Obligation certificates and ROC recycle revenues;
- Climate Change Levy exemption; and
- Embedded benefits.

"Qualifying Material" means a "qualifying material" as defined in the Landfill Tax (Qualifying Material) Order 1996.

"Rates Adjustment" Shall have the meaning in accordance with paragraph 8.1.

"Residual Waste" means waste delivered by third parties for disposal to landfill or to the EfW Facility.

"Revenue Share"	shall mean the amount calculated in accordance with paragraph 9.4.
"Revenue Share Floor"	has the meaning given in paragraph 9.2.
"Review Mechanism"	means the relevant indices for each Category as set out in column 4 of each Indexation Mechanism.
"Revised Estimates"	has the meaning given in paragraph 5.2.
"Revision Notice"	has the meaning given in paragraph 5.2.
"Scrap Metal Rate"	means the Contract Rate for Scrap Metal, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Specific Co-Mingled Recyclables Payment"	means the payment as calculated in accordance with paragraph 14.4.
"Specific Co-Mingled Recyclables Rate"	means the Contract Rate for Specific Co-Mingled Recyclables as set out in Appendix 1 to this Schedule.
"Stage 1 CFC Removal"	means the recovery for destruction, recycling or reclamation from an Appliance of Controlled Substances which are: (a) in liquid form; and/or (b) in gas form.
"Stage 2 CFC Treatment"	means the recovery for destruction, recycling or reclamation from an Appliance of Controlled Substances which are in solid form.
"Supermarket Trolley Payment"	means the payment as calculated in accordance with paragraph 13.3.
"Textiles Rate"	means the Contract Rate for Textiles, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Tonnage Items Payment"	means the payment calculated in accordance with paragraph 12.

"Tonnage for Revenue Share"	means the tonnage calculated in accordance with paragraph 9.5.
"Total Deductions"	means the sum of all Deductions to be deducted from the Monthly Service Payment pursuant to the provisions of paragraph 16.1.
"Total Third Party Tonnage"	means the amount calculated in accordance with paragraph 7.2.
"Total Third Party Income"	means the amount calculated in accordance with paragraph 7.2.
"Transfer Station Services"	means the operation of the Sites for the acceptance of General Waste and containerisation for subsequent transfer onto the river.
"Tyre Waste Rate"	means the Contract Rate for Tyre Waste, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.
"Underwriters"	Together Bank of Ireland and Barclays Capital.
"Unused EfW Annual Reserved Capacity Payment"	means the payment as calculated in accordance with paragraph 7.1.
"Vale Street Transport Rate"	means the Contract Rate for the transport of CA Site Waste from the Vale Street CA Site to the Smugglers Way Site or the Cringle Dock Site or any Third Party Delivery Point in accordance with Performance Schedule 8 of Part Three of the ASS Method Statement, the Base Contract Rate for which is set out in Appendix 1 to this Schedule.
"Waste Oil Rate"	means the Contract Rate for Waste Oil, the Base Contract Rate for which is set out in Appendix 1 of this Schedule.

1. **Monthly Service Payment**

1.1 The Monthly Service Payment for each Contract Month ("**MSP**") shall be calculated as follows:

$$\mathbf{MSP = MSP_{EFW} + MSP_{ASS}}$$

Where:

MSP_{EW} = the Monthly Service Payment for EfW Services.

MSP_{ASS} = the Monthly Service Payment for Authority Site Services

- 1.2 The Contractor shall provide an Invoice to the Authority for the Monthly Service Payment in accordance with clause 29 stipulating on the invoice the bank accounts into which the two payments, MSP_{EW} and MSP_{ASS} , shall be made.
- 1.3 All monetary amounts in this Schedule are expressed free of any applicable VAT. Where VAT is payable by the Authority in respect of any monetary amount, such VAT shall be included as an additional sum in the Invoice for the relevant Contract Month.
- 1.4 Subject to any time limits expressly imposed, any dispute arising in relation to this Schedule may be referred by either Party to the Dispute Resolution Procedure.

2. Indexation

- 2.1 On 1st April 2008 and on each anniversary of that date (each an "Indexation Anniversary") each Base Contract Rate shall be adjusted by the application of the relevant Indexation Mechanism to the relevant Base Contract Rate in accordance with paragraph 2.6. The adjusted Base Contract Rate shall be the "New Contract Rate".
- 2.2 Each Base Contract Rate is made up of one or more constituent parts (each a "**Category**") as set out in column 1 of the relevant Indexation Mechanism.
- 2.3 Each Category has a financial value (the "**Category Value**") calculated in accordance with paragraph 2.7.
- 2.4 Each Category Value is indexed using the Review Mechanism set out in the relevant row of column 6 of the relevant Indexation Mechanism.
- 2.5 The New Contract Rate is the sum of each indexed Category Value.
- 2.6 Each New Contract Rate ("**NCR**") shall be calculated in accordance with the following formula

$$NCR = \sum (CV \times \frac{D_n}{D_1})$$

where:

CV = each Category Value as calculated according to paragraph 2.7 below.

D_n = the December Index taken from the relevant Review Mechanism for the December most recently preceding the Indexation Anniversary.

D_1 = the relevant December 2006 Index Base.

2.7 The Category Values ("CV") shall be calculated as follows:

$$CV = BCR \times P$$

where:

BCR = the relevant April 2007 Base Contract Rate as per column 5 of Appendix 1.

P = the Percentage value attributed to each Category in respect of the relevant April 2007 Base Contract Rate as set out in column 2 of each table in Appendix 2.

2.8 Each New Contract Rate shall be deemed to be the Contract Rate applicable as from the relevant Indexation Anniversary for the purposes of this Agreement and apply for the duration of one Contract Year from the Indexation Anniversary on which it was calculated until the next Indexation Anniversary.

3. Default Contract Rate Compensation Cap

3.1 For any EfW Contract Month the Default Contract Rate Compensation Cap for the EfW Services (" CC_{EFW} ") shall be calculated in accordance with the following formula:

$$CC_{EFW} = \frac{ARCY}{12} \times (B + A \times C - V) + \frac{TT}{12} \times (ATG - G + E \times C - V)$$

Where for the purposes of this paragraph 3.1 only:

ARCY = the EfW Contract Year Annual Reserved Capacity nominated by the Authority

B = EfW General Waste Rate

A = [REDACTED] (Indexed in accordance with Appendix 2.3 of this Payment Mechanism).

C = [REDACTED] kilowatt-hour/tonne.

- V = [REDACTED] being the variable per tonne costs for the processing of General Waste at the EfW Facility (indexed in accordance with Appendix 2.3B of this Payment Mechanism)
- TT = Total Third Party Tonnage
- ATG = Average Third Party Gate Fee
- G = General Waste Handling Rate
- E = Estimated Energy Price

The compensation cap calculation for a lesser period than a month shall be calculated on a pro-rata basis.

- 3.2 For any Contract Month following the EfW Commissioning Date the Default Contract Rate Compensation Cap for the Authority Site Services ("CC_{ASS}") shall be calculated in accordance with the following formula:

$$CC_{ASS} = \frac{(ARCY + TT) * G}{12} + (R1 + R2) * CMR$$

Where for the purposes of this paragraph 3.2 only:

- ARCY = the EfW Contract Year Annual Reserved Capacity nominated by the Authority
- TT = Total Third Party Tonnage
- G = General Waste Handling Rate
- R1 = [REDACTED] (indexed in accordance with Appendix 2.2 of this Payment Mechanism)
- R2 = [REDACTED] (indexed in accordance with Appendix 2.2 of this Payment Mechanism), applicable only from the date of completion of the MRF Works
- CMR = the average number of tonnes per month of Co-Mingled Recyclables received at the MRF or any other materials recovery facility (whether or not owned or operated by the

Contractor) pursuant to this Agreement in the previous 12 full Contract Months as calculated in accordance with this Agreement.

The compensation cap calculation for a lesser period than a month shall be calculated on a pro-rata basis.

3.3 For any Contract Month prior to the EFW Commissioning Date the Default Contract Rate Compensation Cap for the Authority Site Services ("CC_{ASS}") shall be calculated in accordance with the following formula:

$$CC_{ASS} = (ARC + TT) * L + (R1 + R2) * CMR$$

Where for the purposes of this paragraph 3.2 only:

ARC = the average tonnage of General Waste landfilled in the previous 3 months

TT = the average tonnage of Third Party Tonnage landfilled in the previous 3 months

L = Landfilled General Waste Rate (prior to Final Period)

R1 = [REDACTED] (indexed in accordance with Appendix 2.2 of this Payment Mechanism)

R2 = [REDACTED] (indexed in accordance with Appendix 2.2 of this Payment Mechanism), applicable only from the date of completion of the MRF Works

CMR = the average number of tonnes per month of Co-Mingled Recyclables received at the MRF or any other materials recovery facility (whether or not owned or operated by the Contractor) pursuant to this Agreement in the previous 3 full Contract Months as calculated in accordance with this Agreement.

- The compensation cap calculation for a lesser period than a month shall be calculated on a pro-rata basis.

SECTION A – EFW SERVICES

4. Monthly Service Payment and Monthly Service Charge

- 4.1 The Monthly Service Payment for EfW Services for each Contract Month (" MSP_{EFW} ") shall be calculated as follows

$$MSP_{EFW} = MSC_{EFW} - TD_{EFW}$$

Where:

MSC_{EFW} = the Monthly Service Charge for the relevant Contract Month for EfW Services as calculated in accordance with 4.2

TD_{EFW} = the Total Deductions for EfW Services

- 4.2 The Monthly Service Charge for EfW Services for each Contract Month (" MSC_{EFW} ") shall be calculated as follows using the Contract Rates applicable to the Period in which that Contract Month falls:

$$MSC_{EFW} = GP + AEP - UARC$$

Where:

GP = the General Waste Payment for the relevant Contract Month.

AEP = the Authority Energy Payment for the relevant Contract Month

UARC = the Unused EfW Annual Reserved Capacity Payment for the relevant Contract Month

5. General Waste Payment

5.1 Prior to the

- (a) EfW Commissioning Date in respect of the first EfW Contract Year and, in the event that the EfW Commissioning Date occurs between 31 January and 31 March, the second EfW Contract Year; and
- (b) 31 January preceding the second EfW Contract Year (or in circumstances where the EfW Commissioning occurs between 31 January and 31 March, the third EfW Contract Year) and each subsequent EfW Contract Year,

the Parties shall agree the estimated tonnage of EfW General Waste for each EfW Contract Month of the subsequent Contract Year (the "**Estimated EfW Monthly Tonnage**") which in total shall sum to the EfW Contract Year Annual Reserved Capacity with the balance of any General Waste in each EfW Contract Month to be regarded as Landfilled General Waste

- 5.2 If, in any EfW Contract Month, the actual tonnage of EfW General Waste varies by more than ten per cent (10%), from the Estimated EfW Monthly Tonnage, either Party may require by written notice to the other Party (the "Revision Notice") that the Estimated EfW Monthly Tonnage be revised. The Revision Notice shall set out such revised estimates (the "Revised Estimates") for each of the remaining EfW Contract Months of the EfW Contract Year to adjust for the EfW Contract Year Annual Reserved Capacity and the tonnage of General Waste already processed at the EfW Facility in that EfW Contract Year.
- 5.3 The Parties shall use their reasonable endeavours to agree the matters set out in paragraphs 5.1 and 5.2 above. If the Parties fail to reach agreement within twenty (20) Working Days of receipt by a Party of a Revision Notice either Party may refer the matter to the Dispute Resolution Procedure.
- 5.4 In each Contract Month the General Waste Payment ("**GP**") shall be calculated as follows:

$$\mathbf{GP = EP + LP}$$

Where:

EP = the EfW General Waste Payment for the relevant Contract Month.

LP = the Landfilled General Waste Payment for the relevant Contract Month.

- 5.5 In each Contract Month from the EfW Commissioning Date the EfW General Waste Payment ("**EP**") shall be calculated as follows:

$$\mathbf{EP = (A \times B) + (A \times F \times G \times H) + (A \times E \times I) + (A \times R)}$$

Where for the purposes of this paragraph 5.5 only:

A = the Estimated EfW Monthly Tonnage.

B = the EfW General Waste Rate.

- E = the Active Landfill Tax Rate.
- F = the Inactive Landfill Tax Rate.
- G = 0.30 (30% being the percentage of inactive ash resulting from the input of EfW General Waste).
- H = 0.10 (10% being the percentage of G which cannot be recycled, and is therefore required to be landfilled).
- I = 0.05 (5% being the percentage of fly ash resulting from the input of EfW General Waste).
- R = Rates Adjustment calculated in accordance with paragraph 8.1

5.6 In each Contract Month prior to the EfW Commissioning Date the EfW General Waste Payment ("EP") shall be calculated as follows:

$$EP = (A \times B)$$

Where for the purposes of this paragraph 5.6 only:

- A = the tonnage of General Waste processed by the EfW Facility during commissioning
- B = the EfW General Waste Rate.

5.7 Subject to the proviso that the Landfilled General Waste Payment shall not be less than zero, in each Contract Month the Landfilled General Waste Payment ("LP") shall be calculated as follows:

$$LP = (A \times B) + (A \times C)$$

Where for the purposes of this paragraph 5.7 only:

- A = the actual number of General Waste tonnes (less the Estimated EfW Monthly Tonnage) in the relevant Contract Month.

- B = the Landfilled General Waste Rate for the Final Period.
- C = the Active Landfill Tax Rate.

5.8 Annual General Waste Payment Reconciliation

- (a) As soon as is reasonably practicable (but no later than twenty (20) Working Days) following the end of each EfW Contract Year, the Contractor shall calculate the General Waste Payment Reconciliation Amount (in accordance with the provisions of paragraph 27.4.4 of Schedule 15) and notify the Authority of the same, providing the Authority with workings of its calculation (the "**General Waste Reconciliation**").
- (b) The Parties shall use their reasonable endeavours to agree the General Waste Payment Reconciliation Amount within twenty (20) Working Days of a notification in accordance with paragraph 2.2.1. If the Parties are unable to agree, either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.
- (c) Within twenty (20) Working Days of agreement or resolution of the General Waste Payment Reconciliation Amount the Contractor shall raise either an invoice or a credit note (as applicable) in respect of the General Waste Payment Reconciliation Amount.

6. Authority Energy Payment

6.1 The Authority shall have the right, as part of the Energy Reconciliation, to appoint a suitably qualified independent third party, the cost of which shall be to the Contractor's account. Where a new Power Purchase Agreement and/or Heat Purchase Agreement are to be entered into by the EfW Operator the Contractor shall

- (a) advise the Authority as to the Estimated Energy Price(s) which EfW Operator anticipates to receive under such Power Purchase Agreement and/or Heat Purchase Agreement.
- (b) ensure the Power Purchase Agreement and/or Heat Purchase Agreement have been priced/structured in such a way that the Actual Energy Price under the terms of this Agreement is consistent with the average energy price received by the EfW Operator for the EfW Contract Year
- (c) Where the Estimated Energy Price in accordance with 6.1(a) is, in the reasonable opinion of the Contractor, likely to be below [REDACTED] (Indexed for each relevant EfW Contract Year in accordance with Appendix 2.3B of this Payment Mechanism) or where the Authority at any time reasonably believes that the Contractor is in breach of 6.1 (b) then the Authority shall have a right to request a

report from the Contractor outlining the key terms and risks of the relevant proposed Power Purchase Agreement and/or Heat Purchase Agreement.

- (d) The Authority shall have the right to pass such reports to the appointed independent third party for review. In the event that the independent third party concludes that procurement of the relevant Power Purchase Agreement and Heat Purchase Agreement was not reasonable or was not consistent with the Contractor's obligations under 6.1(b), the matter shall be referred to Dispute Resolution.
- (e) Should such Dispute Resolution conclude that the procurement was not reasonable or was not consistent with the Contractor's obligations under 6.1(b) then any agreed adjustment shall be applied via the Energy Reconciliation.

6.2 Prior to:

- (a) the EfW Commissioning Date in respect of the first EfW Contract Year and, in the event that the EfW Commissioning Date occurs between 31 December and 31 March, the second EfW Contract Year; and
- (b) 31 December preceding the second EfW Contract Year (or in circumstances where the EfW Commissioning occurs between 31 December and 31 March, the third Contract Year) and each subsequent EfW Contract Year,

the Parties shall agree an Estimated Energy Price (having regard to any Power Purchase Agreements, Heat Purchase Agreements and Poyry reports) to apply in the subsequent Contract Year (such agreement not to be unreasonably withheld or delayed). In the event that the Parties have not agreed the Estimated Energy Price within twenty (20) Working Days of such date either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

6.3 If, at the end of any Contract Month during that subsequent Contract Year, the Actual Monthly Energy Price has varied by more than [REDACTED] (Indexed in accordance with Appendix 2.3B of this Payment Mechanism) from the Estimated Energy Price, either Party may require by written notice to the other Party (the "Energy Revision Notice") that the Estimated Energy Price be revised. The Energy Revision Notice shall set out such revised estimate (the "Energy Revised Estimate") for the remainder of the Contract Year to adjust for any variation between the Actual Energy Price and the Estimated Energy Price up to that point in the Contract Year.

6.4 The Parties shall use their reasonable endeavours to agree the matters set out in clause 6.2 above. If the Parties fail to reach agreement within twenty (20) Working Days of receipt by a Party of an Energy Revision Notice either Party may refer the matter to the Dispute Resolution Procedure.

- 6.5 The Estimated Energy Price must at all times be greater than or equal to [REDACTED] (Indexed in accordance with Appendix 2.3B of this Payment Mechanism).
- 6.6 In each Contract Month the Authority Energy Payment ("AEP") shall be calculated in accordance with the following formula:

$$\text{AEP} = ((A - B) \times C \times D) + E$$

Where for the purposes of this paragraph 6.6 only:

- A = [REDACTED] (Indexed in accordance with Appendix 2.3B of this Payment Mechanism).
- B = the Estimated Energy Price (expressed in £/kilowatt-hour) for the relevant Contract Month.
- C = [REDACTED] kilowatt-hour/tonne.
- D = the Estimated EfW Monthly Tonnage for the relevant Contract Month.
- E = For the month in which it is calculated only, the Energy Reconciliation Amount, calculated in accordance with paragraph 6.7 below.

- 6.7 As soon as is reasonably practicable (but no later than twenty (20) Working Days) following the end of each Contract Year the Contractor shall produce a reconciliation (the "Energy Reconciliation") calculating the difference (the "Energy Reconciliation Amount") between the sum of

- (a) the Authority Energy Payments made (or otherwise due) in that Contract Year; and
- (b) the Authority Energy Payments that would have been made (or otherwise due) in that Contract Year had the Authority Energy Payment been calculated using the Actual Energy Price and the actual tonnage of EfW General Waste processed in that EfW Contract Year, provided that:
 - (i) if the annual General Waste tonnage is less than the EfW Contract Year Annual Reserved Capacity all General Waste tonnage shall be deemed to be EfW General Waste tonnage; and
 - (ii) if the annual General Waste tonnage is greater than the EfW Contract Year Annual Reserved Capacity the EfW General Waste tonnage shall be deemed to be the greater of:

- (1) the actual EfW General Waste tonnage; and
- (2) the EfW Contract Year Annual Reserved Capacity;

and notify the Authority of the Energy Reconciliation Amount and provide the Authority with workings of the Contractor's calculations and the information set out in 6.7 below.

- 6.8 The Energy Reconciliation shall set out the stages of the calculations referred to in paragraph 6.6, and be accompanied by a report prepared by an independent third party auditor, appointed by the Authority the cost of which shall be to the Contractor's account. The appointment of the auditor shall be without prejudice to the Authority's rights under the Dispute Resolution Procedure. The Parties shall use their reasonable endeavours to agree the Energy Reconciliation Amount within twenty (20) Working Days of notification in accordance with paragraph 6.6. If the Parties are unable to agree, either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.
- 6.9 Within twenty (20) Working Days of agreement or resolution of the Energy Reconciliation Amount the Contractor shall raise either an invoice or credit note (as applicable) for such amount.
- 6.10 For the avoidance of doubt no Authority Energy Payment shall be due prior to EfW Commissioning Date (ie for waste processed during commissioning).

7. Unutilised EfW Annual Reserved Capacity Payment

- 7.1 In each EfW Contract Year the Authority shall be entitled to the Unused EfW Annual Reserved Capacity Payment ("UARC") shall be calculated in accordance with the following formula:

$$\text{UARC} = \blacksquare \times (\text{ATG} - \text{B}) \times (\text{ARC} - \text{ARCY}); \text{UARC} > 0$$

Where for the purposes of this paragraph 7.1 only:

- ATG = Average Third Party Gate Fee in the EfW Contract Year calculated in accordance with paragraph 7.2.
- B = the EfW General Waste Rate
- ARC = the EfW Annual Reserved Capacity
- ARCY = the EfW Contract Year Annual Reserved Capacity as nominated by the Authority

- 7.2 In each EfW Contract Year Average Third Party Gate Fee ("ATG") shall be calculated in accordance with the following formula:

$$\text{ATG} = \text{TI} / \text{TT}$$

Where for the purposes of this paragraph 7.2 only:

TI = Total income (including but not limited to EfW processing fee, transport and transfer costs) received in the EfW Contract Year by the Contractor from third parties delivering Residual Waste to Authority Transfer Stations (ie excluding Authority General Waste) and to Walbrook Wharf (ie excluding City of London's own municipal waste). For the avoidance of doubt this shall exclude any income associated with the generation of electricity from this waste. ("Total Third Party Income")

TT = Total tonnage of waste received in the EfW Contract Year by the Contractor from third parties delivering Residual Waste to Authority Transfer Stations (ie excluding Authority General Waste) and to Walbrook Wharf (ie excluding City of London's own municipal waste). ("Total Third Party Tonnage")

7.3 Prior to:

7.3.1 the EfW Commissioning Date in respect of the first EfW Contract Year and, in the event that the EfW Commissioning Date occurs between 31 January and 31 March, the second EfW Contract Year; and

7.3.2 31 January preceding the second EfW Contract Year (or in circumstances where the EfW Commissioning occurs between 31 January and 31 March, the third Contract Year) and each subsequent EfW Contract Year,

the Parties shall agree an Estimated Average Third Party Gate Fee (having regard to the prevailing market conditions and the previous EfW Contract Years' Average Third Party Gate Fee) to apply in the subsequent Contract Year (such agreement not to be unreasonably withheld or delayed). In the event that the Parties have not agreed the Estimated Average Third Party Gate Fee within twenty (20) Working Days of such date either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

7.4 If, at the end of any Contract Month during that subsequent Contract Year, the Actual Average Third Party Gate Fee has varied by more than 10% from the Estimated Average Third Party Gate Fee, either Party may require by written notice to the other Party (the "**Average Third Party Gate Fee Revision Notice**") that the Estimated Average Third Party Gate Fee be

revised. The Average Third Party Gate Fee Revision Notice shall set out such revised estimate (the "**Average Third Party Gate Fee Revised Estimate**") for the remainder of the Contract Year to adjust for any variation between the Actual Average Third Party Gate Fee and the Estimated Average Third Party Gate Fee up to that point in the Contract Year.

7.5 The Parties shall use their reasonable endeavours to agree the matters set out in clause 7.4 above. If the Parties fail to reach agreement within twenty (20) Working Days of receipt by a Party of an Average Third Party Gate Fee Revision Notice either Party may refer the matter to the Dispute Resolution Procedure.

7.6 Within one month from the end each EfW Contract Year the Contractor shall provide the Authority with an annual report on the Unutilised Annual Reserved Capacity Payment reconciling the payments during the EfW Contract Year. This report shall be prepared by an independent third party auditor appointed by the Authority, the cost of which shall be to the Contractor's account. The appointment of the auditor shall be without prejudice to the Authority's rights under the Dispute Resolution Procedure.

7.7 In the event that there is a change in the Electricity Act Consent which amends conditions 4, 5 or 41 then the above terms to be reviewed in good faith by the Parties to ensure that the Contractor is unable to change principle behind the setting/calculation of ATG to the detriment of the Authority

8. Adjustments to the EfW General Waste Rate

8.1 EfW Facility Business Rates

(a) The EfW General Waste Rate shall be adjusted by way of a "**Rates Adjustment**" from the EfW Commissioning Date to take account of the first change to the business rating of the EfW Facility (estimated as at the Agreement Date to be [REDACTED] per annum) indexed in accordance with Appendix 2.3B of this Payment Mechanism which reflects a change in the approach to the rating of energy from waste facilities from a formula-based approach to a conventional rating approach, whether or not as a result of any change to Rating and Valuation Statutory Instrument No. 3282 1994.

(b) The initial **Rates Adjustment** ("R") shall be calculated in accordance with the formula below and then "R" shall be indexed annually in accordance with Appendix 2.3B of this Payment Mechanism:

$$R = \frac{(RCY - RB)}{D}$$

Where for the purposes of this paragraph 8.1 only:

RCY = the actual business rates in the EfW Contract Year in which the change occurs, adjusted pro rata as appropriate

RB = [REDACTED] indexed in accordance with Appendix 2.3B of this Payment Mechanism

D = the EfW Design Capacity

- (c) Any adjustment shall be agreed by the Parties, acting reasonably, and shall take effect as from the date of the change in the rating approach.

8.2 Contingency Adjustment

- (a) The EfW General Waste Rate is based on the Financial Model containing a total modelled contingency of [REDACTED] which shall be met by [REDACTED] from the Senior Lenders and [REDACTED] of contingent sub-debt ('**Budget Contingency**').
- (b) Within 3 months of the EfW Commissioning Date, the Contractor shall prepare and provide to the Authority a report which shall detail the extent to which the contingency in the Financial Model has been utilised ('**Actual Contingency**'), which the Authority has the right to pass for review to an independent third party auditor appointed by the Authority, the cost of which shall be to the Contractor's account.
- (c) In the event that the Actual Contingency is less than the Budget Contingency then the EfW General Waste Rate shall be reduced in accordance with the following formula:

$$\frac{(\text{Budget Contingency} - \text{Actual Contingency}) \times C}{1,000,000}$$

Where (Budget Contingency – Actual Contingency) > 0

and where C is [REDACTED] indexed in accordance with Appendix 2.3B of this Payment Mechanism

- (d) For the avoidance of doubt any such reduction in the EfW General Waste Rate shall be back-dated to the first application of the EfW General Waste Rate

8.3 Operational Management Adjustment

- (a) Under the terms of the Senior Financing Agreements, the EfW Financiers are required to determine before the completion of the fourth anniversary following the

EfW Commissioning Date if there is a requirement for the EfW Operator to subcontract the operational management of the EfW Facility to a third party (ie who is not a Contractor Party)

- (b) In the event that, at the EfW Financiers sole discretion, there is no requirement for the operational management to be contracted out or the cost of the EfW Operator meeting EfW Financiers' operational management requirements are such that it is less than [REDACTED] (indexed in accordance with Appendix 2.3B of this Payment Mechanism), then the Authority shall be entitled to the a reduction in the EfW General Waste Rate of:

$$\frac{[REDACTED] - \text{Demonstrable cost of EfW Financiers' requirements}}{\text{Authority Share} \times \text{EfW Design Capacity}}$$

Where the adjustment > 0

8.4 General

- (a) Any dispute as to the level of adjustment to the EfW General Waste Rate necessary to take account of any of the adjustments in 8.1 – 8.5 above may be referred by either Party to the Dispute Resolution Procedure

9. Revenue Share

9.1 The Base Case financial model at Financial Close assumed

- (a) a gate fee at the Authority Sites for third party waste ('Average Third Party Gate Fee') of [REDACTED] per tonne (in October 2006 terms).
- (b) a maximum of [REDACTED] tonnes per annum of waste could be delivered by road to the EfW Facility. The average gate fee for this road waste was [REDACTED] [REDACTED] (in October 2006 terms) ('Average Road Waste Gate Fee').
- (c) The Base Case equity IRR is [REDACTED] %

9.2 In order to achieve an equity IRR in the Base Case of [REDACTED] at Financial Close it was calculated that the Average Third Party Gate Fee and Average Road Waste Gate Fee would need to increase by [REDACTED] per tonne (in October 2006 terms). Under such circumstances the Average Third Party Gate Fee increases to [REDACTED] (in October 2006 terms) – the 'Revenue Share Floor'.

9.3 The Revenue Share Floor shall be indexed annually with [REDACTED] in 2006 terms of the Revenue Share Floor indexed in accordance Appendix 2.3A and [REDACTED] (in October 2006

terms) indexed in accordance Appendix 2.3B. In the event of a Relevant Event which impacts on the EfW General Waste Rate or General Waste Handling Rate for the Final Period, the Revenue Share Floor shall be adjusted accordingly so as to reflect the effects of such a Relevant Event on the 'merchant' capacity of the EfW Facility.

9.4 At the end of each EfW Contract Year the Authority shall be entitled to a Revenue Share ("RS") calculated in accordance with the following formula:

$$RS = (ATG - RSF) * TRS * RSP \quad RS > 0$$

Where for the purposes of this paragraph 9.4 only:

ATG = Average Third Party Gate Fee in the EfW Contract Year calculated in accordance with paragraph 7.2.

RSF = Revenue Share Floor = [REDACTED] as defined in paragraph 9.2 and indexed in accordance with paragraph 9.3

TRS = Tonnage for Revenue Share

RSP = The Revenue Share Percentage which shall be [REDACTED]

9.5 In each EfW Contract Year the Tonnage for Revenue Share ("TRS") shall be calculated as in accordance with the following formula:

$$TRS = TT - (ARC - ARCY)$$

TT = Total Third Party Tonnage calculated in accordance with paragraph 7.2.

ARC = the EfW Annual Reserved Capacity

ARCY = The EfW Contract Year Annual Reserved Capacity as nominated by the Authority

9.6 In the event of a 'Road Outage' (ie a period in excess of 48 hours continuous in which road access is not possible for direct deliveries of waste to the EfW Facility) or 'Transfer Station Outage' at Walbrook Wharf (ie a period in excess of 48 hours continuous in which the use of Walbrook Wharf for the transfer of waste is not possible), the parties shall review the calculation of Tonnage for Revenue Share and adjust as necessary in order to ensure that

the Authority neither gains or loses from the outages. In the event if a disagreement then the matter shall be resolved by way of the Dispute Resolution Procedure

9.7 Within one month from the end each EfW Contract Year the Contractor shall provide the Authority with an annual report on the Revenue Share Calculation reconciling the payments during the EfW Contract Year. This report shall be prepared by an independent third party auditor appointed by the Authority, the cost of which shall be to the Contractor's account. The appointment of the auditor shall be without prejudice to the Authority's rights under the Dispute Resolution Procedure

9.8 In the event that there is a change in the Electricity Act Consent which amends conditions 4, 5 or 41 then the above terms to be reviewed in good faith by the Parties to ensure that the Contractor is unable to change the principle behind the setting/calculation of RS to the detriment of the Authority.

9.9 The Revenue Share actual payments in any EfW Contract Year shall, if due in accordance with this paragraph, be subject to the approval of Senior Lenders consistent with the terms of the Senior Financing Agreements and as at the Amended Agreement Date this shall be a requirement that the next semi-annual forecast shall show as a minimum, the following cover ratios:

- Min ADSCR 
- Avg ADSCR 
- Min LLCR 

In the event that Revenue Share payments cannot be made in full to the Authority in any EfW Contract Year as a result of the above requirement any shortfall shall be rolled forward to the next EfW Contract Year. For the avoidance of doubt interest shall be payable on rolled forward sums at the base rate of Barclays Bank plc from time to time. All outstanding Revenue Share payments shall be made at the Expiry Date and any Qualifying Refinancing.

10. Total Deductions for EfW Services

10.1 The sum of the Total Deductions for EfW Services (" T_{DEFW} ") for each Contract Month shall be calculated on the following basis:

$$T_{DEFW} = \Sigma C$$

Where for the purposes of this paragraph 10.1 only:

ΣC = the sum of Default Deductions for EfW Services for the

relevant Contract Month.

- 10.2 For the purposes of paragraph 10.1, the relevant deduction in respect of Default Notices and Repeat Default Notices issued by the Authority in the relevant Contract Month shall be the aggregate of undisputed Default Deductions for that Contract Month
- 10.3 For the purposes of paragraph 10.1, the relevant deduction in respect of Applicable Waste Default Payments for a Contract Month shall be the aggregate of undisputed Applicable Waste Default Payments for each Applicable Waste Type for the relevant Contract Month in respect of which the Authority raises a notice.
- 10.4 The application of Relevant Relief for the purposes of this paragraph 10 shall be conditional upon compliance by the Contractor with the requirements of clause 38.38 applied mutatis mutandis.

SECTION B – AUTHORITY SITE SERVICES

11. Monthly Service Payment and Monthly Service Charge

11.1 The Monthly Service Payment for Authority Site Services for each Contract Month (" MSP_{ASS} ") shall be calculated as follows

$$MSP_{ASS} = MSC_{ASS} - TD_{ASS}$$

Where:

MSC_{ASS} = the Monthly Service Charge for the relevant Contract Month for Authority Site Services as calculated in accordance with 11.2

TD_{ASS} = the Total Deductions for Authority Site Services

11.2 The Monthly Service Charge for Authority Site Services for each Contract Month (" MSC_{ASS} ") shall be calculated as follows using the Contract Rates applicable to the Period in which that Contract Month falls:

$$MSC = TI + NTI + HC$$

Where:

TI = the Tonnage Items Payment for the relevant Contract Month.

NTI = the Non-Tonnage Items Payment for the relevant Contract Month.

HC = the Handling Charge Payment for the relevant Contract Month.

12. Tonnage Items Payments

In each Contract Month the Tonnage Items Payment (" TI ") shall be calculated as follows:

$$TI = GHP + IWP + DP + OP$$

Where:

GHP = the General Waste Handling Payment for the relevant Contract Month.

IWP = the Inert Waste Payment for the relevant Contract Month.

DP = the Detritus Waste Payment for the relevant Contract Month.

OP = the Other Waste Payment for the relevant Contract Month.

12.1 General Waste Handling Payment

- (a) In each Contract Month following EfW Commissioning the General Waste Handling Payment ("GHP") shall be calculated as follows:

$$\mathbf{GHP = A \times B}$$

Where for the purposes of this paragraph 12.1 (a) only:

A = the actual number of General Waste tonnes in the relevant Contract Month.

B = the General Waste Handling Rate for the Final Period.

- (b) In each Contract Month prior to EfW Commissioning the General Waste Handling Payment ("GHP") shall be calculated as follows:

$$\mathbf{GHP = (A \times B) + (A \times C) - (A \times D) - (A \times E)}$$

Where for the purposes of this paragraph 12.1(b) only:

A = the actual number of General Waste tonnes in the relevant Contract Month.

B = the applicable Landfilled General Waste Rate for the Interim Period or any Interim New Mucking Period, the Interim Non-Mucking Period, or the EfW Interim Delay Period (as the case may be).

C = the Active Landfill Tax Rate.

D = Reduction in the applicable landfilled General Waste Rate in accordance with the following formula (NB values not subject to

indexation:

Contract Year commencing 01.04.08 ██████████ per tonne

Contract Year Commencing 01.04.09 ██████████ per tonne

Contract Year Commencing 01.04.10 ██████████ per tonne

E = From the first Contract Month immediately following the date upon which a Smugglers Way CA Site Application is refused by the planning authority or, in accordance with clause 6B.10 (b), the Authority confirms to the Contractor that it does not wish the Contractor to carry out any CA Site Works at the Smugglers Way CA Site the applicable landfilled General Waste Rate will (unless where the provisions of clause 6B.13 apply and Contractor is obliged to carry out the Smugglers Way CA Site Works) be reduced by ██████████ per tonne (not indexed), subject to such a reduction in the applicable General Waste Rate not continuing beyond 31st December 2010.

- (c) During the Interim New Mucking Period, the Interim Non-Mucking Period, or the EfW Interim Delay Period, if the annual tonnage of General Waste, other than Misdelayed or Misdirected General Waste, delivered directly by Constituent Council Party vehicles to Sites which are not Authority Sites in accordance with the provisions of this Agreement, exceeds ninety thousand (90,000) tonnes per annum, the Contractor shall notify the Authority that a further reconciliation (the "**Diverted Waste Reconciliation**") will be made as soon as is reasonably practicable after the end of the Contract Year.
- (d) The Diverted Waste Reconciliation shall, to the Authority's reasonable satisfaction, identify any savings (net of any associated Diverted Tonnage Payments or additional costs or losses other than those which may accrue to the Contractor under the terms of any Authority Project Document) the Contractor had made in relation to General Waste delivered directly by Constituent Council Party vehicles in accordance with the provisions of this Agreement, during the Contract Year.
- (e) The Parties shall use their reasonable endeavours to agree the Diverted Waste Reconciliation within twenty (20) Working Days of receipt by the Authority of a notification in accordance with paragraph 12.1 (d). If the Parties are unable to agree, either Party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.
- (f) Within twenty (20) Working Days of agreement or resolution of the Diverted Waste Reconciliation where it is reasonably demonstrated that a saving has been made by

the Contractor then the Contractor shall raise a credit note for [REDACTED] of such saving in favour of the Authority (the "Diverted Waste Reconciliation Amount"). For the avoidance of doubt, if the Diverted Waste Reconciliation shows that the Contractor has suffered a net loss, no payment shall be made by the Authority to the Contractor.

12.2 Inert Waste Payment

In each Contract Month the Inert Waste Payment ("IWP") shall be calculated as follows:

$$\text{IWP} = (A \times B) + (C \times D) + (E \times F) + (G \times D)$$

Where for the purposes of this paragraph 12.2 only:

- A = the number of tonnes of Inert Waste up to and including 1,500 tonnes processed in accordance with this Agreement in the relevant Contract Month.
- B = the Inert Waste Rate (Band 1).
- C = the number of tonnes of Inert Landfilled Waste included within A.
- D = the Applicable Landfill Tax Rate.
- E = the number of tonnes of Inert Waste exceeding 1,500 tonnes processed in accordance with this Agreement in the relevant Contract Month.
- F = the Inert Waste Rate (Band 2).
- G = the number of tonnes of Inert Landfilled Waste included within E.

12.3 Detritus Waste Payment

In each Contract Month the Detritus Waste Payment ("DP") shall be calculated as follows:

$$\text{DP} = (A \times B \times D) + (A \times B \times C)$$

Where for the purposes of this paragraph 12.3 only:

- A = the number of tonnes of Detritus Waste processed in accordance with this Agreement in the relevant Contract Month.

- B = the Detritus Waste Scale Down Rate for the relevant Contract Month.
- C = the Active Landfill Tax Rate.
- D = the Detritus Waste Rate.

- (a) From the Services Commencement Date until 31 March 2004 the Detritus Waste Scale Down Rate shall be 66.66%.
- (b) Prior to 31 December 2003, and prior to 31 December in each subsequent Contract Year, the Parties shall agree the Detritus Waste Scale Down Rate for the subsequent Contract Year.
- (c) Prior to 31 December 2003, and prior to 31 December in each subsequent Contract Year, the Parties shall agree the Detritus Waste Scale Down Rate for the subsequent Contract Year.
- (d) In setting the Detritus Waste Scale Down Rate the Parties shall:
- (i) adjust the Detritus Waste Scale Down Rate to take account of the water weight loss which the Parties agree occurs between the receipt of Detritus Waste by the Contractor and its eventual disposal by the Contractor in accordance with this Agreement; and
 - (ii) adjust the Detritus Waste Scale Down Rate only on the basis of the weighbridge data collected by or on behalf of the Contractor relating to the Detritus Waste processed by the Contractor in the previous twelve (12) months.
- (e) The Parties shall use their reasonable endeavours to agree the matters set out in paragraph 12.3(d). If the Parties fail to reach agreement within twenty (20) Working Days of either Party seeking such agreement, either Party may refer the matter to the Dispute Resolution Procedure.

12.4 Other Waste Payment

In each Contract Month the Other Waste Payment ("OP") shall be calculated as follows:

$$OP = (A \times B) + (C \times D) + (E \times F) + (G \times H) + (I \times J) + (K \times L) + (K \times M)$$

Where for the purposes of this paragraph 12.4 only:

- A = the number of tonnes of Clinical Waste processed in the relevant Contract Month in accordance this Agreement.
- B = the Clinical Waste Rate.
- C = the number of tonnes of Tyre Waste processed in the relevant Contract Month in accordance with this Agreement.
- D = the Tyre Waste Rate.
- E = the number of tonnes of Hazardous Household Waste processed in the relevant Contract Month in accordance with this Agreement.
- F = the Hazardous Household Waste Rate.
- G = the number of tonnes of Waste Oil processed in the relevant Contract Month in accordance with this Agreement.
- H = the Waste Oil Rate.
- I = the number of tonnes of Battery Waste processed in the relevant Contract Month in accordance with this Agreement.
- J = the Battery Waste Rate.
- K = the number of tonnes of Asbestos Waste processed in the relevant Contract Month in accordance with this Agreement.
- L = the Asbestos Waste Rate.
- M = the Active Landfill Tax Rate.

13. **Non-Tonnage Items Payment**

The Non-Tonnage Items Payment for each Contract Month ("NTI") shall be calculated as follows:

$$\text{NTI} = \text{ADP} + \text{AVP} + \text{STP} + \text{MNCBP} + \text{MCBP} + \text{FTP} + \text{CRTP}$$

Where:

ADP = the Appliance Disposal Payment for the relevant Contract Month.

AVP = the Abandoned Vehicle Payment for the relevant Contract Month.

STP = the Supermarket Trolley Payment for the relevant Contract Month.

MNCBP= the Manufacturer Non-Collected Bottle Payment for the relevant Contract Month.

MCBP = the Manufacturer Collected Bottle Payment for the relevant Contract Month.

FTP = Flourescent Tube Payment

CRTP = CRT Payment

13.1 Appliance Disposal Payment

In each Contract Month the Appliance Disposal Payment ("ADP") shall be calculated as follows:

$$ADP = (A \times B) + C + D + E - F$$

Where for the purposes of this paragraph 13.1 only:

A = the number of Appliances processed in the relevant Contract Month as recorded in a manner to be agreed between the General Manager and the Contractor's Representative.

B = the Management Fee.

C = the Appliance Transport Cost incurred in the relevant Contract Month.

D = the Appliance Storage Cost incurred in the relevant Contract Month.

E = the Appliance Disposal Cost incurred in the relevant Contract Month.

F = any income (if applicable) already received by the Contractor from the Authority due to the Appliances being received within a load of General Waste.

13.2 Abandoned Vehicle Payment

In each Contract Month the Abandoned Vehicle Payment ("AVP") shall be calculated as follows:

$$AVP = (A \times B) + C + D - E$$

Where for the purposes of this paragraph 13.2 only:

- A = the number of Abandoned Vehicles processed in the relevant Contract Month as recorded on the Contractor's returns to the Authority in the manner prescribed in the Output Specification.
- B = the Abandoned Vehicle Management Fee.
- C = the Abandoned Vehicle Storage Cost incurred in the relevant Contract Month.
- D = the Abandoned Vehicle Disposal Cost incurred in the relevant Contract Month net of any income received for the scrap value of any Class A Vehicle (for the avoidance of doubt, this figure could be a credit for the Authority when the scrap value of any Class A Vehicle exceeds any costs incurred by the Contractor).
- E = any income received by the Contractor from the sale of any Class B Vehicles or from any member of the public reclaiming their vehicle.

13.3 Supermarket Trolley Payment

In each Contract Month the Supermarket Trolley Payment ("STP") shall be calculated as follows:

$$STP = (A \times B) - C$$

Where for the purposes of this paragraph 13.3 only:

- A = the number of Supermarket Trolleys processed in the relevant Contract Month as recorded in a manner to be agreed between the General Manager and the Contractor's Representative.
- B = the Management Fee.

C = any income (if applicable) already received by the Contractor from the Authority due to the Supermarket Trolleys being received within a load of General Waste.

13.4 Manufacturer Non-Collected Bottle Payment

In each Contract Month the Manufacturer Non-Collected Bottle Payment ("MNCBP") shall be calculated as follows:

$$\text{MNCBP} = (A \times B) + (A \times C) - D$$

Where for the purposes of this paragraph 14.4 only:

A = the number of Manufacturer Non-Collected Bottles processed in the relevant Contract Month as recorded in a manner to be agreed between the General Manager and the Contractor's Representative.

B = the Manufacturer Non-Collected Bottle Disposal Cost.

C = the Management Fee.

D = any income (if applicable) already received by the Contractor from the Authority due to the Manufacturer Non-Collected Bottles being received within a load of General Waste.

13.5 Manufacturer Collected Bottle Payment

In each Contract Month the Manufacturer Collected Bottle Payment ("MCBP") shall be calculated as follows:

$$\text{MCBP} = (A \times B) - C$$

Where for the purposes of this paragraph 13.5 only:

A = the number of Manufacturer Collected Bottles processed in the relevant Contract Month as recorded in a manner to be agreed between the General Manager and the Contractor's Representative.

B = the Management Fee.

C = any income (if applicable) already received by the Contractor from the Authority due to the Manufacturer Collected Bottles being received within a load of General Waste.

13.6 Fluorescent Tube Payment

In each Contract Month the Fluorescent Tube Payment ("FTP") shall be calculated as follows:

$$\text{FTP} = (\text{A} \times \text{B}) - \text{C}$$

Where for the purposes of this paragraph 13.6 only:

A = the number of full fluorescent tube containers emptied in the relevant Contract Month as recorded in a manner to be agreed between the General Manager and the Contractor's Representative.

B = the Fluorescent Tube Rate

C = any income (if applicable) already received by the Contractor from the Authority due to the Fluorescent Tubes being received within a load of General Waste.

13.7 CRT Payment

In each Contract Month the CRT Payment ("CRTP") shall be calculated as follows:

$$\text{CRTP} = (\text{A} \times \text{B}) - \text{C}$$

Where for the purposes of this paragraph 13.7 only:

A = the number of CRTs processed in the relevant Contract Month as recorded in a manner to be agreed between the General Manager and the Contractor's Representative.

B = the Management Fee

C = any income (if applicable) already received by the Contractor from the Authority due to the CRTs being received within a load of General Waste.

14. Handling Charge Payment

In each Contract Month the Handling Charge Payment ("HC") shall be calculated as follows:

$$\mathbf{HC = CMP + BRP + CAP}$$

Where:

CMP = the Co-Mingled Recyclables Payment for the relevant Contract Month.

BRP = the Bulk Recyclables Payment for the relevant Contract Month.

CAP = the CA Site Transport Payment for the relevant Contract Month.

14.1 Co-Mingled Recyclables Payment

- (a) Subject to paragraphs 14.1.(b) to 14.1.(e) inclusive, in each Contract Month the Co-Mingled Recyclables Payment ("CMP") shall be calculated as follows:

$$\mathbf{CMP = (A \times (B - D)) - (C \times D/2)}$$

Where for the purposes of this paragraph 14.1 only:

A = the number of tonnes of Co-Mingled Recyclables received at the MRF or any other materials recovery facility (whether or not owned or operated by the Contractor) pursuant to this Agreement in the relevant Contract Month as calculated in accordance with this Agreement.

B = the Co-Mingled Recyclables Rate

C = the number of tonnes of Waste which have not been received as Authority Waste but which are accepted and treated by the Contractor through the MRF.

D = (MRF Transfer Value Original Cap - MRF Contract Price Contractor's Percentage) x [REDACTED] provided that if D is less than zero it shall be deemed to equal zero.

- (b) Any Co-Mingled Recyclables (up to 84,000 tonnes per annum less the tonnage of Authority Waste actually processed at the MRF in that year (all pro-rated as required)) received by the Contractor at the MRF but not processed by the

Contractor at the MRF (or any other materials recovery facility (whether or not owned or operated by the Contractor)) as a result of unavailability of the MRF shall be charged at the Co-Mingled Recyclables Rate (and for the avoidance of doubt shall not attract any additional handling charge).

- (c) MRF Rejects shall be introduced into the appropriate Authority Waste stream by the Contractor, and MRF Residuals shall be introduced into the General Waste stream.
- (d) MRF Rejects shall incur such Contract Rate (and where relevant Landfill Tax at the Applicable Landfill Tax Rate) as is determined by their subsequent processing and disposal.
- (e) MRF Residuals shall incur the following charges:
 - (i) the applicable Co-Mingled Recyclables Rate (which, for the avoidance of doubt, will have already been charged for when such material was accepted as Co-Mingled Recyclables by the Contractor); and
 - (ii) such Contract Rate (and where relevant Landfill Tax at the Applicable Landfill Tax Rate) as is determined by their subsequent processing and disposal.

14.2 Bulk Recyclables Payment

- (a) In each In each Contract Month the Bulk Recyclables Payment ("BRP") shall be calculated as follows:

$$\text{BRP} = (\text{A} \times \text{B}) + (\text{C} \times \text{D}) + (\text{E} \times \text{F}) + (\text{G} \times \text{H}) + (\text{I} \times \text{J}) + (\text{K} \times \text{L}) + (\text{M} \times \text{N}) + (\text{O} \times \text{P}) + (\text{Q} \times \text{R}) + (\text{S} \times \text{T}) - \text{BRI}$$

Where for the purposes of this paragraph 14.2 only:

- A = the number of tonnes of Colour Separated Glass processed in accordance with this Agreement in the relevant Contract Month.
- B = the Colour Separated Glass Rate.
- C = the number of tonnes of Mixed Paper processed in accordance with this Agreement in the relevant Contract Month.
- D = the Mixed Paper Rate.
- E = the number of tonnes of Mixed Cans processed in accordance with this Agreement in the relevant Contract Month.

- F = the Mixed Cans Rate.
- G = the number of tonnes of Green Waste processed in accordance with this Agreement in the relevant Contract Month.
- H = the Green Waste Rate.
- I = the number of tonnes of Textiles processed in accordance with this Agreement in the relevant Contract Month.
- J = the Textiles Rate.
- K = the number of tonnes of Clean Timber processed in accordance with this Agreement in the relevant Contract Month.
- L = the Clean Timber Rate.
- M = the number of tonnes of Scrap Metal processed in accordance with this Agreement in the relevant Contract Month.
- N = the Scrap Metal Rate.
- O = the number of tonnes of Mixed Glass processed in accordance with this Agreement in the Relevant Contract Month.
- P = the Mixed Glass Rate.
- Q = the number of tonnes of Large Domestic Appliances processed in accordance with this Agreement in the relevant Contract Month.
- R = the Large Domestic Appliances Rate.
- S = the number of tonnes of Mixed WEEE processed in accordance with this Agreement in the relevant Contract Month.
- T = the Mixed WEEE Rate.
- BRI = the Bulk Recyclables Income for the relevant Contract Month determined in accordance with paragraphs 15.2(b) to 15.2(d) inclusive.

- (b) The Contractor shall sell, if it is reasonably practicable to do so, at the Obtainable Market Rate all Bulk Recyclables accepted by the Contractor for recycling at the Authority Sites in accordance with this Agreement.
- (c) The Obtainable Market Rate means the market rate obtainable either:
 - (i) in the spot market; or
 - (ii) in accordance with any contract for the sale of Bulk Recyclables that the Contractor has entered into,

such spot market rates or contracts to be approved by the Authority, such approval not to be unreasonably delayed or withheld, PROVIDED THAT there is, on the balance of probabilities, no prejudicial effect of any contract entered into by the Contractor referred to in paragraph 14.2(c)(ii) on the operation of the Services or any of the Contractor's obligations under this Agreement, and PROVIDED FURTHER THAT if the Obtainable Market Rate is negative the Authority shall at its option pay the Obtainable Market Rate or instruct the Contractor to dispose of the relevant Bulk Recyclables as General Waste

- (d) The Bulk Recyclables Income ("BRI") for each Contract Month shall be calculated as follows:

$$BRI = \sum(A \times B) + C$$

Where for the purposes of this paragraph 14.2(d) only:

- A = the number of tonnes of each constituent part of the Bulk Recyclables sold in the relevant Contract Month in accordance with this Agreement.
- B = the Obtainable Market Rate for each constituent part of the Bulk Recyclables.
- C = [REDACTED] of any PRN Amount relating to each constituent part of the Bulk Recyclables for the relevant Contract Month.

14.3 Cremorne Wharf Co-Mingled Recyclable Payment

In each Contract Month the Cremorne Wharf Co-Mingled Recyclable Payment ("CWCMP") shall be calculated as follows:

$$CWCMP = (A1 \times B1) + (A2 \times B2) + (C \times D)$$

Where for the purposes of this paragraph 14.3.

- A1 = the number of tonnes up to and including 1250 of each Cremorne Wharf Co-Mingled Recyclables received by the Contractor at the Cremorne Wharf Site in the relevant Contract Month.
- A2 = the number of tonnes in excess of 1250 of each Cremorne Wharf Co-Mingled Recyclables received by the Contractor at the Cremorne Wharf Site in the relevant Contract Month.
- B1 = CW Co-Mingled Recyclables Rate Band 1.
- B2 = CW Co-Mingled Recyclables Rate Band 2.
- C = Cremorne Wharf Transfer Rate.
- D = The number of tonnes in Rejected Cremorne Wharf Loads in the relevant Contract Month.

14.4 Specific Co-Mingled Recyclables Payment

In each Contract Month the Specific Co-Mingled Recyclables Payment ("SCMP") shall be calculated as follows:

$$\text{SCMP} = (A \times B)$$

Where for the purpose of this paragraph 14.4 only:

- A = the number of tonnes up to and including 2600 tonnes of Specific Co-Mingled Recyclables received by the Contractor at the Smugglers Way Site and the Cringle Dock Site in Aggregate for subsequent processing pursuant to this agreement in the relevant Contract Month as calculated in accordance with this Agreement.
- B = the Specific Co-Mingled Recyclables Rate

14.5 CA Site Transport Payment

In each Contract Month the CA Site Transport Payment ("CAP") shall be calculated as follows:

$$\text{CAP} = (\text{A} \times \text{B}) + (\text{C} \times \text{D})$$

Where for the purposes of this clause 14.5 only:

- A = the number of tonnes of CA Site Waste transported to the Cringle Dock Site or the Smugglers Way Site or any Third Party Delivery Point from the Vale Street CA Site in the relevant Contract Month in accordance with this Agreement.
- B = the Vale Street Transport Rate.
- C = the number of tonnes of CA Site Waste transported to the Cringle Dock Site or the Smugglers Way Site or any Third Party Delivery Point from the Cremorne Wharf CA Site in the relevant Contract Month in accordance with this Agreement.
- D = the Cremorne Wharf Transport Rate.

15. **Energy/Utilities**

15.1 The Contractor shall enter into all relevant utility contracts for the provision of the Utilities necessary for the provision of the Authority Site Services, and shall

- (a) make available to the Authority (at the Authority's cost) such Utilities as are received by the Contractor pursuant to such utility contracts as the Authority may require for use at the Authority Buildings; and
- (b) reflect periodically in an Invoice to the Authority, such amounts as are properly due from the Authority to the Contractor in respect of any Utilities used by the Authority pursuant to paragraph 15.1.

16. **Total Deductions for Authority Site Services**

16.1 The sum of the Total Deductions ("TD_{ASS}") for each Contract Month shall be calculated on the following basis:

$$\text{TD}_{\text{ASS}} = \Sigma \text{A} + \Sigma \text{B} + \Sigma \text{C} + \Sigma \text{D}$$

Where for the purposes of this paragraph 16.1 only:

ΣA = the sum of Slow Tonnage Payments calculated in accordance with paragraph 16.2.

ΣB = the sum of Diverted Tonnage Payments calculated in accordance with paragraph 16.3.

ΣC = the sum of Default Deductions for Authority Site Services for the relevant Contract Month.

ΣD = the sum of Applicable Waste Default Payments for each Applicable Waste Type for the relevant Contract Month.

16.2 For the purposes of paragraph 16.1, the relevant deduction in respect of Slow Tonnage Payments for a Contract Month shall be the aggregate of:

- (a) undisputed Slow Tonnage Payments identified in any Slow Tonnage Default Notice issued by the Authority in that Contract Month prior to the issue by the Contractor of the relevant Invoice for that Contract Month; and
- (b) undisputed Slow Tonnage Payments identified in any Slow Tonnage Default Notice issued by the Authority in respect of previous Contract Months for which no deductions have been made by the Contractor from the Monthly Service Charge in calculating previous Monthly Service Payments pursuant to paragraph 11.2.

16.3 For the purposes of paragraph 16.1, the relevant deduction in respect of Diverted Tonnage Payments for a Contract Month shall be the aggregate of:

- (a) undisputed Diverted Tonnage Payments identified in any Diverted Tonnage Default Notice issued by the Authority in that Contract Month prior to the issue by the Contractor of the relevant Invoice for that Contract Month; and
- (b) undisputed Diverted Tonnage Payments identified in any Diverted Tonnage Default Notice issued by the Authority in respect of previous Contract Months for which no deductions have been made by the Contractor from the Monthly Service Charge in calculating previous Monthly Service Payments pursuant to paragraph 11.2.

16.4 Within ten (10) Working Days of the end of a Contract Month ("Contract Month M"), the Contractor shall issue to the General Manager the following:

- (a) a slow tonnage report for each Constituent Council setting out the Slow Tonnage Payment under the relevant Collateral Warranty for Contract Month M, the information utilised in calculating the Slow Tonnage Payment and, where applicable,

details of any Relevant Relief and the amount of any proposed reduction in the Slow Tonnage Payment for Contract Month M resulting from such Relevant Relief (a "Slow Tonnage Summary"); and

- (b) a diverted tonnage report for each Constituent Council setting out the Diverted Tonnage Payment under the relevant Collateral Warranty for Contract Month M, the information utilised in calculating the Diverted Tonnage Payment and, where applicable, details of any Relevant Relief and the amount of any proposed reduction in the Diverted Tonnage Payment for Contract Month M resulting from such Relevant Relief (a "Diverted Tonnage Summary").

Accordingly, the Contractor shall issue in respect of each Contract Month four (4) Slow Tonnage Summaries (one for each Constituent Council) and four (4) Diverted Tonnage Summaries (one for each Constituent Council).

- 16.5 If visiting times at any Site for Constituent Council Party vehicles or the distance travelled for the delivery of Authority Waste are adversely affected by any Relevant Relief, any Slow Tonnage Payment or Diverted Tonnage Payment (as the case may be) shall be reduced to the extent such payment arises as a result of the occurrence of any Relevant Relief.
- 16.6 Within ten (10) Working Days of the later of the date of receipt by the Authority of a Slow Tonnage Summary or a Diverted Tonnage Summary and the date of receipt by the Authority of the relevant weighbridge data for Contract Month M to be provided by the Contractor pursuant to Performance Schedule 11 of the ASS Method Statement, the Authority shall confirm to the Contractor's Representative in writing that either:
 - (a) the Slow Tonnage Summary or Diverted Tonnage Summary (as the case may be) is agreed; or
 - (b) the Slow Tonnage Summary or Diverted Tonnage Summary (as the case may be) is disputed, in which event the Authority shall accompany such confirmation with a statement setting out the reasons for the dispute, together with a revised calculation of the Slow Tonnage Payment or Diverted Tonnage Payment which the Authority believes to be payable by the Contractor in relation to such Slow Tonnage Summary or Diverted Tonnage Summary. In the event of such a dispute and following receipt of confirmation of the dispute from the Authority, the Parties shall meet to endeavour to agree the final form of the Slow Tonnage Summary or Diverted Tonnage Summary including the amount of the relevant Slow Tonnage Payment or Diverted Tonnage Payment.
- 16.7 The Authority shall be entitled to issue a Diverted Tonnage Default Notice or Slow Tonnage Default Notice (as the case may be) to the Contractor in relation to each Slow Tonnage Summary or Diverted Tonnage Summary either confirmed or revised by the Authority pursuant

to paragraph 16.6.(a) or 16.6(b) setting out, inter alia, the Slow Tonnage Payment or the Diverted Tonnage Payment (as the case may be).

- 16.8 Upon receipt of a Diverted Tonnage Default Notice or Slow Tonnage Default Notice in respect of an undisputed Diverted Tonnage Payment or Slow Tonnage Payment, the Contractor shall clearly indicate the relevant Diverted Tonnage Payment and/or Slow Tonnage Payment as a deduction in the Contractor's next Invoice to the Authority.
- 16.9 In the event that the Contractor disputes the level of any Diverted Tonnage Payment or Slow Tonnage Payment specified in a Diverted Tonnage Default Notice or Slow Tonnage Default Notice (as the case may be), the Contractor may refer the matter to the Dispute Resolution Procedure. Pending resolution of the dispute, the Authority shall be entitled to withhold payment of part or all of any Invoice in accordance with clause 28.6 PROVIDED THAT the maximum amount the Authority may withhold shall be a sum equal to the relevant disputed Slow Tonnage Payment or Diverted Tonnage Payment (subject always to the cap on deductions set out in clause 28.6).
- 16.10 The sums payable by the Contractor pursuant to paragraphs 16.2, 16.3 and 16.13 are agreed to be a genuine pre-estimate of the value reduction to the Services and the losses and expenses incurred by the Constituent Councils and the Authority caused by the relevant diversion of Authority Waste or the extended visiting time at any Site for a Constituent Council vehicle.
- 16.11 Subject to any other express right, remedy and/or recourse of the Authority pursuant to the Agreement (including, without limitation, under any indemnity from the Contractor) and without prejudice to any liability the Contractor may have to the Authority for the breach of any other obligation under any Authority Project Document, the sole remedy of the Authority and the Constituent Councils in respect of the additional distance travelled through the diversion of Authority Waste or any failure by the Contractor to meet the average visiting times for Constituent Council Party vehicles at any Site shall be the operation of the Slow Tonnage Payment, the Diverted Tonnage Payment and the Applicable Waste Default Payment mechanisms pursuant to this paragraph 16.
- 16.12 For the purposes of paragraph 16.1, the relevant deduction in respect of Default Notices and Repeat Default Notices issued by the Authority in the relevant Contract Month shall be the aggregate of undisputed Default Deductions for that Contract Month.
- 16.13 For the purposes of paragraph 16.1, the relevant deduction in respect of Applicable Waste Default Payments for a Contract Month shall be the aggregate of undisputed Applicable Waste Default Payments for each Applicable Waste Type for the relevant Contract Month in respect of which the Authority raises a notice.

16.14 The application of Relevant Relief for the purposes of this paragraph 16 shall be conditional upon compliance by the Contractor with the requirements of clause 38.38 applied mutatis mutandis.



SCHEDULE 15
EFW PROVISIONS



11/15/2023 10:00:00 AM

SCHEDULE 15
EFW PROVISIONS

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1. INSURANCE

1.1 If a risk which is:

1.1.1 usually covered by an EfW Insurance;

1.1.2 insured against by the EfW Operator; and

1.1.3 one which a prudent board of directors of a company operating the same or a substantially similar businesses in the United Kingdom to the Lighterage Business and/or the EfW Business (as appropriate) would require to be insured against,

ceases to be insurable on reasonable terms at an economically viable rate with insurers of good repute in the worldwide insurance market (an "**Economically Unviable Insurance Proposition**"),

then:

1.1.4 the Contractor shall procure that the EfW Operator notifies the Authority within five (5) Working Days of the EfW Operator becoming aware of the same and in any event at least five (5) Working Days before expiry or cancellation of any existing insurance in respect of that risk with such details of the Economically Unviable Insurance Proposition as are available at the time, and shall procure that the EfW Operator gives within a further 20 (twenty) Working Days full details of the previously available terms and the reasons why it has, in the opinion of the EfW Operator, become an Economically Unviable Insurance Proposition; and

1.1.5 if the risk is an Economically Unviable Insurance Proposition and:

1.1.5.1 the Economically Unviable Insurance Proposition is not caused by the actions, breaches, or defaults of the EfW Contractor or any EfW Subcontractor; and

1.1.5.2 the Contractor has demonstrated to the Authority that the EfW Operator and a prudent board of directors of a company operating the same or substantially similar businesses to the Lighterage Business and/or the EfW Business (as appropriate) in the United Kingdom

would in similar circumstances (in the absence of the type of relief envisaged by this paragraph) be acting reasonably and in a way most likely to promote the success of the company for the benefit of its members as a whole if they resolved to cease to operate such businesses as a result of that risk becoming an Economically Unviable Insurance Proposition, taking into account inter alia (and without limitation) the likelihood of the risk occurring (if it has not already occurred), the financial consequences for such company if such risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

then the Economically Unviable Insurance Proposition shall be designated as an "Efw Uninsurable Risk" and the Parties and the Efw Operator (whose attendance the Contractor shall procure) shall meet to discuss the means by which the risk should be managed or shared (including the possibility of the insurance of the risk by either Party or the Efw Operator as a last resort). When agreeing whether there is an Efw Uninsurable Risk, the Authority (acting reasonably) and the Efw Operator (which the Contractor shall procure to act reasonably) shall also agree objective criteria for determining what movement in the insurance market would be necessary in order for the Efw Uninsurable Risk to cease to be an Efw Uninsurable Risk, by reference, inter alia, to the Efw Losses that would be suffered by the Efw Operator during the period of suspension of the Lighterage Business and/or the Efw Business (as appropriate).

- 1.2 If it is agreed or Finally Determined that there is an Efw Uninsurable Risk, then save where and for as long as the Authority has opted to act as insurer of last resort in accordance with paragraph 1.8 the Contractor and the Efw Operator shall, upon the relevant Efw Uninsurable Risk ceasing to be insured against, be entitled to suspend the operation of the Lighterage Business and/or the Efw Business (as applicable), **PROVIDED THAT** the Efw Business and the Lighterage Business shall be assessed independently and the Efw Operator shall not be entitled to suspend the Lighterage Business (if it is not the subject of an Efw Uninsurable Risk) on the grounds that the Efw Business is suspended due to its being subject to an Efw Uninsurable Risk, or vice versa.

1.3 If the EfW Operator is entitled to suspend pursuant to paragraph 1.2, and does suspend:

1.3.1 the Lighterage Business but not the EfW Business:

1.3.1.1 the suspension shall constitute an EfW Insurance Relief Event; and

1.3.1.2 the Contractor shall be obliged to provide the Replacement Transportation Services;

1.3.2 the EfW Business but not the Lighterage Business:

1.3.2.1 (save to the extent set out in paragraph 1.5 and to the right of termination in paragraph 1.7), the suspension shall constitute an EfW Insurance Relief Event; and

1.3.2.2 the provisions of paragraph 1.4 shall apply; and

1.3.3 both the Lighterage Business and the EfW Business, this shall constitute an EfW Force Majeure Event in relation to which the EfW Contractor shall be relieved of its obligation as part of the EfW Services to handle, treat or dispose of General Waste, or to provide Replacement Transportation Services.

1.4 In circumstances where, pursuant to paragraph 1.3, the EfW Operator is entitled to suspend, and does suspend, the EfW Business but is not entitled to suspend the Lighterage Business, the EfW Contract shall continue and the provisions of paragraph 27.4.4 shall apply save that, with effect from the date of suspension the Contractor shall be entitled to invoice the Authority pursuant to and in accordance with clause 29.3 for the reimbursement of the following percentages of landfill tax applicable to the disposal of General Waste (in each case up to the first [REDACTED] of landfill tax per tonne):

1.4.1 in relation to the first three (3) months of continuous suspension (ignoring for these purposes any Authority Insurer of Last Resort Periods), [REDACTED];

1.4.2 in relation to months four (4) to six (6) inclusive of continuous suspension (ignoring for these purposes any Authority Insurer of Last Resort Periods), [REDACTED];

1.4.3 in relation to months seven (7) to nine (9) inclusive of continuous suspension (ignoring for these purposes any Authority Insurer of Last Resort Periods), [REDACTED]; and

1.4.4 in relation to months ten (10) onwards of continuous suspension (ignoring for these purposes any Authority Insurer of Last Resort Periods), [REDACTED],

and [REDACTED] of the landfill tax in excess of £48 per tonne (for which purposes the figure of [REDACTED] in this paragraph 1.4 shall be indexed in accordance with Appendix 2.3B of the Payment Mechanism with effect from 1 April 2011).

1.5 During any period of suspension pursuant to paragraphs 1.3.1 or 1.3.2, the Authority shall use its reasonable endeavours to assist the Contractor in finding alternative transfer and/or disposal points for General Waste and will Direct General Waste to such alternative transfer and/or disposal points as may be agreed with the Contractor. In the event of any diversion of Constituent Council Party vehicles away from the Authority Transfer Stations during any suspension of the Lighterage Business or EfW Business pursuant to paragraph 1.3.1 or 1.3.2, the Contractor shall be liable to pay Diverted Tonnage Payments pursuant to the Collateral Warranties and, notwithstanding anything to the contrary in this Agreement, the Contractor shall not be entitled to any relief therefrom.

1.6 The Contractor shall procure that the EfW Operator approaches the insurance market at least every three months to establish whether the relevant risk remains an EfW Uninsurable Risk, and submits a report to the Authority on the results of such approach. As soon as the EfW Operator (acting in accordance with Good Industry Practice) becomes aware that the risk is no longer an EfW Uninsurable Risk, the Contractor shall procure that the EfW Operator:

1.6.1 notifies the Authority in writing; and

1.6.2 takes out and maintains or procures the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk and resumes the operation of the Lighterage Business and/or the EfW Business (as appropriate).

1.7 Without prejudice to the Parties' rights under paragraph 14.5 following a suspension pursuant to paragraph 1.3.3, and subject to paragraph 1.8, if the suspension of the

EfW Business continues for a period in excess of fifteen (15) months (ignoring any Authority Insurer of Last Resort Periods), either Party may terminate the EfW Contract by giving twenty (20) Working Days' written notice to the other Party, and the provisions of paragraph 20 shall apply.

1.8 The Authority may, at its option and by written notice to the Contractor and EfW Operator, agree to act as insurer of last resort in relation to any EfW Uninsurable Risk in accordance with the provisions of this paragraph 1.8, provided that at the relevant time it can demonstrate that it is legally able to do so. Subject to paragraph 1.9, from the date upon which the Parties have agreed in writing (such agreement not to be unreasonably withheld or delayed) that the Authority may legally act as insurer of last resort in relation to an EfW Uninsurable Risk nominated by the Authority pursuant to this paragraph 1.8:

1.8.1 the rights of suspension in paragraph 1.2 shall cease to apply in relation to such EfW Uninsurable Risk;

1.8.2 the Contractor shall pay to the Authority by way of a monthly deduction from any payments due in respect of EfW Services pursuant to clause 29 an amount equal to one-twelfth of the annual premium paid by the Contractor in respect of the EfW Uninsurable Risk in the EfW Contract Year prior to it becoming an EfW Uninsurable Risk (indexed in accordance with Appendix 2.3B of Schedule 8); and

1.8.3 upon the occurrence of the EfW Uninsurable Risk the Authority shall pay to the Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance in respect of the EfW Uninsurable Risk continued to be available, in the same manner and subject to the same conditions and rights as were set out in the insurance policy in relation to which the Authority is acting as insurer of last resort.

1.9 The Authority may, by giving one (1) month's prior written notice to the Contractor and the EfW Operator, withdraw its insurer of last resort cover provided under paragraph 1.8, in which event the suspension rights in paragraph 1.2 shall apply from the date of expiry of such notice and the Authority shall be liable in relation to events occurring during the period of insurance of last resort in the same manner as the policy which it replaced.

2. EMPLOYEES

Early termination of the EfW Service Period

2.1 Contractor Indemnities

The Contractor shall indemnify and keep indemnified in full the Authority and, at the Authority's request, each and every Replacement EfW Contractor against:

2.1.1 claims in respect of all emoluments and all other contractual or statutory payments unpaid by the Contractor or any EfW Subcontractor to any person entitled to such payments from the Contractor or any EfW Subcontractor who is or has been employed or engaged by the Contractor or any EfW Subcontractor in connection with the provision of the EfW Services or part thereof which relate to any period of employment or engagement with the Contractor or any EfW Subcontractor prior to the EfW Termination Date, and all income tax and pension and national insurance contributions payable thereon; and

2.1.2 insofar as subparagraph 2.1.1 does not apply, all EfW Direct Losses reasonably and properly incurred by the Authority or any New EfW Contractor or subcontractor of whatever tier as a result of any claim in respect of any liability to any person who is or has been employed or engaged (whether as a consequence of the Transfer Regulations or of the provisions of this paragraph) by the Contractor or any EfW Subcontractor in connection with the provision of the EfW Services or part thereof, where such claim arises as a result of any act or omission of the Contractor or any EfW Subcontractor occurring before the EfW Termination Date,

save to the extent that such claims, contributions or EfW Direct Losses arise as a result of any breach of this Agreement by the Authority or any failure of any Authority Party or New EfW Contractor to comply with any applicable Law (including the Transfer Regulations).

2.2 Early termination of the EfW Service Period

During the period of any notice of termination of the EfW Services, the Contractor shall not and shall procure that no EfW Subcontractor shall:

- 2.2.1 make any change to the terms and conditions of employment of any person employed in the provision of any EfW Service or part thereof ("**Reverting Employees**");
- 2.2.2 transfer any Reverting Employee to another part of its business or materially increase or decrease the number of Reverting Employees;
- 2.2.3 materially increase the proportion of working time spent on the EfW Services by the Reverting Employees;
- 2.2.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any Reverting Employee; or
- 2.2.5 terminate or give notice to terminate the employment of any Reverting Employee other than lawfully for misconduct or capability,

without the Authority's written consent (which shall not be unreasonably withheld).

- 2.3 Upon a request in writing received from the Authority following any notice of termination of the EfW Services, and subject to the provisions of the DPA, the Contractor shall supply at no cost to the Authority details of the Reverting Employees to the Authority and/or a Replacement EfW Contractor as from time to time directed to do so by the Authority. The Contractor shall advise the Authority and any Replacement EfW Contractor of any alterations to these details occurring prior to the EfW Termination Date and shall keep them updated at periods specified by the Authority. These details, which are subject to any legal obligation owed to each Reverting Employee, are to include the names of the Reverting Employees and in respect of each one, the:

- 2.3.1 terms of employment (including full particulars of emoluments and benefits, including pension entitlements);
- 2.3.2 employee's date of birth;
- 2.3.3 date of commencement of employment;
- 2.3.4 current job title and details of proportion of time spent working on the EfW Services;

- 2.3.5 any professional bodies, trade unions and other bodies of which those employees are members and the identity of any representatives of such bodies of which the Contractor and/or any EfW Subcontractor is aware;
 - 2.3.6 true copies of applicable union recognition agreement(s) and collective agreement(s);
 - 2.3.7 full details of any actions, claims, demand or disputes involving any of those employees (including any outstanding disciplinary and/or grievance matters) and any periods of long term sickness of which the Contractor and/or any EfW Subcontractor is aware; and
 - 2.3.8 details of the pension arrangement in which each Reverting Employee is eligible to participate.
- 2.4 The Contractor shall warrant the accuracy and completeness of the information provided to the Authority and/or any Replacement EfW Contractor under paragraph 2.3 in respect of the Reverting Employees.
- 2.5 On the EfW Termination Date the Contractor shall:
- 2.5.1 procure that all wages, salaries and other benefits of the Reverting Employees and other employees or former employees of the Contractor or the EfW Subcontractors (who have been engaged in the provision of the EfW Services) and all PAYE tax deduction and national insurance contributions relating thereto in respect of the employment of the Reverting Employees and such other employees or former employees of the Contractor (to the extent engaged in the provision of the EfW Services) or EfW Subcontractors up to the EfW Termination Date are satisfied; and
 - 2.5.2 remain responsible for all of the Contractor's or EfW Subcontractors' employees at EfW Termination Date save to the extent that any such employees shall be inherited by a Replacement EfW Contractor or by the Authority by virtue of the Transfer Regulations in which case the Contractor or EfW Subcontractors shall provide the Authority or that Replacement EfW Contractor (as the case may be) with an indemnity against all EfW Direct Losses arising from any claim whatsoever by any of the employees in respect of those Reverting Employees' employment prior to the EfW Termination

Date. The Authority shall be entitled to assign the benefit of the indemnity to any successor contractor.

2.6 The Authority shall indemnify the Contractor (for itself and for the benefit of its EfW Subcontractors) against all EfW Direct Losses arising from:

2.6.1 any act or omission by the Authority or any Replacement EfW Contractor relating to a Reverting Employee who is inherited by a Replacement EfW Contractor or by the Authority by virtue of the Transfer Regulations occurring after the EfW Termination Date;

2.6.2 any failure by the Authority or any Replacement EfW Contractor to pay all emoluments and outgoings in relation to the Reverting Employees who are inherited by a Replacement EfW Contractor or by the Authority by virtue of the Transfer Regulations (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contribution and otherwise) occurring after the EfW Termination Date; and

2.6.3 any failure by the Authority or any Replacement EfW Contractor to comply with its or their obligations under Regulation 13 of the Transfer Regulations except to the extent that such failure is caused by a failure by the Contractor or its EfW Subcontractors to comply with its or their obligations under Regulation 13 of the Transfer Regulations,

save to the extent that such claims, contributions or EfW Direct Losses arise as a result of any breach of this Agreement by the Contractor or any failure of any Contractor Party to comply with any applicable Law (including the Transfer Regulations).

2.7 Other than as expressly provided in the Agreement, the Contractor shall remain entirely responsible for the employment and conditions of service of the Contractor's Employees and shall procure that any EfW Subcontractor is likewise responsible for its employees. The Contractor shall use, and procure that the EfW Operator uses, all reasonable endeavours to procure that all employees (whether of the Contractor or of any EfW Subcontractor) are in possession of valid work permits if they are non-EU nationals.

3. EFW COMPENSATION EVENTS

3.1 Effect of an EfW Compensation Event

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

- 3.1.1 Not used;
- 3.1.2 EfW Completion is not achieved on or before the EfW Target Completion Date or (following the EfW Target Completion Date) EfW Completion will be delayed; and/or
- 3.1.3 the Contractor will be unable to comply with its obligations under the EfW Contract; and/or
- 3.1.4 the EfW Operator will incur any EfW Estimated Change in Project Cost,

then the Contractor is entitled to:

- (a) apply for an extension of time to the EfW Target Completion Date and/or to the EfW Latest Works Completion Date; and/or
- (b) claim relief from its obligations; and/or
- (c) claim any EfW Estimated Change in Project Costs.

3.2 Procedure for Relief and Compensation

To obtain an extension of time, relief and/or claim compensation the Contractor must:

- 3.2.1 as soon as practicable, and in any event within 30 Working Days after it became aware that the EfW Compensation Event has caused or is likely to cause delay, breach of an obligation under the EfW Contract and/or the EfW Operator to incur any EfW Estimated Change in Project Costs, give to the Authority a notice of its claim for an extension of time to the EfW Target Completion Date, EfW Latest Works Completion Date, the payment of any EfW Estimated Change in Project Costs and/or relief from its obligations under the EfW Contract;
- 3.2.2 within 30 Working Days of receipt by the Authority of the notice referred to in paragraph 3.2.1 above, give full details of the EfW Compensation Event

(including the Contractor's opinion on each of the matters referred to in paragraphs 6.3.1 to 6.3.8 as if the EfW Compensation Event were an EfW Authority Change and any actions that the Contractor and/or EfW Operator have taken to mitigate the effects of the EfW Compensation Event) and the extension of time and/or relief from its obligations under the Agreement and/or any EfW Estimated Change in Project Costs; and

3.2.3 demonstrate to the reasonable satisfaction of the Authority that:

3.2.3.1 the EfW Compensation Event was the direct cause of:

- (a) the EfW Estimated Change in Project Costs; and/or
- (b) any delay in the achievement of EfW Completion on or before the EfW Target Completion Date or (following the EfW Target Completion Date) any delay in achievement of EfW Completion before the EfW Latest Works Completion Date; and/or
- (c) the breach of the Contractor's EfW Obligations under the EfW Contract; and

3.2.3.2 the EfW Estimated Change in Project Costs, time lost, and/or relief from the obligations under the EfW Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor or the EfW Operator both independently acting in accordance with Good Industry Practice.

3.3 Giving of Relief and Compensation

In the event that the Contractor has complied with its obligations under paragraph 3.2 above, then:

3.3.1 the EfW Target Completion Date and/or the EfW Latest Works Completion Date shall be postponed by such time as shall be reasonable for such an EfW Compensation Event, taking into account the likely effect of delay;

3.3.2 in the case of any EfW Estimated Change in Project Costs incurred by the EfW Operator:

3.3.2.1 on or before the EfW Commissioning Date; or

3.3.2.2 as a result of Capital Expenditure being incurred by the EfW Operator at any time,

the Authority shall compensate the Contractor for the EfW Estimated Change in Project Costs as adjusted to reflect the actual EfW Estimated Change in Project Costs reasonably incurred (to the extent it could not reasonably have been mitigated), within 25 Working Days of receipt of a written demand by the Contractor supported by all relevant information required by this paragraph 3;

3.3.3 in the case of any EfW Estimated Change in Project Costs that are not the subject of paragraph 3.3.2, the Authority shall compensate the Contractor for the actual EfW Estimated Change in Project Costs incurred (to the extent it could not reasonably have been mitigated) by an adjustment to the EfW General Waste Rate in accordance with paragraph 29 and/or (in relation to an EfW Compensation Event by virtue of which the Contractor is denied Authority Waste and/or Third Party Waste) by reimbursement of the EfW Estimated Change in Project Costs relating to the denied tonnage within 25 Working Days of receipt of a written demand by the Contractor supported by all relevant information; and/or

3.3.4 the Authority shall give the Contractor such relief from its EfW Obligations, as is reasonable for such an EfW Compensation Event.

3.4 Late Provision of Information

In the event that information is provided after the dates referred to in paragraph 3.2 above, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under the EfW Contract in respect of the period for which the information is delayed.

3.5 Failure to Agree

If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under the EfW Contract, or the Authority disagrees that an EfW Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this paragraph 3, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

4. EFW RELIEF EVENTS

4.1 Effect of EfW Relief Event

If and to the extent that an EfW Relief Event:

4.1.1 is the direct cause of a failure by the EfW Operator to achieve EfW Completion on or before the EfW Target Completion Date or (following the EfW Target Completion Date) is the direct cause of a delay in achievement of EfW Completion; and/or

4.1.2 adversely affects the ability of the Contractor to perform any of its obligations under the EfW Contract,

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under paragraph 10 (Termination for Contractor Default).

4.2 Procedure for Relief

To obtain relief, the Contractor must:

4.2.1 as soon as practicable, and in any event within 30 Working Days (prior to EfW Completion) or 20 Working Days (following EfW Completion) after it became aware that the EfW Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other EfW Obligations give to the Authority a notice of its claim for relief from its obligations under the Contract, including full details of the nature of the EfW Relief Event, the date of occurrence and its likely duration;

4.2.2 within 20 Working Days (prior to EfW Completion) or 15 Working Days (following EfW Completion) of receipt by the Authority of the notice referred to in paragraph 4.2.1, give full details of the relief claimed; and

4.2.3 demonstrate to the reasonable satisfaction of the Authority that:

4.2.3.1 the Contractor and the EfW Subcontractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

4.2.3.2 in the case of delay, the EfW Relief Event directly caused the delay in the achievement of EfW Completion on or before the EfW Target Completion Date or (following the EfW Target Completion Date) any delay in the achievement of EfW Completion; and/or;

4.2.3.3 the time lost and/or relief from the EfW Obligations claimed could not reasonably be expected to be mitigated or recovered by the Contractor or EfW Operator acting in accordance with Good Industry Practice, without incurring material expenditure; and

4.2.3.4 the Contractor and the EfW Operator are using their reasonable endeavours to perform the EfW Obligations.

4.3 Giving of Relief

In the event that the Contractor has complied with its obligations under paragraph 4.2, then:

4.3.1 (save where an event falling within paragraph (c)(ii) and (d) of the definition of EfW Relief Event has occurred) the EfW Target Completion Date and/or (in relation to all applicable EfW Relief Events) the EfW Latest Works Completion Date shall be postponed by such time as shall be reasonable for such an EfW Relief Event, taking into account the likely effect of delay; and/or

4.3.2 (subject to the provisions of paragraph 1.7 of Schedule 15 in relation to EfW Insurance Relief Events) the Authority shall not be entitled to exercise its rights to terminate the EfW Contract under paragraph 10.

4.4 Payments and Deductions

Nothing in paragraph 4.3 shall affect any entitlement to award EfW Default Points or make deductions pursuant to the terms of the Payment Mechanism during the period in which the EfW Relief Event is subsisting.

4.5 Late Provision of Information

In the event that information required by paragraph 4.2 is provided after the dates referred to in that paragraph, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

4.6 Notice of Further information

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

4.7 Failure to Agree

If the Parties cannot agree the extent of the relief required, or the Authority disagrees that an EfW Relief Event has occurred or that the Contractor is entitled to any extension to the EfW Target Completion Date and/or (following the EfW Target Completion Date) to the EfW Latest Works Completion Date, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

5. OPERATION AND MAINTENANCE

5.1 Maintenance of Manual

The Contractor shall throughout the EfW Service Period procure that the EfW Operator maintains and regularly updates an operating and maintenance manual setting out the procedures for operating the EfW Facility which if complied with would constitute compliance by the Contractor with its obligations in respect of the EfW Services in so far as it relates to operation of the EfW Facility ("**Operating Manual**").

5.2 Access to Manual

The Contractor shall procure that the EfW Operator at the request of the Authority provides the Authority with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under paragraph 5.1.

5.3 Copy on Termination

The Contractor shall within 10 Working Days of the EfW Termination Date provide a copy of the Operating Manual to the Authority.

5.4 Maintenance

The Contractor shall ensure on a continuing basis that the EfW Operator's maintenance and operating procedures are and remain sufficient to ensure that, to the extent applicable:

- 5.4.1 such Handback Assets as are physical assets are kept in good structural and decorative order (subject to fair wear and tear), and in compliance with the requirements of the Output Specification;
- 5.4.2 the ISO containers are maintained in accordance with the Freight Container (Safety Convention) Regulations 1984;
- 5.4.3 such Handback Assets as are lighterage assets (other than the ISO containers referred to in paragraph 5.4.2) shall have all necessary consents required for the provision of the lighterage operation and be in good operational condition;
- 5.4.4 such Handback Assets as are mobile plant shall be in good and (to the extent applicable) roadworthy condition (subject to fair wear and tear);
- 5.4.5 the EfW Operator can maintain the design intention of the Handback Assets (where relevant) to achieve their full working life;
- 5.4.6 the Contractor can deliver the EfW Services in accordance with the EfW Contract; and

5.4.7 such Handback Assets as required to be transferred to the Authority or its nominee following the EfW Termination Date are transferred in a condition complying with this paragraph 5.4.

6. EFW AUTHORITY CHANGES

6.1 Authority Changes

Subject to clause 46.1, the Authority has the right to propose EfW Authority Changes in accordance with this paragraph 6. If the Authority requires an EfW Authority Change (including in respect of paragraph (g) of the definition of EfW Qualifying Change in Law), it must serve a notice ("**EfW Authority Notice of Change**") on the Contractor in accordance with paragraph 6.2. The Contractor shall be entitled to refuse an EfW Authority Change which:

- 6.1.1 requires the EfW Works and/or the EfW Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;
- 6.1.2 would cause any Planning Permission or PPC Permit to be revoked or would require an amendment to an existing Planning Permission or PPC Permit or a new Planning Permission or PPC Permit to be obtained to implement the relevant change in the EfW Works and/or the EfW Services which, after using reasonable efforts, the Contractor has been unable to obtain, it being understood and agreed that the Contractor shall not be responsible for the risk of obtaining the amended or new Planning Permission or PPC Permit beyond procuring the EfW Operator to use its reasonable efforts to obtain it and that the Contractor and the EfW Operator shall be reimbursed all third party costs (approved in accordance with paragraphs 6.8.2 and 6.8.3) reasonably incurred in connection with the relevant EfW Authority Change in the event that, having used reasonable efforts, the Contractor and/or the EfW Operator is unable to obtain the amended or new consent;
- 6.1.3 would materially and adversely affect the Contractor's ability to deliver the EfW Works and/or EfW Services (except those EfW Works and/or EfW Services which have been specified as requiring to be amended in the EfW Authority Notice of Change) in a manner not compensated pursuant to this Agreement);

- 6.1.4 would, if implemented, materially and adversely affect the health and safety of any person;
 - 6.1.5 other than in the case of an EfW Authority Change proposed for the purpose of implementing an EfW Change in Law pursuant to paragraph (g) of the definition of EfW Qualifying Change in Law would, if implemented, either materially and adversely change the nature of the EfW Project (including its risk profile) or materially and adversely affect the EfW Operator's business insofar as it relates to waste other than General Waste;
 - 6.1.6 the Authority does not have the legal power or capacity to require the implementation of such Authority Change;
 - 6.1.7 would, (if implemented), put the EfW Operator in breach of its contractual obligations to other customers or offtakers; or
 - 6.1.8 requires the Contractor to undertake obligations otherwise than on a pass-through basis to the EfW Operator.
- 6.1A The Contractor shall procure that the EfW Operator makes available land within the EfW Operator's ownership at the Belvedere Site for the purposes of an EfW Authority Change in respect of paragraph (g) of the definition of EfW Qualifying Change in Law to the extent so requested by the Authority pursuant to the relevant EfW Authority Notice of Change.

6.2 EfW Authority Notice of Change

The EfW Authority Notice of Change shall:

- 6.2.1 set out the change in the EfW Works or EfW Services required in sufficient detail to enable the Contractor to calculate and provide the EfW Estimated Change in Project Costs in accordance with paragraph 6.3 (the "Estimate");
- 6.2.2 in the event that the EfW Authority Change will require Capital Expenditure, state whether the Authority intends to pay to the Contractor the costs involved in implementing the EfW Authority Change or whether the Authority requires the Contractor and/or the EfW Operator to use their respective reasonable efforts to obtain funding in accordance with paragraph 6.9;

6.2.3 require the Contractor to provide the Authority with the Estimate within such reasonable period as the Authority shall specify in the EfW Authority Notice of Change and in setting such period the Authority shall pay due regard to the nature of the proposed EfW Authority Change and the need to involve the EfW Operator in the preparation of the Estimate. If the Contractor believes that it is reasonable to incur third party costs in connection with preparing the relevant Estimate, the Contractor shall notify the Authority within five Working Days of receiving the EfW Authority Notice of Change and the time period for submitting the Estimate shall not commence until the parties have agreed or it is determined under the Dispute Resolution Procedure the matters referred to in paragraphs 6.8.2 and 6.8.3; and

6.2.4 state whether, in the opinion of the Authority, the implementation of the EfW Authority Change will require a variation to the ASS Contract (in which event the Authority shall also serve a Variation Notice and the provisions of clause 46.1 shall apply).

6.3 Contractor's Estimate

As soon as practicable and in any event before the expiry of the period referred to in paragraph 6.2.3, the Contractor shall deliver to the Authority the Estimate. The Estimate shall include the opinion of the Contractor and the EfW Operator on:

- 6.3.1 whether relief from compliance with obligations is required, including without limitation the obligations of the Contractor to achieve the EfW Target Completion Date during the implementation of the EfW Authority Change;
- 6.3.2 any impact on the provision of the EfW Works, the EfW Services, the Authority Site Works and/or the Authority Site Services;
- 6.3.3 any amendment required to the EfW Contract and/or any Project Document, Ancillary Document or Financing Agreement as a result of the EfW Authority Change;
- 6.3.4 any EfW Estimated Change in Project Costs that reasonably and properly result from the EfW Authority Change;
- 6.3.5 any loss of or increase in revenue that results from the EfW Authority Change;

- 6.3.6 any Capital Expenditure that is required or no longer required as a result of the EfW Authority Change;
- 6.3.7 any regulatory approvals which are required;
- 6.3.8 the proposed method of certification of any construction or operational aspects of the EfW Works or the EfW Services; and
- 6.3.9 if reasonably practicable, appropriate contingency plans in the event that any necessary amendment or new regulatory approval is not obtainable.

6.4 Discussion

As soon as practicable after the Authority receives the Estimate, the Parties shall discuss and agree the issues set out in the Estimate, including:

- 6.4.1 providing evidence that the Contractor and/or EfW Operator (as the case may be) have taken all reasonable steps (including (where practicable) the use of competitive quotes) to oblige the EfW Subcontractors to minimise any increase in costs and maximise any reduction in costs;
- 6.4.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time have been taken into account; and
- 6.4.3 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 EfW Authority Change concerned, has been taken into account in the amount which in its opinion has resulted or is required under paragraph 6.3.4 and/or 6.3.5 and/or 6.3.6 above; and
- 6.4.4 demonstrating that the Estimate, insofar as it includes Changes in Costs and/or Changes in Revenue, does not give rise to any double counting of costs and/or profits.

In such discussions the Authority may modify the EfW Authority Notice of Change and (if the estimated increase in Capital Expenditure in respect of the EfW Authority Change is expected to exceed [REDACTED] and it is practicable for the

Contractor and/or the EfW Operator (as appropriate) to do so), the Authority may require the Contractor to, or require the Contractor to procure the EfW Operator to, seek and evaluate competitive tenders for the relevant capital works. In each case the Contractor shall, as soon as practicable, and in any event not more than 20 Working Days after receipt of such modification, notify the Authority of any consequential changes to the Estimate.

6.5 Value for Money

If the Contractor and/or EfW Operator (as appropriate) does not intend to use its own resources to implement any EfW Authority Change the Contractor shall comply, and shall procure that the EfW Operator complies, with Good Industry Practice with the objective of ensuring that the Contractor and/or EfW Operator (as appropriate) obtains best value for money (taking into account all relevant circumstances including, in particular, the requirement that neither the Contractor nor the EfW Operator should be worse off as a result of the implementation of the EfW Authority Change) when procuring any work, services, supplies, materials or equipment required in relation to the EfW Authority Change.

6.6 Disputes

If the Parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with the Dispute Resolution Procedure.

6.7 Confirmation of Withdrawal of EfW Authority Notice of Change

As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to Dispute Resolution Procedure, the Authority shall:

6.7.1 confirm in writing the Estimate (as modified); or

6.7.2 withdraw the EfW Authority Notice of Change.

6.8 Failure to Confirm Estimate

If the Authority does not confirm in writing the Estimate (as modified) within 20 Working Days (or such longer reasonable period as the parties may agree having regard to the nature of the proposed EfW Authority Change and the Estimate) of the contents of the Estimate having been agreed in accordance with paragraph 6.4 or

determined pursuant to paragraph 6.6, then the EfW Authority Notice of Change shall be deemed to have been withdrawn. Where there is a withdrawal (either pursuant to this paragraph 6.8 or paragraph 6.7 or paragraph 6.10) the Authority shall pay to the Contractor the reasonable additional third party costs incurred by the Contractor and/or the EfW Operator in preparing such Estimate provided that:

6.8.1 the Contractor and/or the EfW Operator (as appropriate) have used all reasonable endeavours to submit a reasonably priced Estimate;

6.8.2 the Contractor has made available to the Authority a cost break down of the Estimate including an estimate of third party costs to be incurred by the Authority if the EfW Authority Notice of Change is withdrawn or deemed to be withdrawn;

6.8.3 the Authority has:

6.8.3.1 approved the estimate of third party costs referred to in paragraph 6.8.2 and the type of third party prior to any third party costs being incurred; and

6.8.3.2 agreed that, given the nature of the proposed EfW Authority Change, it is reasonable to expect the relevant third party to incur costs in preparing the Estimate on the basis of the extent of the proposed change to the EfW Services and/or the EfW Works and the work required in submitting an accurate Estimate in compliance with this paragraph 6.8; and

6.8.4 the Contractor has provided the Authority with such evidence as it may reasonably require in order to verify the additional third party costs incurred by the Contractor and/or EfW Operator (as appropriate).

6.9 Funding for Capital Expenditure

In the event that the Estimate (as modified) involves estimated Capital Expenditure in excess of [REDACTED] then (unless the Authority has elected to fund such costs in accordance paragraph 6.2.2) the Contractor shall procure that the EfW Operator uses its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure on terms reasonably satisfactory to it and the Senior Lenders.

6.10 Failure to Obtain Funding for Capital Expenditure

If the EfW Operator has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within 40 Working Days of the date that the Authority confirmed the Estimate, then the Contractor shall have no obligation to carry out the EfW Authority Change, unless the Authority agrees within 15 Working Days of the end of such period to pay the costs for which funding is not available on the basis provided in paragraph 6.13 below.

6.11 Authority Contribution to Funding

The Authority may, at any time following the date on which the Estimate is confirmed, agree to meet all or, to the extent the Contractor has obtained funding for part of the Capital Expenditure, the remaining part of the estimated Capital Expenditure.

6.12 Adjustment to EfW General Waste Rate

In the event that the Estimate has been confirmed by the Authority, then the adjustment to the EfW General Waste Rate shall be effected in accordance with paragraph 29 (Financial Adjustment).

6.13 Method of Payment of Authority Contribution

Where the Authority agrees to pay the costs for which funding is not available pursuant to paragraph 6.10:

6.13.1 the Authority and Contractor shall agree:

6.13.1.1 a payment schedule in respect of the payment of such sum reflecting the amount and timing of the costs to be incurred by the Contractor in carrying out the EfW Authority Change to the extent borne by the Authority; and

6.13.1.2 where payment for part of an EfW Authority Change reflects the carrying out of, or specific progress towards, an element within the EfW Authority Change, an objective means of providing evidence confirming that the part of the EfW Authority Change corresponding

to each occasion when payment is due under the payment schedule appears to have been duly carried out,

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

6.13.2 the Authority shall make a payment to the Contractor within 15 Working Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with the agreed payment schedule (as the case may be, varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the EfW Authority Change has been carried out; and

6.13.3 if payment is not made in accordance with subparagraph 6.13.2, the Authority shall pay interest to the Contractor on the amount unpaid from the date 15 Working Days after receipt of the relevant invoice until paid at the Default Interest Rate.

7. EFW CONTRACTOR CHANGES

7.1 EfW Contractor Changes

If the Contractor wishes to introduce a change in the EfW Works and/or EfW Services which affects, or may affect, the Authority's rights or liabilities under or in connection with the EfW Contract, it must serve a notice ("**EfW Contractor Notice of Change**") on the Authority.

7.2 Contractor EfW Contractor Notice of Change

The EfW Contractor Notice of Change must:

7.2.1 set out the proposed change to the EfW Works and/or EfW Services in sufficient detail to enable the Authority to evaluate it in full;

7.2.2 specify the Contractor's reasons for proposing the change to the EfW Works and/or EfW Services, and demonstrate how it will not materially and adversely affect the Contractor's ability to deliver the EfW Works and/or EfW Services (as the case may be);

- 7.2.3 request the Authority to consult with the Contractor with a view to deciding whether to agree to the change to the EfW Works and/or EfW Services and, if so, what consequential changes the Authority requires as a result;
- 7.2.4 indicate any implications of the change to the EfW Works and/or EfW Services;
- 7.2.5 indicate, in particular, whether a variation to the EfW General Waste Rate is proposed (and, if so, give a detailed cost estimate of such proposed change); and
- 7.2.6 indicate if there are any dates by which a decision by the Authority is critical; and
- 7.2.7 state whether, in the opinion of the Contractor, the implementation of the EfW Contractor Change will require a variation to the ASS Contract (in which event the Contractor shall also serve a Variation Notice and the provisions of clause 46.1 shall apply).

7.3 Authority to Evaluate

The Authority shall evaluate the Contractor's proposed change to the EfW Works and/or EfW Services in good faith, taking into account all relevant issues, including whether:

- 7.3.1 a change in the EfW General Waste Rate will occur;
- 7.3.2 the change affects the quality of the EfW Works and/or EfW Services or the likelihood of successful delivery of the EfW Works and/or EfW Services;
- 7.3.3 the change will interfere with the relationship of the Authority with third parties;
- 7.3.4 the value of the Residual Value Rights is reduced; or
- 7.3.5 the change materially affects the risks or costs to which the Authority is exposed both during the EfW Service Period and upon and subsequent to the EfW Termination Date.

7.4 Discussion

As soon as practicable after receiving the EfW Contractor Notice of Change, the Parties shall meet and discuss the matter referred to in it. During their discussions the Authority may propose modifications, which the Contractor shall be entitled to accept or reject in its absolute discretion. The Authority shall, following such discussions, confirm its acceptance or rejection of the EfW Contractor Notice of Change (subject to any modifications agreed (by the Contractor) provided that the Authority shall only be entitled to refuse to allow an EfW Contractor Change where the Authority reasonably considers that the EfW Contractor Change will result in:

- 7.4.1 an increase to the EfW General Waste Rate;
- 7.4.2 the change detrimentally affecting the Services;
- 7.4.3 an adverse effect on the value of the Residual Value Rights to the Authority;
or
- 7.4.4 a material change to the risks or costs to which the Authority is exposed either during the EfW Service Period or subsequent to the EfW Termination Date.

Where the Authority does not confirm its acceptance or rejection of the EfW Contractor Notice of Change within a period of 30 days after being presented with a final copy of the EfW Contractor Notice of Change the Authority shall be deemed to have rejected the EfW Contractor Change. Where the Authority is deemed to have rejected the EfW Contractor Change pursuant to this paragraph 7.4, the Contractor may dispute the Authority's right to reject such a change through the Dispute Resolution Procedure.

7.5 Acceptance of EfW Contractor Notice of Change

If the Authority accepts the EfW Contractor Notice of Change (with or without modification), the relevant change to the EfW Works and/or EfW Services shall be implemented by the Contractor within such reasonable period as agreed or Finally Determined (where any action is required by any Authority Party) or (in any other circumstances) as specified in the EfW Contractor Notice of Change. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Agreement or any relevant EfW

Project Documents which are necessary to give effect to the change to the EfW Works and/or EfW Services.

7.6 Not Used

7.7 Adjustment to EfW General Waste Rate

Unless the Authority's acceptance specifically agrees to an increase in the EfW General Waste Rate, there shall be no increase in the EfW General Waste Rate as a result of a change to the EfW Works and/or EfW Services proposed by the Contractor.

7.8 Decrease in Costs

If the change to the EfW Works and/or EfW Services proposed by the Contractor causes or will cause the Contractor's costs or those of any EfW Subcontractor to decrease, the Contractor shall use, and shall procure that the EfW Operator uses, all reasonable endeavours to maximise such decrease and there shall be a decrease in the EfW General Waste Rate in accordance with paragraph 29 such that any savings are shared 50:50 between the Authority and the Contractor.

7.9 EfW Contractor Change Required by Change in Law

The Authority shall not be entitled to reject a change to the EfW Works and/or EfW Services which is required in order to conform to an EfW Change in Law. The costs of introducing a change to the EfW Works and/or EfW Services resulting from an EfW Qualifying Change in Law (including any resulting variation in the EfW General Waste Rate) shall be dealt with in accordance with paragraph 8.2 and to the extent not dealt with shall be borne by the Contractor.

8. EFW CHANGE IN LAW

8.1 The Contractor shall advise the Authority in writing of all EfW Changes in Law which might reasonably be expected to affect the performance and/or provision of the EfW Works and/or the EfW Services, and/or are likely to constitute an EfW Qualifying Change in Law.

8.2 EfW Qualifying Change in Law

If an EfW 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:

- 8.2.1 any necessary change to the EfW Works and/or the EfW Services;
- 8.2.2 whether any changes are required to the terms of the Agreement to deal with the EfW Qualifying Change in Law;
- 8.2.3 whether relief from compliance with obligations is required, including the obligation to achieve EfW Completion by the EfW Target Completion Date and/or the EfW Latest Works Completion Date and/or meet the EfW Obligations during the implementation of any relevant EfW Qualifying Change in Law;
- 8.2.4 any Change in Revenue that will result from the relevant EfW Qualifying Change in Law;
- 8.2.5 any EfW Estimated Change in Project Costs that directly result from the EfW Qualifying Change in Law; and
- 8.2.6 any Capital Expenditure that is required or no longer required as a result of an EfW Qualifying Change in Law,

in each case giving in full detail the procedure for implementing the change in the EfW Works and/or in the EfW Services. Responsibility for the costs of implementation (and any resulting variation to the EfW General Waste Rate) shall be dealt with in accordance with paragraphs 8.3 to 8.7.

8.3 Parties to Discuss

As soon as practicable after receipt of any notice from either Party under paragraph 8.2, the Parties shall discuss and agree the issues referred to in paragraph 8.2 and any ways in which the Contractor and/or EfW Operator can mitigate the effect of the EfW Qualifying Change of Law, including:

- 8.3.1 providing evidence that the Contractor and EfW Operator have taken all reasonable steps (including (where practicable) the use of competitive quotes)

to oblige the EfW Subcontractors to minimise any increase in costs and maximise any reduction in costs;

- 8.3.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor and EfW Operator;
- 8.3.3 giving evidence as to how the EfW Qualifying Change in Law has affected prices charged by any similar businesses to the EfW Operator's business, including similar businesses in which the EfW Shareholders or their Affiliates carry on business; and
- 8.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the EfW Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under paragraph 8.2.5 and/or 8.2.6.

8.4 Change Agreed

- 8.4.1 If the Parties agree or it is Finally Determined under the Dispute Resolution Procedure that the EfW Operator is required to incur additional Capital Expenditure due to an EfW Qualifying Change in Law (excluding the Contractor's Share of any Capital Expenditure agreed or determined to be required as a result of an EfW General Change in Law under this paragraph 8), then at the request of the Authority the Contractor shall procure that the EfW Operator uses its reasonable endeavours to obtain an offer for funding for the EfW Authority Share of such Capital Expenditure on terms reasonably satisfactory to the EfW Operator and the Senior Lenders.
- 8.4.2 When agreeing that the EfW Operator is required to incur additional Capital Expenditure due to an EfW Qualifying Change in Law, the Parties (acting reasonably) shall agree with the EfW Operator (whom the Contractor shall procure to act reasonably) the Design Life of such Capital Expenditure for the purposes of the Residual Value Agreement.

8.5 EfW Qualifying Change in Law Cost Allocation

8.5.1 Subject to paragraph 8.5.2 and other than in respect of an EfW Qualifying Change in Law as set out in paragraph (g) of the definition of EfW Qualifying Change in Law, in relation to EfW Qualifying Changes in Law:

8.5.1.1 which adversely affect both the Contractor and the EfW Operator, the Authority shall only be liable to the extent that it affects the EfW Operator; and

8.5.1.2 which affect the Contractor only, the Contractor will be entitled to be compensated so as to be left in a Neutral Position Without Profit,

but in each case only in relation to the EfW Authority Share, with the balance remaining for the account of the Contractor.

8.5.2 The Contractor's Share of any EfW Cumulative Capital Expenditure arising from EfW Qualifying Changes in Law falling under limb (d) of the definition of EfW Qualifying Change in Law shall be solely for the account of the Contractor.

8.6 Financing

If the EfW Operator has used reasonable endeavours to obtain an offer for funding for Capital Expenditure referred to in paragraph 8.4, but has been unable to do so within 40 Working Days of the date that the agreement or determination in paragraph 8.4 occurred, or if the Authority (in its absolute discretion) decides to reject the offer of funding then the Authority shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling 20 Working Days as a lump sum after the Capital Expenditure has been incurred.

8.7 Adjustment to EfW General Waste Rate

Any compensation payable under this paragraph 8 by means of an adjustment to or reduction in the EfW General Waste Rate (other than EfW Qualifying Changes in Law in relation to which paragraph 8.5.1.2 applies) shall be calculated in accordance with paragraph 29.

8.8 Payment of Irrecoverable VAT

8.8.1 To the extent that an EfW Change in Law results in Irrevocable VAT being incurred:

8.8.1.1 by both the Contractor and the EfW Operator, the Authority shall pay the Contractor, for payment to the EfW Operator; and

8.8.1.2 by the Contractor only, the Authority shall pay the Contractor,

an amount equal to any such Irrecoverable VAT incurred by the EfW Operator (where paragraph 8.8.1 applies) or the Contractor (where paragraph 8.8.2 applies). Any such payment shall be made within 20 Working Days of the delivery by the Contractor to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this paragraph 8.8 **"Irrecoverable VAT"** means the Relevant VAT Proportion (as defined in paragraph 8.8.2 below) of any input VAT incurred by the Contractor or the EfW Operator on any supply which is made to it or the EfW Operator to the extent such supply is used in performing the EfW Works or the EfW Services or any of the obligations or provisions under the EfW Contract (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Contractor or the EfW Operator (as appropriate) is not entitled to repayment or credit from HM Revenue & Customs in respect of such input VAT.

8.8.2 For the purposes of paragraph 8.8.1, **"Relevant VAT Proportion"** means:

8.8.2.1 where the Irrevocable VAT relates to any EfW Authority Change or to any supply made solely as a result of an EfW Compensation Event, 100%;

8.8.2.2 where the Irrevocable VAT relates to any supply made solely in relation to General Waste under this Agreement or solely in relation to any matter for which the Authority is required to indemnify the Contractor under this Agreement, 100%; and

8.8.2.3 in all other circumstances, the EfW Authority Share.

8.9 Notwithstanding paragraph 8.8, the Parties shall use reasonable endeavours to minimise any VAT liability arising as a result of the relevant EfW Change in Law.

8.10 EfW Qualifying Changes in Law

Any changes to the EfW Contract necessitated by an EfW Qualifying Change in Law shall be introduced by the affected Party through the EfW Authority Change procedure in paragraph 6 or the EfW Contractor Change procedure in paragraph 7 (as appropriate), provided that it shall always be a Relevant Event for the purposes of clause 29.

9. TERMINATION FOR EFW AUTHORITY DEFAULT

9.1 EfW Authority Default

If an EfW Authority Default has occurred and the Contractor wishes to terminate the EfW Contract, it must serve a termination notice ("**EfW Authority Default Termination Notice**") on the Authority within 30 Working Days of becoming aware of the EfW Authority Default.

9.2 EfW Authority Default Termination Notice

The EfW Authority Default Termination Notice must specify the type of EfW Authority Default which has occurred entitling the Contractor to terminate the EfW Contract.

9.3 Termination

The EfW Contract will terminate on the day falling 30 Working Days after the date the Authority receives the EfW Authority Default Termination Notice, unless the Authority rectifies the EfW Authority Default within 20 Working Days of receipt of such notice.

10. TERMINATION FOR EFW CONTRACTOR DEFAULT

10.1 Subject to clause 11.4, paragraph 11 of this Schedule and the provisions of paragraph 1 of Schedule 16 (Ringfencing), the Authority shall be entitled to terminate the EfW Contract by notice in writing to the Contractor and the EfW Operator if an EfW Contractor Default has occurred.

10.2 **Transfer of Handback Assets on EfW Contractor Default**

On termination under paragraph 10, the provisions of Schedule 2 to the Finance Direct Agreement shall apply.

11. **RECTIFICATION**

11.1 If an EfW Contractor Default has occurred and the Authority wishes to terminate the Contract, it shall serve a notice ("**EfW Contractor Default Termination Notice**") on the Contractor and the EfW Operator. The provisions of paragraphs 10 and 11 shall not apply (and the relevant time periods in paragraphs 11.2 and 11.5) unless and until the Authority has properly served such a notice on both the Contractor and the EfW Operator.

11.2 **EfW Contractor Default Termination Notice**

The EfW Contractor Default Termination Notice shall specify:

11.2.1 the type and nature of EfW Contractor Default that has occurred, giving reasonable details; and

11.2.2 that the EfW Contract will terminate on the day falling 40 Working Days after the date the Contractor and the EfW Operator receive the EfW Contractor Default Termination Notice, unless:

11.2.2.1 the Contractor puts forward an acceptable rectification programme ("**Rectification Programme**") within the relevant period of time specified in paragraph 11.2.2 (and implements the Rectification Programme in accordance with its terms and rectifies the EfW Contractor Default in accordance with the Rectification Programme); or

11.2.2.2 the Contractor rectifies:

- (a) EfW Contractor Default (g) (Assignment) within 15 Working Days;
- (b) EfW Contractor Default (l) (Non-Payment) within 20 Working Days; or

- (c) any other EfW Contractor Default within 25 Working Days;
or

11.2.2.3 the provisions of the Finance Direct Agreement apply to prevent termination.

11.3 EfW Contractor Default Rectified

If the Contractor either:

11.3.1 rectifies or procures the rectification of the EfW Contractor Default within the time period specified in the EfW Contractor Default Termination Notice;
or

11.3.2 implements the accepted Rectification Programme, if applicable, in accordance with its terms;

the EfW Contractor Default Termination Notice shall be deemed to be revoked and the EfW Contract shall continue.

11.4 Failure to Rectify EfW Contractor Default

If the Contractor fails to rectify the EfW Contractor Default within the time period specified in the EfW Contractor Default Termination Notice (or in accordance with the accepted Rectification Programme), the EfW Contract will, subject to the terms of the Finance Direct Agreement, terminate on the date falling 40 Working Days after the date of receipt of the EfW Contractor Default Termination Notice.

11.5 If the Contractor fails to implement the accepted Rectification Programme in accordance with its terms, the EfW Contract shall, subject to the terms of the Finance Direct Agreement, terminate on the date falling 40 Working Days after the date of receipt of the EfW Contractor Default Termination Notice.

12. NOT USED

13. AUTHORITY TERMINATION FOR BREACH OF REFINANCING AND/OR EQUITY RESTRUCTURING PROVISIONS

13.1 If the EfW Operator wilfully fails to comply with paragraph 30 then the Authority may terminate the EfW Contract at any time on or before its Expiry Date by complying with its obligations under paragraphs 13.2 to 13.4 below.

13.2 If the Authority wishes to terminate the EfW Contract under this paragraph, it must give notice to the Contractor stating:

13.2.1 that the Authority is terminating the EfW Contract under this paragraph 13;

13.2.2 that the EfW Contract will terminate on the date falling 30 days after the date of receipt of the notice; and

13.2.3 whether the Authority has chosen to exercise its option under paragraph 13.3.

13.3 On termination, the provisions of Schedule 2 to the Finance Direct Agreement shall apply.

13.4 The EfW Contract will terminate on the date falling 30 days after the date of receipt of the notice referred to in paragraph 13.2.

14. TERMINATION FOR EFW FORCE MAJEURE

14.1 Obligations

No Party shall be entitled to bring a claim for a breach of obligations under the EfW 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 an EfW Force Majeure Event occurs and it is prevented from carrying out obligations by that EfW Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate the EfW Contract for an EfW Contractor Default if such EfW Contractor Default arises from an EfW Force Majeure Event (but without prejudice to paragraph 14.5).

14.2 Payments and Deductions

Nothing in paragraph 14.1 above shall affect any entitlement to award EfW Default Points or make deductions pursuant to the terms of the Payment Mechanism in the period during which the EfW Force Majeure Event is subsisting.

14.3 Notification of EfW Force Majeure Event

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

14.4 Consultations

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 EfW Force Majeure Event and facilitate the continued performance of the EfW Contract.

14.5 Failure to Agree

If no such terms are agreed on or before the date falling 80 Working Days after the date of the commencement of the EfW Force Majeure Event and such EfW Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under the EfW Contract for a period of more than 180 days, then, subject to paragraph 14.6, either Party may terminate the EfW Contract by giving 20 Working Days' written notice to the other Party.

14.6 Force Majeure termination of the ASS Contract

In circumstances where either Party is entitled to terminate the ASS Contract pursuant to clause 10.10.2 or clause 40.10.2 (Force Majeure) then:

- (i) an EfW Force Majeure Event shall be deemed to have occurred;
- (ii) the EfW Contract shall terminate with immediate effect by written notice by either Party; and
- (iii) the provisions of paragraph 14.7 shall apply.

14.7 Consequences of Termination

If the EfW Contract is terminated under paragraphs 14.5 or 14.6, then subject to paragraph 14.10 and the terms of the Finance Direct Agreement:

14.7.1 compensation shall be payable by the Authority in accordance with paragraph 20; and

14.7.2 the provisions of Schedule 2 of the Finance Direct Agreement shall apply.

14.8 Mitigation

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

14.9 Cessation of EfW Force Majeure Event

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

14.10 EfW Force Majeure Option

At any time on or prior to the EfW Force Majeure Option Longstop Date, and provided that there is no subsisting EfW Uninsurable Risk at such time, the Contractor may, by written notice to the Authority, disapply the application of paragraph 20 (Compensation on Termination for EfW Force Majeure), in which event upon a subsequent EfW Force Majeure termination pursuant to paragraph 14.5 or 14.6 (as relevant):

14.10.1 no compensation shall be payable to the Contractor pursuant to paragraph 20.2; and

14.10.2 the Handback Assets will remain with Holdco, the EfW Operator or the relevant Subsidiary (as appropriate) and will not be transferred to the Authority or as directed by the Authority pursuant to paragraph 20.8 and the Authority shall irrevocably release any security which it may have under this Agreement in relation to all of the Handback Assets.

Once the option has been exercised by the Contractor pursuant to this paragraph 14.10 it shall not be capable of revocation without the written consent of the Authority (acting in its absolute discretion).

14.11 The provisions of this paragraph 14 and paragraph 20 with respect to the payment of compensation shall be without prejudice to the provisions of clauses 10, 40 and 47 in relation to the Authority Site Services.

15. CONTINUING OBLIGATIONS

15.1 Save as otherwise expressly provided in the Agreement:

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

15.1.2 termination of the EfW Contract shall not affect the continuing rights and obligations of the Authority and the Contractor under any provision of the EfW Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

16. TRANSITION TO ANOTHER EFW CONTRACTOR

16.1 During the period of any notice of termination of the EfW Contract and for a period of two months thereafter, the Contractor shall provide, and shall procure that the EfW Operator provides all reasonable co-operation, information and assistance (subject to the terms of this Agreement including, without limitation, clause 56) with the transfer of responsibility for the EfW Obligations (or any part thereof) to the Authority or to any new contractor of such services the same or similar to the EfW Services (in each case, a "New EfW Contractor"), and for the purposes of this paragraph 16 this obligation shall include:

- 16.1.1 liaising with the Authority and/or any New EfW Contractor, and providing reasonable assistance and advice concerning the EfW Services and their transfer to the New EfW Contractor;
 - 16.1.2 allowing any New EfW Contractor access (at reasonable times and on reasonable notice) to the EfW Facility but not so as to interfere with or impede the provision of the EfW Services; and
 - 16.1.3 (without prejudice to the obligations of the Contractor pursuant to paragraph 5 (Operating Manual)) providing to the Authority and/or to any New EfW Contractor all and any information concerning the EfW Facility and the EfW Services which is required for the efficient transfer of responsibility for their performance, subject to clause 56 (Confidentiality).
- 16.2 The Contractor shall use, and shall procure that the EfW Operator uses, all reasonable endeavours:
- 16.2.1 so as to facilitate the smooth transfer of responsibility for the EfW Service to a New EfW Contractor and the Contractor shall take, and shall procure that the EfW Operator takes, no action at any time during the EfW Service Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer;
 - 16.2.2 to transfer to the New EfW Contractor, and shall provide all reasonable assistance to the New EfW Contractor in relation to the transfer of, all EfW Necessary Consents, in each case to the extent that the same are transferable by Legislation.
- 16.3 In circumstances other than where the EfW Contract is terminated due to any EfW Contractor Default, the Authority shall reimburse to the Contractor all reasonable out-of-pocket expenses incurred by the Contractor or the EfW Operator in complying with this paragraph 16.

17. **HANDBACK OF ASSETS ON TERMINATION**

- 17.1 Following the EfW Termination Date, the provisions of Schedule 2 to the Finance Direct Agreement shall apply. The Authority shall do, and the Contractor shall procure that the EfW Operator and Holdco does, all necessary acts (including entering into any contracts) to ensure that the person to whom the Handback Assets are to be

transferred in accordance with Schedule 2 to the Finance Direct Agreement obtains such Handback Assets. Each Party shall be responsible for its own costs incurred in complying with this paragraph 17.1. The Authority shall be responsible for paying all stamp duty land tax, stamp duty reserve tax and the costs of obtaining any EfW Necessary Consents in connection with the transfer of the Handback Assets other than in the circumstances of a Contractor Default termination, in which event such costs shall not be borne (directly or indirectly) by the Authority.

17.2 Where, pursuant to the provisions of this Schedule 15 and the Finance Direct Agreement, the Handback Assets are to be transferred to the Authority or as directed by the Authority, the Contractor shall procure that such Handback Assets are transferred (as applicable):

17.2.1 in a condition which complies with the requirements of paragraph 5.4 (Operation and Maintenance);

17.2.2 subject to paragraph 17.2.3 and the Finance Direct Agreement, in such a way that the Authority or its nominee obtains all of Holdco's, the EfW Operator's and/or any Subsidiary's (as relevant) rights, title and interest in and to (at the discretion of the Authority) any or all of the Handback Assets;

17.2.3 in relation to the freehold of the Belvedere Site and the Belvedere Sub-Lease, with full title guarantee;

17.2.4 free from all Encumbrances in respect of financial indebtedness whether of RRRL or any other person save for any Permitted Encumbrances; and

17.2.5 free from all Encumbrances which would prevent full use and disposal of such Handback Assets by the Authority or Replacement EfW Contractor.

17.3 Not used.

17.4 For the duration of any EfW Force Majeure Event, and following any notice of termination of the EfW Contract pursuant to paragraphs 13.2, 14.5, or clause 44, the Contractor shall procure that none of Holdco the EfW Operator or any Subsidiary (as relevant) Dispose of or attempt to Dispose of:

17.4.1 without prejudice to paragraph 17.4.2, any interest in any single Handback Asset or any group of related Handback Assets, in each case with a market

value in excess of [REDACTED] without the express prior written consent of the Authority; and

17.4.2 the EfW Facility without the express written consent of the Authority such consent to be in the absolute discretion of the Authority.

17.5 The Authority shall not refuse consent requested pursuant to paragraph 17.4.1 where the Contractor provides a replacement Handback Asset which is reasonably acceptable to the Authority, or where the Disposal was both:

17.5.1 in the ordinary course of business; and

17.5.2 had been agreed prior to the date referred to in paragraph 17.4 above.

18. COMPENSATION ON TERMINATION FOR EFW AUTHORITY DEFAULT

18.1 On termination of the EfW Contract under paragraph 9 the Authority shall pay the EfW Authority Default Termination Sum in accordance with clause 18.1 of the Finance Direct Agreement. Subject to paragraphs 18.3 to 18.5 the "**EfW Authority Default Termination Sum**" shall be an amount equal to the aggregate of:

18.1.1 the Base Senior Debt Termination Amount;

18.1.2 redundancy payments for employees of the EfW Operator that have been or will be reasonably incurred by the EfW Operator as a direct result of termination of the EfW Contract and any EfW Operator Subcontractor Breakage Costs, **EXCLUDING** such redundancy payments and EfW Operator Subcontractor Breakage Costs as are directly or indirectly increased as a result of the acquisition of the CEL Shares and/or CSRS Shares by Holdco on or after the Second Amended Agreement Date; and

18.1.3 the aggregate amount for which the share capital of the EfW Operator and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis, based on the Relevant Assumptions and encumbered by the Base Senior Debt Termination Amount as nominally being outstanding at the EfW Termination Date, but for the purposes of the share capital valuation disregarding any amounts outstanding under the New Subordinated Debt Agreement.

- 18.2 Not used.
- 18.3 If the aggregate of the amounts referred to in paragraphs 18.1.1 and 18.1.3 is less than the Revised Senior Debt Termination Amount, then the EfW Authority 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 paragraph 18.1.2 provided always that:
- 18.3.1 the amount referred to in paragraph 18.1.2 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
- 18.3.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no EfW Operator Subcontractor Breakage Costs shall be paid in respect of any EfW Operator Subcontract in circumstances where there is an event of default under such EfW Operator Subcontract which would entitle the EfW Operator to terminate such EfW Operator Subcontract.
- 18.4 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the EfW Operator has wilfully, or through gross negligence, failed to comply with its obligations under clause 13.4(d)(i) of the Finance Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (vi) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the EfW Authority Default Termination Sum, provided that the amount of the EfW Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 18.5 If the EfW Operator has wilfully or through gross negligence failed to comply with its obligations under clause 13.4(d)(ii) of the Finance Direct Agreement and there has been an overstatement of the cash balances by the EfW Operator as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the EfW Termination Date than it actually is required to pay under the terms of this paragraph 18, then the EfW Authority Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the EfW Termination Date), provided that the amount of the EfW

Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

19. COMPENSATION ON TERMINATION FOR EFW CONTRACTOR DEFAULT

19.1 Retendering Election

Subject to paragraph 19.2, the Authority shall be entitled either to:

19.1.1 tender the New EfW Contract and RRRL Undertaking in accordance with paragraph 19.3; or

19.1.2 require an expert determination in accordance with paragraph 19.4.

19.2 Entitlement to Tender

The Authority shall be entitled to tender the New EfW Contract and RRRL Undertaking in accordance with paragraph 19.3 if:

19.2.1 the Authority notifies the Contractor on or before the date falling 20 Working Days after the EfW Termination Date; and

19.2.2 there is a Liquid Market; and either:

19.2.2.1 the Senior Lenders have not exercised their rights to step in under clause 10 (Step-in Period) of the Finance Direct Agreement; or

19.2.2.2 the Contractor or Senior Lenders have not procured the transfer of the Contractor's rights and liabilities under the EfW Contract to a Suitable Substitute EfW Contractor and have failed to use all reasonable efforts to do so,

but otherwise the Authority shall not be entitled to tender the New EfW Contract and RRRL Undertaking and paragraph 19.4 shall apply.

19.3 Retendering Procedure

If the Authority elects to tender the New EfW Contract and RRRL Undertaking under paragraph 19.1, then the following provisions of this paragraph 19.3 shall apply:

- 19.3.1 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.
- 19.3.2 The Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.
- 19.3.3 The Authority 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 and the basis on which the RRRL Undertaking will be offered pursuant to the Sale and Purchase Agreement (which, unless otherwise agreed with the EfW Operator, shall be at the option of the tenderers either by way of a sale of the RRRL Shares or a sale of the RRRL Business) but shall act reasonably in setting such requirements and terms. Without limitation, it shall not be reasonable for the Authority to be required to give any representation, warranty or other comfort in relation to the period prior to its assumption of ownership of the whole of the RRRL Undertaking or, post assumption of ownership, in relation to that part of the RRRL Undertaking of which the Authority (or its nominee) does not assume ownership), but the EfW Operator or Holdco (as appropriate) shall (without the benefit of any credit enhancement by the Authority) be given the opportunity to give warranties, representations or other comfort directly to the New EfW Contractor in order to enhance the value of the RRRL Undertaking.
- 19.3.4 The Contractor authorises, and shall procure authorisation from the EfW Operator for, the release of any information by the Authority under the Tender Process which would otherwise be prevented under clause 56 (Confidentiality) that is reasonably required as part of the Tender Process.
- 19.3.5 The Contractor may, at its own cost, appoint a person ("**Tender Process Monitor**") to monitor the Tender Process for the purpose of monitoring and

reporting to the Contractor and the Senior Lenders on the Authority's compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor will not disclose any confidential information to the Contractor or any other person other than the Senior Lenders (and shall provide an undertaking to the Authority to such effect as a condition of its appointment, together with appropriate confidentiality undertakings in a form acceptable to the Authority (acting reasonably) from the Senior Lenders prior to any disclosure to the Senior Lenders) but shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the EfW Adjusted Highest Compliant Tender Price.

19.3.6 Subject to the Tender Process Monitor entering into a confidentiality agreement with the Authority in a form consistent with paragraph 19.3.5 and in all other respects acceptable to the Authority, the Tender Process Monitor 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 Authority 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 Authority 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 EfW Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure.

19.3.7 For all or any part of a month, falling within the period from the EfW Termination Date to the EfW Compensation Date, the Authority shall use its reasonable endeavours to perform or procure the performance of the EfW Operator's obligations under the EfW Waste Supply Agreement and shall pay to the Contractor:

19.3.7.1 the EfW Post Termination Service Amount for that month, on or before the date falling 10 Working Days after the end of that month; and

19.3.7.2 the EfW Post Termination Service Amount for the period ending on the EfW Compensation Date, on or before the date falling 20 Working Days after the EfW Compensation Date.

19.3.8 If any EfW Post Termination Service Amount is less than zero then it shall be carried forward and shall be set off against any future positive EfW Post Termination Service Amounts. If any such EfW Post Termination Service Amount has not been set off on or before the EfW Compensation Date then it shall be taken into account in the calculation of the EfW Adjusted Highest Compliant Tender Price.

19.3.9 The Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies on the date that the New EfW Contract is entered into.

19.3.10 As soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify the Contractor of the Highest Compliant Tender Price and the EfW Adjusted Highest Compliant Tender Price.

19.3.11 If the Contractor refers a dispute relating to the EfW Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure, the Authority shall be entitled to enter into a New EfW Contract. The Authority shall pay the EfW Adjusted Highest Compliant Tender Price (in accordance with clause 18.1 of the Finance Direct Agreement) on or before the date falling 20 Working Days after the later of:

19.3.11.1 Not used.

19.3.11.2 the date the EfW Adjusted Highest Compliant Tender Price has been determined in accordance with the Dispute Resolution Procedure; and

19.3.11.3 the date on which the New EfW Contractor pays the Highest Compliant Tender Price to the Authority,

and the Authority shall pay interest at the Senior Debt Rate on any amount of EfW Adjusted Highest Compliant Tender Price which had been withheld,

from the date specified in paragraph 19.3.12 below until the date specified in this paragraph 20.3.11.

19.3.12 Subject to paragraph 19.3.11 and 19.3.15, the Authority shall pay an amount equal to the EfW Adjusted Highest Compliant Tender Price in accordance with clause 18.1 of the Finance Direct Agreement no later than the date falling 20 Working Days after the date of entering into the New EfW Contract.

19.3.13 The discharge by the Authority of its payment obligation in paragraph 19.3.11 and/or 19.3.12 above shall be in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of the EfW Contract and the EfW Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the EfW Termination Date that has not already been taken into account in the EfW Adjusted Highest Compliant Tender Price.

19.3.14 Subject to paragraphs 19.3.15 and 19.3.18 below, if the Authority has not paid an amount equal to the EfW Adjusted Highest Compliant Tender Price in accordance with clause 18.1 of the Finance Direct Agreement on or before the date falling two years after the EfW Termination Date then paragraphs 19.3.15 to 19.3.18 inclusive shall not apply to that termination and the provisions of paragraph 19.4 shall apply instead.

19.3.15 If the EfW Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment in accordance with clause 18.1 of the Finance Direct Agreement and with effect from the time that the Authority gives notice of that event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of the EfW Contract and any EfW Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the EfW Termination Date (but not from the termination itself) that has not already been taken into account in determining the EfW Adjusted Highest Compliant Tender Price.

19.3.16 If the EfW Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the EfW Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority. If no Compliant Tenders are received, the No Retendering Procedure shall immediately apply in accordance with paragraph 19.4.

19.3.17 The Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under paragraph 19.4 by notifying the EfW Operator that this election has been made.

19.3.18 If the Authority has 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 an amount equal to the EfW Adjusted Highest Compliant Tender Price within 20 Working Days of such notification in accordance with clause 18.1 of the Finance Direct Agreement.

19.4 No Retendering Procedure

If the Authority is not entitled to tender the New EfW Contract and RRRL Undertaking under paragraph 19.3, or no Compliant Tenders are received (as referred to in paragraph 19.3.16), or the Authority elects to require an expert determination in accordance with this paragraph 19.4 then the following procedure shall apply:

19.4.1 Subject to paragraph 19.4.2 below, the Contractor shall not be entitled to receive any EfW Post Termination Service Amount.

19.4.2 If the Authority elects to require an expert determination in accordance with this paragraph 19.4 after it has elected to follow the procedure under paragraph 19.3, then the Authority shall continue to pay to the Contractor each EfW Post Termination Service Amount until the EfW Compensation Date, in accordance with paragraph 19.3.

19.4.3 In agreeing or determining the EfW Estimated Fair Value of the Tendered Assets insofar as it relates to the Deemed New EfW Contract, the Parties shall be obliged to follow the principles set out below:

19.4.3.1 all forecast amounts should 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 the EfW Contract;

19.4.3.2 the total of all future payments of the full EfW General Waste Rate (without deductions) forecast to be made and all third party revenue forecast to be earned shall be calculated and discounted to the EfW Termination Date at the EfW Termination Date Discount Rate;

19.4.3.3 the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the EfW Termination Date Discount Rate and deducted from the payment calculated pursuant to paragraph 19.4.3.2 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) the costs of the service forecast to be incurred by the Authority in providing the EfW Project to the standard required; and
- (c) any rectification costs required to deliver the EfW Project to the standard required (including any costs forecast to be incurred by the Authority 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 EfW General Waste Rate referred to in paragraph 19.4.3.2 above.

19.4.4 In agreeing or determining the EfW Estimated Fair Value of the Tendered Assets insofar as it relates to the RRRL Business, the Parties (or in the case of paragraph 19.4.5, the expert) shall follow generally accepted accounting principles for valuing businesses same as or similar to the RRRL Business. In so doing, the Parties (or in the case of paragraph 19.4.5, the expert) will

determine the value which a willing buyer and a willing seller would agree on arm's length terms between informed and willing parties (other than in a forced or liquidation sale) for the sale and purchase of the RRRL Undertaking whether by the sale and purchase of the RRRL Business or the RRRL Shares.

19.4.5 If the Parties cannot agree on the EfW Adjusted Estimated Fair Value of the Tendered Assets on or before the date falling 30 days after the date on which the Authority elected to require an expert determination in accordance with this paragraph 19.4, then the EfW Estimated Fair Value of the Tendered Assets shall be determined in accordance with the Dispute Resolution Procedure.

19.4.6 The Authority shall pay an amount equal to the EfW Adjusted Estimated Fair Value of the Tendered Assets on the date falling 28 days after the date on which the EfW Adjusted Estimated Fair Value of the Tendered Assets has been agreed or determined in accordance with this paragraph 19.4 in accordance with clause 18.1 of the Finance Direct Agreement.

19.4.7 The discharge by the Authority of its obligation in paragraph 19.4.6 is in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of the EfW Contract or any EfW Project Documents whether in contract, tort, restitution or otherwise save for any liability that arose prior to the EfW Termination Date (but not from the termination itself) that has not been taken into account in determining the EfW Adjusted Estimated Fair Value of the Tendered Assets.

19.4.8 To the extent that the EfW Adjusted Estimated Fair Value of the Tendered Assets is less than zero, then an amount equal to the the EfW Adjusted Estimated Fair Value of the Tendered Assets shall be due and payable in accordance with clause 18.1 of the Finance Direct Agreement.

20. COMPENSATION ON TERMINATION FOR EFW FORCE MAJEURE

20.1 On termination of the EfW Contract under paragraphs 1.7 or 14, and provided that the Contractor shall not have exercised the EfW Force Majeure Option on or prior to the EfW Force Majeure Option Longstop Date, the Authority shall (without prejudice to the provisions of clauses 10, 40 and 47 in relation to the Authority Site Services) pay

the Force Majeure Termination Sum and the provisions of clause 18.1 of the Finance Direct Agreement shall apply.

20.2 Subject to paragraphs 20.4 and 20.6 below, the EfW Force Majeure Termination Sum shall be the amount equal to the aggregate of:

20.2.1 the Base Senior Debt Termination Amount; and

20.2.2 redundancy payments for employees of the EfW Operator that have been or will be reasonably incurred by the EfW Operator as a direct result of termination of the EfW Contract and any EfW Operator Subcontractor Breakage Costs, **EXCLUDING** such redundancy payments and EfW Operator Subcontractor Breakage Costs as are directly or indirectly increased as a result of the acquisition of the CEL Shares and/or the CSRS Shares by Holdco on or after the Second Amended Agreement Date.

20.3 Not used..

20.4 If the amount referred to in paragraphs 20.2.1 is less than the Revised Senior Debt Termination Amount, then the EfW 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 paragraph 20.2.4 provided always that:

20.4.1 the amount referred to in paragraph 20.2.4 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and

20.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no EfW Operator Subcontractor Breakage Costs shall be paid in respect of any EfW Operator Subcontract in circumstances where there is an event of default under such EfW Operator Subcontract which would entitle the EfW Operator to terminate such EfW Operator Subcontract.

20.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the EfW Operator has wilfully, or through gross negligence, failed to comply with its obligations under clause 13.4(d)(i) of the Finance Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be

entitled to set off the value of that Distribution a second time against the EFW 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.

20.6 If the EFW Operator has wilfully or through gross negligence failed to comply with its obligations under clause 11.4(d)(ii) of the Finance Agreement and there has been an overstatement of the cash balances by the EFW Operator as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the EFW Termination Date than it actually is required to pay under the terms of this paragraph 20, then the EFW Force Majeure Termination Sum, shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the EFW Termination Date), provided that the amount of the EFW Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

20.7 Not used.

20.8 On termination, provided that the Contractor shall not have exercised the EFW Force Majeure Option on or prior to the EFW Force Majeure Option Longstop Date the provisions of clause 18.1 of, and Schedule 2 to, the Finance Direct Agreement shall apply.

21. COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD

On termination of the EFW Contract in accordance with clause 44, the Authority shall pay an amount equal to the Revised Senior Debt Termination Amount, in accordance with the provisions of clause 18.1 of the Finance Direct Agreement.

22. COMPENSATION ON TERMINATION FOR BREACH OF REFINANCING AND/OR EQUITY RESTRUCTURING PROVISIONS

On termination under paragraph 13.4, the Authority shall pay an amount equal to the amount payable under paragraph 21 in accordance with the provisions of clause 18.1 of the Finance Direct Agreement.

23. NOT USED

24. CONTRACTOR'S RECORDS

24.1 The Contractor shall procure that the EfW Operator shall, at all times:

24.1.1 maintain a full record of particulars of the costs of performing the EfW Service and undertaking the EfW Works, including those relating to the design, construction, maintenance, operation and finance;

24.1.2 when reasonably requested by the Authority, provide details of any of the costs and appropriate records referred to in paragraph 24.1.1 on an open book basis, including details of any funds held by the EfW Operator specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to exercise its rights under this EfW Contract;

24.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this paragraph.

24.2 The Contractor shall keep, and shall procure that the EfW Operator and the EfW Operator's subsidiaries keep, books of account in accordance with generally accepted accountancy practice with respect to the EfW Contract showing in detail:

24.2.1 administrative overheads;

24.2.2 payments made to EfW Subcontractors;

24.2.3 capital and revenue expenditure; and

24.2.4 such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of paragraph 3, paragraph 6.1 and paragraph 8, and wherever else reasonably required under the EfW Contract,

and the Contractor shall have (and procure that the EfW Operator and its subsidiaries have) the books of account evidencing the items listed in paragraph 24.2.1 to 24.2.4 available for inspection by the Authority, its auditors, and any expert employed by the Authority upon reasonable notice.

24.3 The Contractor shall procure that the EfW Operator maintains or procures that the following are maintained:

24.3.1 a full record of all incidents relating to health, safety and security which occur during the term of the EfW Contract as required by law;

24.3.2 full records of all material maintenance procedures carried out during the term of the EfW Contract; and

24.3.3 a full record of all environmental prosecutions and measures taken by the Environment Agency against the EfW Operator or in relation to the EfW Project,

and the Contractor shall procure that the EfW Operator has the items referred to in paragraphs 24.3.1 and 24.3.2 available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested.

24.4 The Contractor shall, subject to clause 56 (Confidentiality) procure that the EfW Operator permits records referred to in this paragraph to be examined and copied by the Authority, its auditors and any expert employed by the Authority (at the cost of the Authority) and their respective representatives.

24.5 The records referred to in this paragraph shall be retained for a period of at least five years after the end of the EfW Service Period.

24.6 Following the EfW Termination Date, in the event that the Authority or its nominee wishes to enter into a contract for the operation and management of the EfW Project the Contractor shall procure that the EfW Operator and its subsidiaries comply with all reasonable requests of the Authority (at the Authority's cost) to provide information relating to the EfW Operator's costs of operating and maintaining the EfW Project.

24.7 All information referred to in this paragraph is subject to the obligations set out in clause 56 (Confidentiality).

25. NOT USED

26. BELVEDERE SURPLUS LAND

26.1 The Contractor shall procure that the EfW Operator, upon any sale of the Belvedere Surplus Land:

26.1.1 applies the net proceeds of sale in the prepayment of the Senior Debt (and the permanent prepayment of the 2017 Senior Debt for the purposes of the Base Case) as soon as reasonably practicable following receipt of such proceeds unless and until the 2017 Senior Debt in the Base Case is reduced to zero; and

26.1.2 notifies the Authority in writing once this has been done.

27. EFW TONNAGE

27.1 Commissioning Waste

27.1.1 The Contractor shall procure that the EfW Operator prioritises the use of riverborne General Waste and City of London Waste, as commissioning waste for the EfW Facility, save to the extent that it is reasonably necessary to use waste transported by road to prove the ability of the EfW Facility and related infrastructure to receive waste by road. The amount of General Waste and City of London Waste deemed to have been incinerated as commissioning waste shall be in proportion to their relative tonnages transported by river to the EfW Facility over the relevant period.

27.1.2 Any General Waste used for commissioning purposes pursuant to paragraph 27.1.1 shall be charged to the Authority at the rate specified in paragraph 5.6 of the Payment Mechanism.

27.2 EfW Annual Reserved Capacity Adjustment

The Authority shall notify the Contractor on or prior to 1 October in each of 2013, 2018, 2022 and 2027 of any change it wishes to make to the EfW Annual Reserved Capacity for the five (5) EfW Contract Year period immediately following each such date. The nomination shall take effect from the commencement of the EfW Contract Year commencing immediately following such dates.

27.3 EfW Authority Quotient Percentage

The EfW Authority Quotient Percentage shall, in relation to any EfW Contract Year and for the purposes of calculating the EfW Authority Share of EfW Qualifying Changes in Law pursuant to paragraph 8.5 (or where otherwise used in this Agreement), equal:

$$\frac{\text{EfW Average Reserved Capacity} * 100}{740,000}$$

where:

EfW Average Reserved Capacity is the average of the EfW Annual Reserved Capacities in each of the immediately preceding five (5) EfW Contract Years or, if less than five (5) EfW Contract Years' data is available, the period for which such data is available.

27.4 EfW Contract Year Annual Reserved Capacity

27.4.1 No later than 2 months prior to the commencement of each EfW Contract Year, the Authority shall notify the Contractor in writing of:

27.4.1.1 the proportion of EfW Annual Reserved Capacity that it wishes to nominate as its "**EfW Contract Year Annual Reserved Capacity**". The EfW Contract Year Annual Reserved Capacity shall always be greater than the EfW Annual Reserved Capacity less 84,000 tonnes per annum; and

27.4.1.2 the proportion of the Additional EfW Annual Reserved Capacity it wishes to utilise in accordance with clause 7.2.

27.4.2 The Contractor shall procure that the EfW Operator gives priority at the EfW Facility to all General Waste up to the EfW Contract Year Annual Reserved Capacity plus the Nominated Additional EfW Annual Reserved Capacity in accordance with the mechanism set out in paragraph 5 of the Payment Mechanism.

27.4.3 If and to the extent that the EfW Annual Reserved Capacity exceeds the EfW Contract Year Annual Reserved Capacity nominated pursuant to paragraph

27.4.1, the Authority shall be entitled to a revenue share payment pursuant to paragraph 7 of the Payment Mechanism.

27.4.4 For the purposes of the Payment Mechanism, in any EfW Contract Year a tonnage equal to the lower of:

27.4.4.1 the total tonnage of General Waste in such EfW Contract Year; and

27.4.4.2 the EfW Contract Year Annual Reserved Capacity plus the Nominated Additional EfW Annual Reserved Capacity of General Waste for such EfW Contract Year,

shall be deemed to have been incinerated by the EfW Facility (and shall be invoiced at the EfW General Waste Rate), irrespective of whether this in fact occurred.

28. GOOD FAITH

28.1 Both Parties will act in good faith towards each other in relation to all matters arising under this EfW Contract and both Parties will do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of this EfW Contract. In particular (without failure to comply with the following amounting to a breach of contract):

28.1.1 the Contractor will inform the Authority fully and as soon as possible of any circumstances which might prejudice the Contractor's or EfW Operator's ability to provide the EfW Services whether temporarily or permanently;

28.1.2 each Party shall inform the other fully and as soon as possible of any circumstance which might reasonably lead to any substantial change in the nature, composition or amount of General Waste or any other circumstance which might alter the burden of the obligations of each Party;

28.1.3 the Authority Representative shall be given all information and other access and assistance he may reasonably require to ensure that the Contractor is fulfilling its obligations under this Agreement, provided that this shall not entitle the Authority Representative to any additional information to which the Authority is not already entitled under this Agreement (including, without limitation, pursuant to paragraph 24); and

28.1.4 the Parties shall use the Liaison Committee to identify any way in which either Party might be, or become, in breach of its obligations, and any necessary remedial action, and to resolve informally any problem arising as perceived by either Party.

28.2 Any act, omission, decision, requirement, agreement or other step of any kind taken by any Party or their representatives pursuant to the EfW Contract shall be so taken in good faith.

29. FINANCIAL ADJUSTMENT

29.1 Options for Financial Adjustment

Whenever a Relevant Event occurs, the financial consequence shall (save where the Parties mutually agree otherwise) be determined in accordance with this paragraph 29.

29.2 Updating the Base Case

Save to the extent paragraph 29.8 of this Schedule 15 applies, where for the purposes of this paragraph 29 the Base Case is to be adjusted by reference to a Relevant Event, the Contractor shall procure that this shall be carried out by the EfW Operator, in consultation with the Authority, 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 EfW Operator shall be entitled to take into account, inter alia:

29.2.1 any Change in Costs and Change in Revenue (including, for the avoidance of doubt, any additional financing costs);

29.2.2 reasonable economic assumptions prevailing at the time; and

29.2.3 changes in the prospective technical performance of the EfW Project arising as a result of the Relevant Event;

PROVIDED THAT the Authority shall not be required (and the EfW Operator 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 Agreement, including (to

the extent so borne by the Contractor under this Agreement) changes in VAT rates, taxation rates, any prior refinancing gains, Indexation, the impact of Deductions and the limitations on the Authority's liability set out in paragraph 8.5 (EfW Changes in Law) of this Schedule 15.

29.3 Application of the Base Case

Subject to paragraph 8.5.1.2 of this Schedule 15, where, pursuant to this Agreement, 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 Authority's Refinancing Share and Authority's Restructuring Share to which paragraph 30 of this Schedule 15 shall apply), the adjustment to the EfW General Waste Rate due shall be that required to ensure that (prior to adjustment pursuant to the proviso to paragraph 29.4 of this Schedule 15), by reference to the Base Case adjusted under this paragraph 29 in the manner referred to in paragraph 29.8 of this Schedule 15, the EfW Operator is left in 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 EfW General Waste Rate required to maintain the financial position of the EfW Operator with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

29.4 No Better and No Worse

29.4.1 Any reference in the EfW Contract to “no better and no worse” or to leaving the EfW Operator in a “no better and no worse position” shall be construed by reference to the EfW Operator’s:

29.4.1.1 rights, duties and liabilities under or arising pursuant to performance of the EfW Project Documents and Financing Agreements insofar as they relate to the EfW Works and/or the EfW Services; and

29.4.1.2 ability to perform its obligations in relation to the EfW Project Documents and Financing Agreements insofar as they relate to the EfW Works and/or EfW Services and exercise its rights thereunder so as to ensure that:

- (i) (subject to the proviso set out below) the EfW Operator is left in a position which is no better and no worse by reference to

minimum and average debt service cover ratios, the minimum loan life cover ratio and the blended equity real pre-shareholder tax IRR under the version of the Base Case applicable immediately prior to the Relevant Event than had the Relevant Event not occurred, and

- (ii) the ability of the EfW Operator to perform the EfW Services is not adversely affected or improved as a consequence of the Relevant Event,

PROVIDED THAT:

- (a) in relation to an EfW Qualifying Change in Law, the Authority's liability shall be limited as set out in paragraph 8.5, and the adjustment to the EfW General Waste Rate shall be calibrated accordingly;
- (b) the Authority shall have no liability in relation to EfW Contractor Losses; and
- (c) there shall be no adjustment to the Base Case in relation to EfW Compensation Events which result in a denial to the EfW Operator of Authority Waste and/or Third Party Waste, in relation to which the provisions of paragraph 3.3.3 of this Schedule 15 shall apply,

and "no better and no worse" shall be construed accordingly.

29.5 Replacement of Base Case

Any Base Case produced following adjustments in accordance with this paragraph 29 (Financial Adjustments) shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Agreement until its further amendment in accordance with this Agreement.

29.6 Amendments to Logic and/or Formulae

Subject always to the provisions of paragraphs 29.3 and 29.4 of this Schedule 15:

29.6.1 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.

29.6.2 Where any amendment is made to the logic or formulae incorporated in the Base Case, the Base Case shall first be run as at the date immediately prior to amendment to ensure that the loan life cover ratio and the debt service cover ratio from the Base Case are maintained at no lower or no higher levels than the loan life cover ratio and the debt service cover ratio immediately post amendment, and the difference in the real pre-tax Project IRR after and immediately prior to amendment does not differ by more than five (5) basis points (being point zero five percent (0.05%)).

29.7 Copies of the Revised Base Case

Following any change to the Base Case under the provisions of this paragraph 29 (Financial Adjustments), the Contractor shall procure that the EfW Operator promptly delivers a copy of the revised Base Case to the Authority in the same form as is established at EfW Financial Close or in such other form as may be agreed between the Parties as suitably amended to reflect the changes referred to above.

29.8 In circumstances where:

29.8.1 the aggregate of all operational expenditure arising as a result of a Relevant Event in any one year does not exceed [REDACTED] and the aggregate of Capital Expenditure arising as a result of any Relevant Event does not exceed [REDACTED]; or

29.8.2 the Parties otherwise agree,

the financial adjustment to be made by the Parties under this Agreement as a result of a Relevant Event shall be calculated:

29.8.2.1 in relation to the EfW Operator, without reference to the Base Case but shall be agreed between the Parties or Finally Determined to leave the EfW Operator in no better and no worse position; and

29.8.2.2 in relation to the Contractor, and in relation to EfW Qualifying Changes in Law only, in accordance with paragraph 8.5.1.2.

30. REFINANCING AND EQUITY RESTRUCTURING

30.1 Requirement for Authority Consent

Subject to paragraph 30.3, the Contractor shall procure that the EfW Operator obtains the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Contractor agree (and the Contractor shall procure that the EfW Operator agrees) at all times to act in good faith with respect to any Refinancing, provided that (subject to being provided with the information as required by paragraph 30.4) the Authority shall not be entitled to unreasonably withhold or unreasonably delay its consent to any Qualifying Refinancing where the Contractor has complied with its obligations under this clause 30, and procures that the Authority is provided with its share of any Refinancing Gain as required pursuant to clause 30.5.

30.2 Share of Gain

The Authority shall be entitled to receive a share of any Refinancing Gain arising from a Qualifying Refinancing as follows:

30.2.1 Where a Qualifying Refinancing is effected without any increase in the quantum of Senior Debt raised at the date of Refinancing and either:

30.2.1.1 results in no change in the Authority Termination Liability; or

30.2.1.2 would result in an increase in the Authority Termination Liability but the Authority has confirmed in writing that it has chosen not to receive any share of that element of the Refinancing Gain which arises from the increase in Authority Termination Liability and in return will not accept any increase in Authority Termination Liability (in which event the Authority's liability shall not be increased):

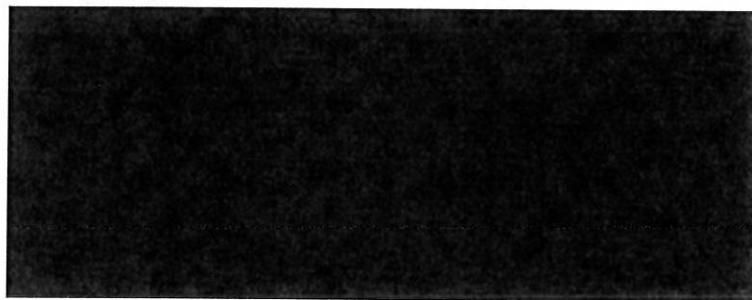


30.2.2 Where a Qualifying Refinancing is effected without any increase in the quantum of Senior Debt raised at the date of Refinancing but results in an

increase in Authority Termination Liability and the Authority has confirmed in writing that it has chosen to receive the Authority Refinancing Share of that element of the Refinancing Gain which arises from the increase in Authority Termination Liability and in return will accept the increase in Authority Termination Liability arising from the Qualifying Refinancing:



30.2.3 Where a Qualifying Refinancing is effected through an increase in the quantum of Senior Debt raised and the Authority has confirmed in writing that it has chosen not to receive any share of that element of the Refinancing Gain which arises from the increase in the quantum of Senior Debt raised and in return will not accept any increase in Authority Termination Liability resulting from the increase in the quantum of Senior Debt but will accept the increase in Authority Termination Liability arising from the re-profiling of the pre-existing Senior Debt, the Authority's liability shall be as set out in clause 30.2.2 above:

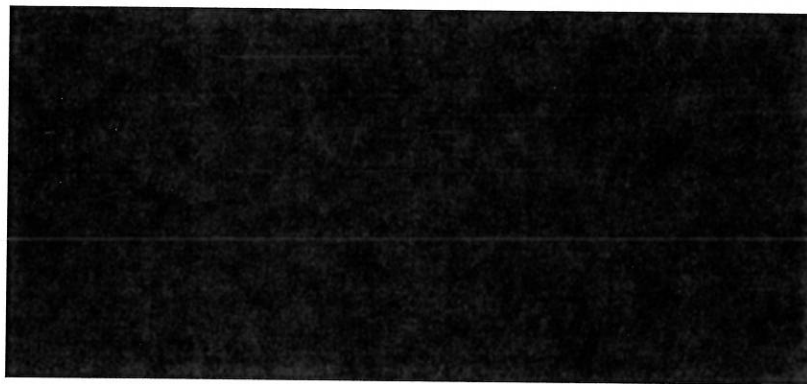


30.2.4 Where a Qualifying Refinancing is effected through an increase in the quantum of Senior Debt raised the Authority may choose not to receive any share of that element of the Refinancing Gain which arises from any increase in Authority Termination Liability, whether the increase in Authority Termination Liability is caused by the increase in the quantum of Senior Debt raised or not, and in return will not accept any increase in Authority

Termination Liability. In this instance, the Authority's share of the Refinancing Gain shall be as set out in clause 30.2.1 above:



30.2.5 Where a Qualifying Refinancing is effected through an increase in the quantum of Senior Debt raised and results in an increase in the Authority Termination Liability and where the Authority has confirmed in writing that it has chosen to receive its share of that element of the Refinancing Gain which arises from the increase in Authority Termination Liability and in return will accept the increase in Authority Termination Liability arising from the Qualifying Refinancing:



30.3 Withholding Consent

The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that defined in 30.2 above.

30.4 Contractor to Provide Details

The Contractor shall procure that the EfW Operator provides the Authority 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 Contractor shall procure that the Authority shall (before, during and at any time after any Refinancing) be provided by the EfW Operator with 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).

30.5 Receipt of Gain

The Authority shall have the right to elect to receive its share of any Refinancing Gain as:

30.5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;

30.5.2 a deduction from each monthly Invoice (applied, at the Authority's option, either as a straight deduction or by way of a reduction to the EfW Contract Rate over the invoiced tonnage for General Waste in the relevant month) submitted pursuant to clause 29.2 of the Agreement over the remaining term of the Agreement provided that no such deduction in any one month shall (other than on or following the Expiry Date or EfW Termination Date) result in a monthly Invoice of less than zero, in which event the balance (together with interest at the Default Interest Rate) shall be carried forward to the immediately following month(s) until payment has been made; or

30.5.3 a combination of any of the above.

30.6 Method of Calculation

The Authority and the Contractor will negotiate in good faith and the Contractor shall procure that the EfW Operator negotiates in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under paragraph 30.5). If the Authority, the Contractor and the EfW Operator fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the dispute shall be determined in accordance with the Dispute Resolution Procedure.

30.7 Costs

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 Authority will be paid to the Authority by the Contractor within 28 days of any Qualifying Refinancing.

30.8 Notifiable Financings

Without prejudice to the other provisions of this paragraph 30, the Contractor shall procure that the EfW Operator:

30.8.1 notifies the Authority 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

30.8.2 includes a provision in the Financing Agreements whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements.

30.9 The Contractor shall procure that, upon any Refinancing, any new finance provider enters into a finance direct agreement in a form reasonably acceptable to the Authority, the Contractor, the EfW Operator and the new finance provider.

30.10 Equity Restructuring - Requirement for Authority Consent

Subject to paragraph 30.12, the Contractor shall procure that the EfW Operator obtains the Authority's prior written consent to any Equity Restructuring and both the Authority and the Contractor agree (and the Contractor shall procure that the EfW Operator or Holdco (as applicable) agrees) at all times to act in good faith with respect to any Equity Restructuring, provided that (subject to being provided with the information as required by paragraph 30.13) the Authority shall not be entitled to unreasonably withhold or unreasonably delay its consent to any Equity Restructuring where the Contractor has complied with its obligations under the Equity Restructuring Provisions, and procures that the Authority is provided with its Equity Restructuring Share as required pursuant to clause 30.14.

30.11 Authority's Restructuring Share

The Authority shall be entitled to receive the Authority's Restructuring Share of any Restructured Equity in accordance with the Equity Restructuring Provisions.

30.12 Equity Restructuring - Withholding Consent

The Authority shall not withhold or delay its consent to an Equity Restructuring to increase the Authority's Restructuring Share.

30.13 Equity Restructuring - Contractor to Provide Details

The Contractor shall procure that the EfW Operator or Holdco (as applicable) promptly provides the Authority with full details of any proposed Equity Restructuring and its calculations as to the potential Authority Restructuring Share arising therefrom (if any). The Contractor shall procure that the Authority shall (before, during and at any time after any Equity Restructuring) be provided with unrestricted rights of audit in relation to the Equity Restructuring and the calculation, determination and payment of the Authority's Restructuring Share.

30.14 Equity Restructuring - Payment of Authority's Restructuring Share

30.14.1 Following the occurrence of an Equity Restructuring, the Contractor shall pay to the Authority the Relevant Proportion of the Tax Benefit (as defined below).

30.14.2 The "Tax Benefit" for a Tax Period shall be calculated by multiplying the amount of converted Risk Capital by the coupon applicable to the replacement debt multiplied by the rate of corporation tax applicable on the date upon which the calculation is undertaken.

30.14.3 The Tax Benefit shall be calculated on the date the Equity Restructuring occurs, and at the start of each applicable Tax Period thereafter. It will be adjusted pro rata where the calculation is made in relation to a period which is less than a full Tax Period.

30.14.4 The Contractor shall pay the Authority's Restructuring Share by equal monthly instalments over the relevant Tax Period through a rebate to the Monthly Service Payment for EfW Services (as defined in paragraph 4.1 of the Payment Mechanism). The first rebate shall be incorporated into the monthly Invoice immediately following the Equity Restructuring, provided that no such deduction in any one month shall (other than on or following the Expiry Date or EfW Termination Date) result in a monthly Invoice of less than zero, in which case the balance (together with interest at the Default

Interest Rate) shall be carried forward to the immediately following month(s) until payment has been made.

30.15 Equity Restructuring – Costs

All reasonable and proper professional costs incurred by the Authority in connection with any Equity Restructuring shall be paid to the Authority by the Contractor within 28 days of the occurrence of the Equity Restructuring.

30.16 Equity Restructuring - Notifiable Restructurings

Without prejudice to the other provisions of the Equity Restructuring Provisions, the Contractor shall notify the Authority of all Equity Restructurings on becoming aware of the same and again when they are entered into and provide full details of the same.

30.17 Equity Restructuring - Without Prejudice

The rights of the Authority under the Equity Restructuring Provisions shall be without prejudice to the other rights of the Authority under the EfW Contract including, without limitation, its rights of approval over any Qualifying Refinancing. For the avoidance of doubt:

30.17.1 where a transaction comprises both a Qualifying Refinancing and an Equity Restructuring, the Authority's consent shall be required independently under both paragraphs 30 and the Equity Restructuring Provisions; and

30.17.2 where the full effect of any Equity Restructuring is reflected in the calculation of a Refinancing Gain, the Authority shall not be entitled to receive the Authority's Restructuring Share from the point in time at which the Refinancing Gain is realised.

30.18 For the purposes of the interpretation of this clause 30 and its attendant definitions, the applicable form of the Residual Value Agreement shall be the form annexed at Schedule 18.

31. DISCRIMINATION

31.1 The Contractor shall not, and shall take all reasonable steps to secure that all servants, employees or agents of all EfW Subcontractors employed in the execution of the EfW Contract do not, unlawfully discriminate within the meaning and scope of the

provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976 or the Disability Discrimination Act 1996 or any statutory modification or re-enactment thereof in relation to discrimination in employment, or any future Legislation which concerns discrimination in employment.

31.2 The Contractor shall procure that the EfW Operator does not, and takes all reasonable steps to secure that all servants, employees or agents of all EfW Operator Subcontractors employed in the execution of the EfW Contract do not, unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976 or the Disability Discrimination Act 1996 or any statutory modification or re-enactment thereof in relation to discrimination in employment, or any future Legislation which concerns discrimination in employment.

32. **NOT USED**

33. **ANCILLARY AND FINANCE DOCUMENTS**

33.1 Not used.

33.2 **Delivery of Amendments to Ancillary Documents**

Without prejudice to the provisions of this clause 33, if at any time an amendment is made to any Ancillary Document or Financing Agreement, or the Contractor or EfW Operator 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 Authority a conformed copy of each such amendment or agreement within 10 Working Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor or the EfW Operator (as appropriate).

33.3 **Changes to Financing Agreements**

Subject to clauses 33.4 and 33.5, the EfW Operator shall be free, at any time, to enter into, terminate, amend, waive its rights and generally deal with its Financing Agreements on such terms and conditions as it sees fit provided that (at the time such action is contemplated and effected) the same will not materially and adversely affect the ability of the EfW Operator to perform its obligations under the EfW Project Documents.

- 33.4 The Contractor shall procure that any amendment or variation of any Financing Agreement which constitutes a Refinancing or Equity Restructuring shall be carried out in accordance with the provisions of clause 30.
- 33.5 Subject to clause 33.6, no entry into, amendment, waiver or exercise of a right under, any Financing Agreement or Ancillary Document after the Second Amended Agreement Date shall have the effect of increasing the Authority's liabilities on early termination of the EfW Contract unless the Contractor has obtained the prior written consent of the Authority to such increased liability expressly for the purposes of this clause 33.5.
- 33.6 It is agreed, without limitation and for the avoidance of doubt, that the Authority's liabilities on early termination of the EfW Contract shall not be increased as a result of any Initial Financing Agreement.

