

DATED 26 June 2006

(1) NOTTINGHAMSHIRE COUNTY COUNCIL
AND
(2) VEOLIA ES NOTTINGHAMSHIRE LIMITED

WASTE MANAGEMENT PFI
PROJECT AGREEMENT
CONTRACT A

Sharpe Pritchard
Elizabeth House
Fulwood Place
LONDON
WC1V 6HG

Reference: NAS/SMS 35000/40

CONTENTS

PART ONE – PRELIMINARY	4
1. DEFINITIONS.....	4
2. INTERPRETATION	4
3. INDEXATION	5
4. PRECEDENCE OF DOCUMENTATION.....	6
5. NOT USED.....	6
6. NOT USED.....	6
7. AUTHORITY VIRES: LOCAL GOVERNMENT (CONTRACTS) ACT 1997.....	6
8. PROJECT DOCUMENTS AND FINANCING AGREEMENTS.....	6
9. COLLATERAL WARRANTIES	8
10. PARENT COMPANY GUARANTEE.....	8
11. COMMENCEMENT AND DURATION	9
12. GENERAL REPRESENTATIONS WARRANTIES AND UNDERTAKINGS.....	10
13. CONTRACTOR'S DUE DILIGENCE.....	13
PART TWO – DESIGN AND WORKS.....	15
14. PRINCIPAL OBLIGATIONS DURING WORKS.....	15
15. LAND ISSUES	15
16. CONSENTS.....	30
17. NOT USED.....	31
18. NOT USED.....	31
19. NOT USED.....	31
20. THIRD PARTY CONSENTS OF ADJOINING OWNERS.....	31
21. CONDUCT OF THE WORKS.....	32
22. CONSTRUCTION CONTRACTS	35

23.	PROJECT MANAGEMENT.....	36
24.	SITE MEETINGS AND PROGRESS.....	36
25.	DESIGN DEVELOPMENT.....	36
26.	CHANGES TO CONTRACTOR'S PROPOSALS	38
27.	NOT USED.....	38
28.	EFFECT OF THE AUTHORITY'S AGREEMENT	38
29.	SITE MATTERS	39
30.	HEALTH SAFETY AND CDM REGULATIONS	40
31.	MANAGEMENT OF CONSTRUCTION CONTRACTS	40
32.	NOT USED.....	41
33.	MONITORING AND INSPECTION.....	41
34.	EXTENSIONS OF TIME.....	43
35.	DELAYS TO THE WORKS AND EXISTING CONTAMINATION	43
36.	COMPENSATION EVENTS	44
37.	PROTESTER ACTION.....	47
38.	NOT USED.....	47
39.	HWRC REFURBISHMENT WORKS AND NEW WTS WORKS	47
40.	COMPLETION OF THE WORKS.....	47
41.	DEPOSIT OF AND ACCESS TO AS-BUILT DRAWINGS.....	48
	PART THREE – SERVICE PERIOD.....	50
42.	PRINCIPAL OBLIGATIONS DURING SERVICE PERIOD.....	50
43.	SHEFFIELD OFF-TAKE CONTRACT.....	50
44.	EXCLUSIVITY	51
45.	EASTCROFT.....	52
46.	CHANGES IN WCA WASTE.....	53

47.	RECYCLING AND NEW RECYCLABLE WASTE	54
48.	CAPACITY	56
49.	NOT USED	58
50.	NOT USED	58
51.	NOT USED	58
52.	DIVERSION AND TIPPING AWAY	58
53.	OWNERSHIP OF WASTE.....	58
54.	CONTRACT WASTE	59
55.	DUTY OF CARE.....	59
56.	ENVIRONMENT AGENCY AND RELEVANT AUTHORITIES.....	59
57.	NON CONTRACT WASTE.....	60
58.	NOT USED	60
59.	HEALTH AND SAFETY	60
60.	QUALITY ASSURANCE AND QUALITY MANAGEMENT SYSTEMS.....	61
61.	PERFORMANCE MONITORING	61
62.	EQUIPMENT	62
63.	CIVIL DEFENCE AND EMERGENCIES	63
64.	TUPE.....	63
65.	EMPLOYEES AND AUTHORITY POLICIES.....	63
66.	PLANNED MAINTENANCE.....	65
67.	SURVEYS	66
68.	PERFORMANCE DEFAULTS AND UNAVAILABILITY	68
	PART FOUR – PAYMENT PROVISIONS	69
69.	INVOICING AND PAYMENT.....	69
70.	SET-OFF	69

71. LATE PAYMENTS	70
72. UTILITIES.....	70
73. NNDR	70
74. VALUE ADDED TAX	70
75. LANDFILL TAX.....	70
76. THIRD PARTY INCOME	70
77. FEES, COSTS AND EXPENSES.....	71
78. BEST VALUE AND CONTINUOUS IMPROVEMENT	71
79. BENCHMARKING AND MARKET TESTING	76
PART FIVE – TERMINATION AND EXPIRY.....	77
80. TERMINATION ON CONTRACTOR DEFAULT	77
81. COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT.....	77
82. VOLUNTARY TERMINATION BY AUTHORITY.....	77
83. COMPENSATION ON TERMINATION FOR VOLUNTARY TERMINATION.....	78
84. TERMINATION ON AUTHORITY DEFAULT.....	78
85. COMPENSATION ON TERMINATION FOR AUTHORITY DEFAULT	78
86. NOT USED.....	79
87. NOT USED.....	79
88. TERMINATION FOR PERSISTENT BREACH	79
89. TERMINATION ON FORCE MAJEURE	79
90. COMPENSATION ON TERMINATION FOR FORCE MAJEURE.....	81
91. TERMINATION FOR CORRUPT GIFTS AND FRAUD.....	81
92. COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD	82
93. TRANSFER OF ASSETS ON TERMINATION.....	82
94. GROSS UP OF TERMINATION PAYMENTS	82

95. NOT USED.....	82
96. CONTRACTOR'S ACCOUNTS	82
97. SET OFF ON TERMINATION	83
98. METHOD OF PAYMENT.....	83
99. SURVEYS ON EXPIRY AND TERMINATION	84
100. TREATMENT OF ASSETS AT EXPIRY DATE.....	86
101. EXIT PROVISIONS ON EXPIRY OR TERMINATION.....	87
PART SIX – PERFORMANCE AND CHANGE	90
102. OPEN BOOK.....	90
103. SERVICE DELAY.....	90
104. RELIEF EVENTS	91
105. CHANGE IN LAW	93
106. PAYMENT OF IRRECOVERABLE VAT	95
107. AUTHORITY AND CONTRACTOR CHANGES.....	95
PART SEVEN – STEP-IN AND ACCESS	103
108. AUTHORITY STEP-IN	103
109. RECYCLING STEP-IN	104
110. RIGHTS OF ACCESS	106
PART EIGHT - FINANCE AND AUDIT.....	107
111. FINANCIAL ADJUSTMENTS	107
112. ERRORS IN BASE CASE AND FINANCIAL MODEL.....	108
113. CUSTODY OF FINANCIAL MODEL AND BASE CASE	108
114. AUDIT ACCESS AND OMBUDSMAN CO-OPERATION	108
115. CONVERSION	109
PART NINE – DISPUTES AND REMEDIES.....	110

116. DISPUTE RESOLUTION.....	110
117. MITIGATION	115
118. INDEMNITIES	115
119. EXCLUSIVE REMEDIES AND ACCRUED RIGHTS	120
120. INSURANCE	123
121. REINSTATEMENT AFTER INSURED EVENT	124
122. UNINSURABLE RISKS.....	127
PART TEN - GENERAL	132
123. FREEDOM OF INFORMATION AND CONFIDENTIALITY.....	132
124. CONTRACTOR'S RECORDS.....	137
125. INTELLECTUAL PROPERTY RIGHTS AND IT SYSTEMS LICENCES	138
126. DATA PROTECTION	141
127. PUBLIC RELATIONS AND PUBLICITY	142
128. NOTICES.....	142
129. REPRESENTATIVES.....	144
130. EURO CONTINUITY OF CONTRACT	146
131. PRIVACY.....	146
132. NO AGENCY.....	146
133. ASSIGNMENT AND SUB-CONTRACTING.....	147
134. OFF-TAKE CONTRACTS	148
135. CHANGE OF OWNERSHIP OF CONTRACTOR.....	149
136. CONTINUING OBLIGATIONS	150
137. DISCRIMINATION.....	150
138. AMENDMENTS.....	150
139. WAIVER	150

140. ENTIRE AGREEMENT.....	151
141. SEVERABILITY	151
142. COUNTERPARTS.....	151
143. LAW OF THE CONTRACT AND JURISDICTION	151

CONTRACT A

	Schedules
1.	Definitions
2.	Specification
3.	Local Government Vires Certificate
4.	Legal and Beneficial Ownership of the Contractor
5.	Parent Company Guarantee
6.	Payment and Performance Mechanism
6a	Payment Mechanism
6b	Performance Mechanism
6c	Performance Scorecard
7.	KPIs
7a	HWRC Customer Satisfaction Survey (Baseline and Methodology)
8.	Sites and Property Agreements
9.	Authority Title Warranties
10.	TUPE and Pensions
11.	Equipment Lists (Transferred Equipment and Additional Equipment)
12.	Works Programme (to include Proposed Site Timetable)
13.	Works Delivery Plan
14.	Basic Design Proposals
15.	Reviewable Design Data
16.	Review Procedure
17.	Construction Contracts
18.	Construction Sub-Contractor Collateral Warranty (MRF)
19.	Sheffield Contract
20.	Sheffield Contract Collateral Warranty
21.	Acceptance Criteria and Tests
22.	Availability
23.	Service Delivery Plan

CONTRACT A

	Schedules
23a	Interface Plan
24.	Contractual Dates
25.	Reporting Requirements
26.	Not used
27.	Not used
28.	Delivery Points and Contingency Delivery Points
29.	WCA Baseline (WCA Waste and Collection Methodology)
30.	Facility Input Specifications
31.	Authority Policies
32.	Benchmarking and Market Testing
32A	Mansfield and Ashfield Waste Protocol
33.	Cost Apportionment Table (for Capex element of General Change in Law)
34.	Foreseeable Waste Management Legislation
35.	Environmental Criteria
36.	Required Insurance
37.	Premium Risk Share Mechanism
38.	Financial Model
39.	Not Used
40.	Unitary Charge Adjustment Protocol
40a	Compensation for lost Third Party Income
41.	Not used
42.	Financing Agreement
43.	Relevant Discharge Terms
44.	Compensation on Termination
45.	Commercially Sensitive Contractual Provisions
46.	Commercially Sensitive Material
47.	Pro forma notices to Authority

CONTRACT A

THIS CONTRACT is made on **26 June 2006**

BETWEEN

1. **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, West Bridgford, Nottingham NG2 7QP (the "Authority") which expression shall include its successors in title and assigns to the extent permitted under this Contract; and
2. **VEOLIA ES NOTTINGHAMSHIRE LIMITED** company number 5584380 whose registered office is at Veolia House, 154a Pentonville Road, London N1 9PE (the "Contractor")

BACKGROUND

- A. The National Waste Strategy 2000 issued by the Secretary of State pursuant to the Environmental Protection Act 1990 (the EPA) requires Local Authorities to achieve certain targets for recycling which have been enshrined in Best Value Performance Indicators (BVPIs). The 1999 Landfill Directive (99/31/EC) requires all Local Authorities to divert prescribed amounts of biodegradable municipal waste from landfill and this is enforced by the Waste Emissions and Trading Act 2003 (together the BVPIs and landfill diversion requirements shall be known as the Statutory Targets);
- B. The Authority is a Waste Disposal Authority (WDA) for the purposes of Section 30 of the Environmental Protection Act 1990 (the EPA);
- C. The Authority wishes to procure the services of a private sector contractor to provide certain waste management functions with a view to assisting the Authority discharging its statutory obligations and in achieving its Statutory Targets having regard at all times to the Waste Hierarchy;
- D. This Contract is let under the Government's Private Finance Initiative;
- E. The Authority has tendered this Contract in accordance with the Public Services Contracts Regulations 1993 and in accordance with its responsibilities under Part 2 of the EPA and has selected the Contractor as the most economically advantageous tenderer to provide the Services; and
- F. The parties consent to this Contract being a certified contract pursuant to Section 4.3 of the Local Government (Contracts) Act 1997.

THE PARTIES HAVE AGREED AS FOLLOWS:

CONTRACT A

PART ONE – PRELIMINARY**1. DEFINITIONS**

- 1.1. In this Contract unless the context otherwise requires the terms set out in Schedule 1 (Definitions) shall have the meanings set out therein.

2. INTERPRETATION

- 2.1. In this Contract, except where the context otherwise requires:
- 2.1.1. the masculine includes the feminine and the neuter and vice versa;
 - 2.1.2. the singular includes the plural and vice versa;
 - 2.1.3. a reference in this Contract to any Clause, sub-Clause, paragraph, Schedule, appendix or annex is except where it is expressly stated to the contrary, a reference to such Clause, sub-Clause, paragraph, Schedule, appendix or annex of this Contract;
 - 2.1.4. save where stated to the contrary any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document;
 - 2.1.5. any reference to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation, or other similar instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
 - 2.1.6. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
 - 2.1.7. headings are for convenience of reference only;
 - 2.1.8. 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.
- 2.2. The Schedules hereto all form part of this Contract and shall have the same force and effect as if expressly set out in the body of this Contract.
- 2.3. Where this Contract states that an obligation shall be performed “no later than” or “within” a prescribed number of Business Days after a stipulated date or event or “by” a date which is a prescribed number of Business Days after a base date, the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
- 2.4. This Contract is entered into under the PFI.

CONTRACT A

- 2.5. **This Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of paragraph 4 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Contractor acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the Parties' rights or obligations under this Contract.**
- 2.6. All of the Contractor's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Authority and (save as provided hereunder) to be performed at the Contractor's own cost and expense.
- 2.7. **Various roles of Local Authorities**
- 2.7.1. **Save as otherwise expressly provided, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counter-party and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity and save for the provisions of Clause 2.7.2 nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Authority to the Contractor.**
- 2.7.2. For the avoidance of doubt, the operation of Clause 2.7.1 shall not:
- 2.7.2.1. prevent the Contractor from applying for relief in relation to limb (b) of the definition of Relief Event and accordingly from applying for relief pursuant to Clause 104 (Relief Events); or
- 2.7.2.2. relieve the Authority as a contracting counter-party of any express obligation or liability arising pursuant to this Contract.
- 2.8. References to "the date of this Contract or the date hereof" shall mean 26th June 2006.

3. INDEXATION

- 3.1. **In this Contract, references to amounts expressed to be "Indexed" are references to such amounts Indexed in accordance with CIFy as defined in section 3.3 of Schedule 6a (Payment Mechanism). Indexation shall be applied annually from the Price Base Date in each Contract Year with the first such adjustment being on 1 April 2006.**

CONTRACT A

4. PRECEDENCE OF DOCUMENTATION

- 4.1. In the event of any inconsistency between the provisions of the body of this Contract and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:-
- 4.1.1. these Clauses 1 to 143, Schedule 1 (Definitions) and Schedule 44 (Compensation on Termination);
 - 4.1.2. Schedule 6 (Payment and Performance Mechanism), Schedule 7 (KPIs) and Schedule 23a (Interface Plan);
 - 4.1.3. Schedule 2 (Specification);
 - 4.1.4. Schedule 24 (Contractual Dates);
 - 4.1.5. Schedules 13 and 23 (Works and Services Delivery Plans);
 - 4.1.6. The remaining Schedules equally.

5. NOT USED**6. NOT USED****7. AUTHORITY VIRES: LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

- 7.1. The Certification Requirements are intended to be satisfied by the Authority with respect to this Contract before the end of the Certification Period.
- 7.2. The Contractor hereby consents to the issue by the Authority of a certificate under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Contract.
- 7.3. If a certificate is not issued by the Authority before the end of the Certification Period then the Contractor shall be entitled by giving notice in writing to the Authority within 5 Business Days of the end of the Certification Period to terminate this Contract, whereupon the Relevant Discharge Terms shall apply.
- 7.4. The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are set out in Schedule 43 (Relevant Discharge Terms).

8. PROJECT DOCUMENTS AND FINANCING AGREEMENTS

- 8.1. Subject to Clause 8.3, the Contractor shall perform its obligations under, and observe all of the provisions of, the Project Documents and shall not:-
- 8.1.1. terminate or agree to the termination of all or part of any Project Document;
 - 8.1.2. make or agree to any material variation of any Project Document;
 - 8.1.3. in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any

CONTRACT A

rights they may have in a material respect), under any Project Document or;

- 8.1.4. enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority's Representative for review under Schedule 16 (Review Procedure) and there has been no objection by the Authority within ten (10) Business Days of receipt by the Authority's Representative of the submission of the proposed course of action (and any relevant documentation), (or such shorter period as may be agreed by the Parties) and in the circumstances specified in Clause 8.1.4 the Contractor has complied with Clause 133 (Assignment and Sub-Contracting) and Clause 135 (Change of Control).

- 8.2. Subject to Clause 8.4 (Changes to Financing Agreements and Project Documents) the Authority shall not unreasonably withhold or delay its approval of the matters set out in Clause 8.1 where the Contractor and the Authority reasonably consider (at the time such action is contemplated) that any of the actions specified in Clause 8.1:

8.2.1. will not adversely affect the ability of the Contractor to perform its obligations under the relevant Project Document or the Contract; and

8.2.2. will not increase the Authority's obligations or prejudice its rights under the Contract.

- 8.3. Subject to Clause 8.4 (Changes to Financing Agreements and Project Documents) in relation to any Financing Agreement only, the Contractor 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.

- 8.4. **No amendments, waiver or exercise of a right under any Financing Agreement or Project Document or any substitution or replacement of any Financing Agreement or Project Document shall have the effect of increasing the Authority's liabilities on early termination of this Contract unless the Contractor has obtained the prior written consent of the Authority to such increased liability for the purposes of this Clause 8.**

- 8.5. Without prejudice to the provisions of this Clause 8, if at any time an amendment is made to any Project Document or Financing Agreement, or the Contractor enters into a new Project Document or Financing Agreement (or any agreement which affects the interpretation or application of any Project Document or Financing Agreement), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation, certified as a true copy by an officer of the Contractor.

CONTRACT A

9. COLLATERAL WARRANTIES

- 9.1. The Contractor shall not engage (a) the MRF Construction Sub-Contractor or any replacement thereof in connection with the Works in respect of the MRF or (b) the Sheffield Contractor or any replacement thereof in connection with the Services without having procured that such persons have first delivered to the Authority a duly executed Collateral Warranty.
- 9.2. The Agreed Form of Collateral Warranty is set out in Schedule 18 (Collateral Warranties).

10. PARENT COMPANY GUARANTEE

- 10.1. The Contractor shall procure the execution on or before the date of this Contract and as a condition of this Contract of a Parent Company Guarantee by the Guarantor in favour of the Authority substantially in the form annexed at Schedule 5 (Parent Company Guarantee) to secure the due performance by the Contractor of its obligations to the Authority.
- 10.2. As at the date of this Contract the Guarantor shall be Veolia Environmental Services plc.
- 10.3. Unless and until otherwise agreed by the Parties the form of guarantee set out in Schedule 5 (Parent Company Guarantee) shall be the relevant specified form for the purposes of this Contract.
- 10.4. If during the Contract Period the Guarantor shall cease to meet the criteria in Clause 10.5.1 and at the same time either of the criteria in 10.5.2 or 10.5.3 are not met, the Contractor shall at the request of the Authority procure that another company within the Guarantor's Group which at the relevant time and thereafter shall meet all the Guarantee Criteria shall become the Guarantor and shall provide a Parent Company Guarantee substantially in the form referred to in Clause 10.1 above to secure due performance by the Contractor of its obligations to the Authority;
- 10.5. The Guarantee Criteria for the purposes of Clause 10.3 above shall be that in respect of the Guarantor the latest statutory accounts shall demonstrate that the Guarantor has:
- 10.5.1. consolidated net asset value of not less than [REDACTED]; and/or
- 10.5.2. consolidated interest bearing debt less cash balances to be no more than [REDACTED] consolidated shareholders' equity; and/or
- 10.5.3. consolidated profit before interest, tax, goodwill, amortisation and exceptional items to be in excess of [REDACTED] consolidated net interest costs. For the avoidance of doubt, cash interest costs exclude the elimination of provision discounts and non-cash coupons (for example the finance charges on convertible loan notes).
- 10.6. In the event that the Contractor shall have failed to comply with Clause

CONTRACT A

10.4 above within 3 Months of a written notice to do so, the Contractor shall provide to the Authority such alternative form of security to a value of not less than £10,000,000 (ten million pounds) (Indexed) which may take the form (without limitation) of an alternative guarantee, the provision of funds or reserves by a third party (under guarantee performance body cash deposit or escrow account) as the Authority may approve (such approval not to be unreasonably withheld or delayed).

- 10.7. If the Contractor is required to provide alternative security under Clause 10.6 above and at any time thereafter the Contractor can demonstrate that the Guarantor referred to in Clause 10.2 above or other company within the Guarantor's Group meets the Guarantee Criteria the Contractor shall have the right by notice to the Authority to provide a Parent Company Guarantee in the Agreed Form (Schedule 5 (Parent Company Guarantee)) by such company as aforesaid and if the Contractor shall provide such Parent Company Guarantee within 20 Business Days of such notice the Authority shall accept such Parent Company Guarantee in place of any then existing alternative security provided under Clause 10.6 above.
- 10.8. Any dispute under this Clause 12 may be referred by either party to determination under Clause 116 (Dispute Resolution).

11. COMMENCEMENT AND DURATION

11.1. Duration of Contract

- 11.1.1. **This Contract and the rights and obligations of the Parties to this Contract shall take effect on the date of this Contract; and**
- 11.1.2. subject to Clauses 11.4.1 and 11.4.2 shall continue until the Expiry Date or earlier Termination Date.

11.2. In respect of each Facility, in respect of which Works are to be carried out (save for the HWRC Refurbishment Works) the Works Period will commence on the Works Commencement Date and terminate on the earlier of:

- 11.2.1. the Service Commencement Date; and
- 11.2.2. the Termination Date.

11.3. In respect of each Facility **the Service Period will commence on the Service Commencement Date and terminate on the earlier of:**

- 11.3.1. **the Expiry Date; and**
- 11.3.2. **the Termination Date.**

11.4. Option to Extend the Contract Period

- 11.4.1. On or before a date falling no later than two years prior to the Expiry Date the Authority may in its absolute discretion give written notice to the Contractor of its desire to extend the Expiry Date by a period of up to five years (the "Extension Period").

CONTRACT A

- 11.4.2. If on receipt of such written notice the Contractor so agrees to the Extension Period and the parties (each in its absolute discretion) are able to agree the terms of such extension (including any consequential variations to the Contract and the Unitary Charge) then this Contract shall remain in full force and effect for the Extension Period.

12. **GENERAL REPRESENTATIONS WARRANTIES AND UNDERTAKINGS**

- 12.1. The Contractor warrants to the Authority that:
- 12.1.1. it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 12.1.2. it has the power to enter into and to exercise its rights and perform its obligations under the Project Documents and Financing Agreements;
- 12.1.3. all necessary action to authorise the execution of and the performance of its obligations under the Project Documents and Financing Agreements has been taken or, in the case of any Project Document and/or Financing Agreements executed after the date of this Contract, will be taken before such execution;
- 12.1.4. the obligations expressed to be assumed by the Contractor under the Project Documents and Financing Agreements are, or in the case of any Project Document and/or Financing Agreements executed after the date of this Contract will be, legal, valid, binding and enforceable upon and against the Contractor to the extent permitted by law and each Project Document and Financing Agreement is or will be in the proper form for enforcement in England;
- 12.1.5. the execution, delivery and performance by it of the Project Documents and Financing Agreements does not contravene any provision of:
- 12.1.5.1. any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
- 12.1.5.2. the Memorandum and Articles of Association of the Contractor;
- 12.1.5.3. any order or decree of any court or arbitrator; or
- 12.1.5.4. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 12.1.6. Not Used
- 12.1.7. the Contractor has not, other than in connection with the

CONTRACT A

Project, traded at any time since its incorporation as a company pursuant to the Companies Act 1985 (as amended);

- 12.1.8. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against the Contractor or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;
- 12.1.9. the Contractor is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;
- 12.1.10. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 12.1.11. no Contractor Default has occurred which is continuing;
- 12.1.12. each of the Project Documents and Financing Agreements is or, when executed, will be in full force and effect and constitutes or, when executed, will constitute the valid, binding and enforceable obligations of the parties thereto;
- 12.1.13. the copies of the Project Documents and Financing Agreements which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents and Financing Agreements which would materially affect the interpretation or application of any of the Project Documents and Financing Agreements; and

the Authority relies upon such warranties.

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

- 12.2.1. it will give the Authority notice of all litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority to which the Contractor or (so far as the Contractor is aware acting reasonably and in accordance with Good Industry Practice) its Sub-Contractors is a party which would adversely affect, to an extent which is material in the context of the Project, the Contractor's ability to perform its obligations under this Contract; such notice shall be given

CONTRACT A

as reasonably practicable after the Contractor becomes aware that the proceedings may be threatened or pending and immediately after they are commenced;

- 12.2.2. subject always to the provisions of Clause 135 (Change of Ownership), it will not without the prior written consent of the Authority (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any substantial part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract;
 - 12.2.3. it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
 - 12.2.4. it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor;
 - 12.2.5. it shall not without the written consent of the Authority (such consent not to be unreasonably withheld or delayed) incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services;
 - 12.2.6. it shall not without the written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business; and
 - 12.2.7. it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.
- 12.3. All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.
- 12.4. **Authority Title Warranties**
- 12.4.1. Save in respect of the Authority Title Warranties but without prejudice to any express provision of this Contract, the Authority shall not be liable to the Contractor for, and the Contractor shall not seek to recover from the Authority (or from any employee, contractor or agent of the Authority), any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of information, data, statements or guidance given (orally or in writing) by the Authority or

CONTRACT A

any Authority Related Party prior to the date of this Contract.

12.4.2. Save as provided in Schedule 9 (Authority Title Warranties) but without prejudice to any express provision of this Contract, the Authority does not warrant the accuracy of any representation or statement of fact or law given to the Contractor by the Authority or any Authority Related Party at any time before the date of this Contract.

12.4.3. Except in respect of any statement, information or advice which was made or given fraudulently by the Authority, the Authority shall not, subject to Schedule 9 (Authority Title Warranties) and without prejudice to any express provision of this Contract, be liable to the Contractor for any loss or damage which the Contractor may sustain as a result of relying on any such statement, information or advice whether in contract, tort under the Misrepresentation Act 1967 or otherwise and the Contractor shall not be entitled to rescind the Contract on account of any inaccuracy, incompleteness or insufficiency of the same.

12.4.4. Subject to Schedule 9 (Authority Title Warranties) but without prejudice to any express provision of this Contract, and except in the case of fraud, the Authority shall not be liable to the Contractor in respect of any failure to disclose or make available to the Contractor (whether before, on or after the execution of this Contract) any information, nor any failure to review or to update any data, nor any failure to inform the Contractor (whether before, on or after execution of this Contract) of any inaccuracy, error, omission, defects or inadequacy in any information.

12.5. **Ancillary Documents**

12.5.1. Save to the extent it is prevented from doing so by any act or omission of the Contractor the Authority shall comply with its obligations under those Ancillary Documents to which it is a party.

13. **CONTRACTOR'S DUE DILIGENCE**

13.1. Without prejudice to any express provision of this Contract, the Contractor shall be deemed to have obtained for itself all necessary information as to risks, contingencies, due diligence and any other circumstances which might influence or affect its obligations under this Contract including without limitation current and projected Contract Waste tonnages and trends and potential markets for Recyclable Waste.

13.2. Without prejudice to the generality of Clause 13.1 above and without prejudice to any express provision of this Contract, **the Contractor shall be deemed to have:**

13.2.1. **satisfied itself** before entering into this Contract **as to** all matters relating to the making Available of the Facilities and

CONTRACT A

the provision of the Services including but not limited to:

- 13.2.1.1. the accuracy and sufficiency of the Financial Model, Base Case and other financial information stated by the Contractor in its tender, the Financing Agreements or any other Project Document;
 - 13.2.1.2. the extent, condition and suitability of any **Assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract;**
 - 13.2.1.3. the extent and nature of its obligations under this Contract;
- 13.2.2. **gathered all information necessary to perform its obligations under this Contract and other obligations assumed, including:**
- 13.2.2.1. **information as to the nature, location and condition of the Sites (including hydrological, geological, geo-technical and sub-surface conditions);**
 - 13.2.2.2. **information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures.**
- 13.3. Without prejudice to any express provision of this Contract, the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

CONTRACT A

PART TWO – DESIGN AND WORKS**14. PRINCIPAL OBLIGATIONS DURING WORKS**

- 14.1. Subject to Clause 16 (Consents), the Contractor shall commence the Key Works no later than the Planned Works Commencement Date and shall thereafter continue and complete the Works in accordance with Schedule 12 (Works Programme) and Schedule 13 (Works Delivery Plan).
- 14.2. Save in respect of the HWRC Refurbishment Works and the New WTS Works to which Clause 39 shall apply the Contractor shall complete the Works in relation to each relevant Facility so that for each relevant Facility the Acceptance Date occurs in accordance with Clause 40 (Completion of Works) on or before the Planned Service Commencement Date.
- 14.3. The Contractor shall commence, provide and complete the Works in accordance with:
- 14.3.1. the Contract;
 - 14.3.2. Good Industry Practice;
 - 14.3.3. Legislation;
 - 14.3.4. the terms of the relevant Lease or Underlease to which the Contractor is a party; and
 - 14.3.5. subject to Clause 16 (Consents), the provisions and conditions of all Consents but not any Superior Landlord's Consents (save those for the carrying out of the HWRC Refurbishment Works and Works for which consent from the Landlord has been properly secured by the Authority in accordance with Clause 15 (Land Issues) and subject at all times to the provisions of Clause 15.
- 14.4. Schedule 35 (Environmental Criteria) applies in the event of any Contamination in, on, at over or under the Sites or any Adjoining Property or otherwise.
- 14.5. For the avoidance of doubt, (save as expressly provided in limbs (i), (j), or (l) of the definition of Contractor Default in respect of the Key Works) the Authority shall have no right to terminate this Contract for Contractor Default by reason of the Contractor failing to commence any Works by the Planned Works Commencement Date or complete any element of the Works by the relevant Planned Services Commencement Date or Longstop Date.

15. LAND ISSUES**15.1. Grant of Leases/Underleases of Existing Sites****15.1.1. General**

- 15.1.1.1. The Authority will on the date of this Contract grant and the Contractor will accept a Lease of each of the Existing

CONTRACT A

Freehold Sites

- 15.1.1.2. The Authority will on the date of this Contract grant and the Contractor will accept an Underlease of each of the Existing Leasehold Sites (save for those Sites where a Superior Landlord's Consent has not yet been obtained) and will allow the Contractor necessary rights of access use and occupation of the Existing Licensed Sites to allow the Contractor to perform its obligations under this Contract such licence being given on the same terms (with any necessary changes) as would have applied had a Lease been granted of those sites.
- 15.1.1.3. The term of each Lease and Underlease of the Existing Sites shall commence on the date of this Contract and shall expire on the Lease Expiry Date unless terminated earlier in accordance with this Contract.
- 15.1.1.4. For the avoidance of doubt the Contractor shall not be entitled to any compensation on the expiry or earlier determination of the Leases or Underleases save as expressly set out in this Contract
- 15.1.1.5. Subject to clause 15.1.2 (Warranties) the Leases and Underleases are granted subject to but where applicable with the benefit of:-

CONTRACT A

- a) all existing rights privileges easements liabilities (and in particular but without prejudice to the generality of the foregoing) drainage or other service rights or easements and quasi or reputed easements affecting the Existing Sites;
- b) all local land charges (whether registered or not before the date hereof) and all matters capable of registration as local land charges (whether or not actually registered as such) affecting or relating to the Existing Sites or any part thereof or any building or other structure thereon whether general or specific;
- c) all notices orders proposals or requirements whatsoever (whether registered or not before the date hereof) affecting or relating to the Existing Sites or any part thereof given or made by any Relevant Authority including for the avoidance of doubt in this context any Government department or by any statutory undertaker or by any public local authority or other competent authority;
- d) all actual or proposed charges orders proposals restrictions agreements notices or other matters whatsoever (whether registered or not before the date hereof) affecting or relating to the Existing Sites or any part thereof or any building or other structure thereon or any part thereof under the Planning Acts; and
- e) the matters mentioned or referred to in the registers to the freehold or leasehold titles to the Existing Sites as at the date of this Contract

existing at the date of this Contract and the Contractor shall be deemed to take the Leases and Underleases with full knowledge thereof and shall raise no requisition thereon or objection thereto.

15.1.1.6. In relation to those Existing Leasehold

CONTRACT A

Sites for which a Superior Landlord's Consent has not been obtained:-

- 15.1.1.6.1. the Authority shall use all reasonable endeavours to obtain such consents as quickly as possible;
- 15.1.1.6.2. the Contractor shall be permitted to occupy the Sites from today's date as a licensee and on the same terms (consistent with a licence) as would apply if the relevant Underlease had been granted
- 15.1.1.6.3. the Authority and the Contractor will on the date 10 working days following the obtaining of all Superior Landlord's Consents for a Site enter into the relevant Underlease for such site in the form executed by the parties and held in escrow pending only the fulfilment of this condition
- 15.1.1.6.4. the Authority acknowledges that it shall carry the risk of any disturbance to the use occupation and operation of those Sites by the Contractor by reason of the absence of Superior Landlord's Consent.

15.1.2. Warranties

The Authority warrants to the Contractor that-

- (a) the information contained in the written replies to the additional enquiries raised by the Contractor's solicitors to the Authority's solicitors in relation to the Existing Sites are true complete and accurate in all material respects and not misleading in any material respect and there is no omission from such information where such omission makes such information misleading
- (b) the originals or copies of all Title Deeds and other documents and papers relating to the Existing Sites in the Authority's possession have been made available to the Contractor's solicitors. The originals of such Title Deeds, documents and papers are held by the Authority free of charge or lien

CONTRACT A

- (c) the Superior Landlord's Consent in relation to the Existing Leasehold Sites and the HWRC Refurbishment Works have been obtained save that in relation to the Sites at Daneshill Road, near Torworth, Lilac Road, Beeston, and Coachgap Lane, Langar the Authority has not been able to obtain the Superior Landlord's Consent as at the date of this Contract.
- (d) the Authority has the benefit of a licence arrangement in relation to the Existing Licensed Sites the terms of which do not prevent the Authority from allowing the Contractor the rights of access use and occupation set out in Clause 15.1.1.2.
- (e) that the Authority has the benefit of a licence arrangement in relation to the Existing Licensed Sites the terms of which do not prevent the Authority from allowing the Contractor the rights of access use and occupation set out in Clause 15.1.1.2.
- (f) to the Authority's knowledge and belief the warranties set out in Schedule 9 (Authority Title Warranties) are true, accurate and not misleading. Provided That in issuing this warranty the Authority warrants that:
 - (i) the Authority has maintained estate management records in relation to each of the Existing Sites since acquisition;
 - (ii) the Authority has made reference to those records in issuing the warranties set out in Schedule 9;
 - (iii) an official/officials of the Authority has/have enjoyed responsibility for the good estate management of the Existing Sites during the period of the Authority's ownership and to the extent that such official/s remain in the employ of the Authority that that/those official/s have been adequately consulted in issuing the warranties set out in Schedule 9.

and in the event that any of the warranties given in this Clause 15.1.2 is found to be inaccurate or misleading in anyway or is otherwise breached, such inaccuracy, misleading or breach shall for the purposes of both Clause 36 (Compensation Event) and Clause 103 (Service Delay) be deemed to be a Compensation Event.

15.1.3. Registration

CONTRACT A

15.1.3.1. The Contractor shall apply for and procure registration of each of the Leases and Underleases in respect of the Existing Sites at HM Land Registry and meet all fees in connection therewith as soon as reasonably practicable after the date of this Contract and shall within ten (10) Business Days of completion of such application supply copies of the leasehold register entries and title plan to the Authority's solicitors Provided that this obligation shall not apply in relation to any Existing Sites to which the Council's title is unregistered until the Council procures first registration of its own title.

15.1.3.2. The Authority shall use all reasonable endeavours (but without being required to incur any costs) to assist the Contractor in responding to any proper requisitions raised by HM Land Registry

15.1.4. Title

Subject to clause 15.1.2. (Warranties) title to the Existing Sites having been deduced to the Contractor or the Contractor's solicitors prior to the date of this Contract the Contractor shall take the Leases and the Underleases with full knowledge thereof and shall raise no requisition thereon or objection thereto save that the Contractor can require the Authority's assistance with regard to registration as provided for in Clause 15.1.3.2.

15.2. **Headleases**

15.2.1. Subject to the provisions of Clause 15.4 the Authority shall not during the Contract Period without the Contractor's prior written consent surrender or assign any Headlease or enter into any underletting of the whole or part of the premises demised by a Headlease or enter into any dealings of whatsoever nature with the Authority's interest in a Headlease save to any statutory successor body of the Authority taking over the Authority's waste disposal authority functions or as the same may be permitted pursuant to Clause 133 (Assignment and Subcontracting).

15.2.2. If any Headlease is forfeited by a Superior Landlord following a breach by the Authority of its tenant covenants (save to the extent due in whole or part to a breach by the Contractor or any Contractor Related Party of the covenants or obligations set out in the relevant Underlease or in this Contract) then the provisions of Clause 107 (Authority and Contractor Changes) shall apply and the Authority shall be

CONTRACT A

deemed to have served an Authority Notice of Change in accordance with Clause 107.2 and the procedure set out in Clauses 107.3 to 107.13 shall apply as appropriate.

15.2.3. Nothing in this Clause shall prevent the Contractor from seeking relief from forfeiture.

15.2.4. The Authority shall comply with the obligations on the part of the tenant under the Headleases (save to the extent that such obligations are owed by the Contractor under the terms of this Contract) provided that the Authority shall not carry out its obligations nor exercise any rights under the Headleases in such a manner as to interfere with the beneficial use and enjoyment of the Leasehold Sites by the Contractor or the due performance by the Contractor of its obligations under this Contract.

15.3. Alterations

Subject at all times to Clause 107 (Authority and Contractor Changes) if at any time after the date of this Contract the Contractor wishes to carry out any alterations or additions of any kind to any of the Sites (save for the HWRC Refurbishment Works) the Contractor shall prior to the commencement of any such alterations or additions in relation to any Leasehold Sites:-

15.3.1. Provide the Authority with all information (including plans and specifications where applicable) which the relevant Superior Landlord shall require under the terms of the relevant Headlease to enable the Authority to apply for Superior Landlord's Consent to the proposed alterations or additions in accordance with the provisions of the relevant Headlease;

15.3.2. Bear all reasonable costs properly incurred in obtaining the Superior Landlord's Consent; and

15.3.3. Provide such security and enter into such covenants as the relevant Superior Landlord may require in accordance with the terms of the relevant Headlease

15.4. Closing Sites

15.4.1.

(a) For the avoidance of doubt, the Authority may at any time throughout the Contract Period propose that an Existing Site be closed on or prior to the Lease Expiry Date for the relevant Existing Site by serving an Authority Notice of Change pursuant to clause 107.2 (Authority and Contractor Changes) in which case the Contractor shall deliver to the Authority's solicitors a Deed of Surrender in respect of the Lease or Underlease (as applicable)

CONTRACT A

for the relevant Existing Site in accordance with the terms set out in the Authority Notice of Change together with the Lease/Underlease (as applicable), all other relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to such Lease/Underlease and the provisions of clause 107 (Authority and Contractor Changes) shall apply.

- (b) If the Authority proposes at any time though the Contract Period that an Existing Site which is an HWRC be closed prior to the Lease Expiry Date for that Existing Site the Authority must provide not less than 3 months written notice to the Contractor and the provisions of Schedule 40 (Unitary Charge Adjustment Protocol) shall apply (and the Authority shall not need to serve an Authority Notice of Change) in which case at the date agreed for such closure pursuant to Schedule 40 the Contractor shall deliver to the Authority's solicitors a Deed of Surrender in respect of the Lease or Underlease (as applicable) for the relevant Existing Site together with the Lease/Underlease (as applicable), all other relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to such Lease/Underlease.

- 15.4.2. In relation to those Existing Sites at Coach Gap Lane, Langar and Hollinwood Lane, Calverton the Authority shall procure that it acquires a Property Interest in such sites prior to their respective Lease Expiry Dates and shall prior to the respective Lease Expiry Date offer a new Underlease of such sites to the Contractor upon the same terms as the Underleases of such Existing Sites save that the term of such new Underleases shall expire on the Expiry Date. In the event the Authority is unable to comply with its obligations in this Clause 15.4.2 Clause 107 (Authority and Contractor Changes) shall apply.

15.5. New HWRC Sites

- 15.5.1. Without prejudice to Clause 15.5.2 the Authority may (at its absolute discretion) at any time throughout the Contract Period acquire a Property Interest in a new site suitable for use by the Contractor as an HWRC.
- 15.5.2. In the event the Authority has determined to deliver a New HWRC Site this should be notified to the Contractor in an Authority Notice of Change in accordance with clause 107.2 (Authority and Contractor Changes) and thereafter the

CONTRACT A

Authority will keep the Contractor regularly informed in writing at all times as to its progress in identifying a suitable New HWRC Site and shall provide to the Contractor as soon as reasonably practicable following receipt of the same all information and documentation (including any Property Documents) available to the Authority regarding any New HWRC Site identified by the Authority as potentially being suitable for a New HWRC (which for the avoidance of doubt must include a ground conditions survey prepared by an independent environmental consultant containing sufficient detail to enable the Contractor to take an informed decision as to the likely level of contamination at the proposed New HWRC Site).

- 15.5.3. The Authority will carry out all investigations and due diligence which would be expected of a prudent purchaser of a Property Interest in the proposed New HWRC Site and shall forward the results of such due diligence exercise to the Contractor forthwith upon the results becoming available.
- 15.5.4. The Authority will (within the reasonable time following receipt of a request) provide (to the extent it is able to do so) further clarification of issues and/or information in response to any reasonable request by the Contractor relating to the New HWRC Site.
- 15.5.5. The Contractor shall as soon as practicable and in any event within forty (40) Business Days of receipt of the Property Documents (which in the case of a leasehold interest shall include confirmation in principle that any Superior Landlord is willing to issue a Superior Landlord's Consent) and all of the information and documentation referred to in Clauses 15.5.3 and 15.5.4 serve written notice on the Authority confirming whether or not the Contractor (acting reasonably) is willing to treat the proposed New HWRC Site as an Appropriate Site ("the HWRC Approval"). In determining whether the proposed New HWRC Site is an Appropriate Site the Contractor may have regard to any matters which may relate to the suitability of the Site as a property from which Services are to be delivered and in particular suitability for the Intended Use. Without limitation the Contractor may take into account geographical location, size, access, title matters, ground conditions and any other matters requirements or assumptions that could reasonably be relevant to site selection.
- 15.5.6. If the Contractor fails to serve written notice pursuant to clause 15.5.5 then the Contractor will be deemed to have issued the HWRC Approval on the last day of the aforesaid period of forty (40) Business Days.
- 15.5.7. If the Contractor serves notice refusing to give the HWRC

CONTRACT A

Approval it shall provide full and detailed reasons for such refusal and the Authority shall take such reasonable action and/or provide such additional information as may be available to the Authority in order to deal with the Contractor's concerns.

- 15.5.8. If the Authority does not consider the Contractor has acted reasonably in refusing to give the HWRC Approval whether the Contractor's refusal to issue the HWRC Approval is reasonable shall be determined in accordance with clause 116 (Dispute Resolution)
- 15.5.9. If the Parties agree or if it is determined in accordance with clause 116 (Dispute Resolution) that the Contractor's refusal to issue the HWRC Approval is reasonable and if any concerns reasonably raised by the Contractor cannot be dealt with satisfactorily then the Authority shall either:-
- a) Propose an alternative New HWRC Site and the provisions of this clause 15.5 shall continue to apply in relation to any alternative proposal until the HWRC Approval is given; or
 - b) Issue notice to the Contractor that a New HWRC Site will not be delivered on the date specified in the relevant Authority Notice of Change.
- 15.5.10. If the Contractor issues an HWRC Approval to a New HWRC Site or it is determined that the Contractor's refusal to issue the HWRC Approval is not reasonable then:-
- (a) The Authority will enter into the Proposed Acquisition;
 - (b) The Authority's solicitors shall serve on the Contractor a Notice in the form set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England & Wales) Order 2003 ("the Order") in relation to the Lease/Underlease (as applicable) of the New HWRC Site to be granted pursuant to this clause 15.5.10 together with the form of the declaration to be sworn by the Contractor as set out in paragraph 8 of Schedule 2 to the Order ("the Tenant's Declaration") and the Parties agree that the provisions of Sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 (as amended) shall be excluded from the Lease/Underlease to be granted and the Contractor shall issue such declaration prior to completion of such Lease/Underlease;
 - (c) The Authority will on the date specified in the

CONTRACT A

relevant Authority Notice of Change grant and the Contractor will accept a Lease (or Underlease if the Property Interest is a Leasehold) of the New HWRC Site to the Contractor (the Superior Landlord's Consent for such grant having been obtained by the Authority at its own expense). The term of the Lease/Underlease shall commence on the date of grant and expire on the Expiry Date unless terminated earlier in accordance with this Contract

- 15.5.11. The provisions of Clauses 15.1.1.4, 15.1.1.5, 15.1.2 (save for paragraph (f)), 15.1.3, 15.2 and 15.3 above shall apply as if the New HWRC Site was an Existing Site (with any necessary changes)
- 15.5.12. The Authority confirms it will be responsible for all costs associated with the acquisition of the Property Interest in the New HWRC Site and any other interest required to use the New HWRC Site for the Intended Use and all costs in relation to the development of the New HWRC including but not limited to costs of acquisition obtaining any Superior Landlord's Consent build costs legal and professional fees costs and expenses Stamp Duty Land Tax VAT HMLR fees and other costs of registration and without prejudice to the foregoing the provisions of Clause 107 (Authority and Contractor Changes) shall apply without limitation in respect of the acquisition of the New HWRC Site

15.6. Contractor New Sites

15.6.1. The Contractor will:-

- a) Use reasonable endeavours to identify and negotiate acquisition terms for the Contractor New Sites in sufficient time to enable the Contractor to comply with the Contractor's Proposals and in any event by the Contractor New Site Longstop Date.
- b) Keep the Authority regularly and fully informed in writing at all times as to its progress in identifying and acquiring a Property Interest in the Contractor New Sites and provide to the Authority as soon as reasonably practicable following receipt of the same all information and documentation available to the Contractor regarding such Contractor New Sites including all Property Documents together with a formal notice in accordance with clause 128.8 (Notices) confirming that the Contractor

CONTRACT A

considers the Contractor New Site to be an Appropriate Site

- c) Carry out all investigations and due diligence which would be expected of a prudent purchaser in respect of any Contractor New Site and shall forward the results of such due diligence exercise to the Authority forthwith upon the results becoming available
- d) Within a reasonable time following receipt of a request provide to the extent it is able to do so further clarification of issues and/or information in response to any request by the Authority relating to the Contractor New Sites

15.6.2. The Authority shall as soon as practicable and in any event within forty (40) Business Days of receipt of the Property Documents (which in the case of a leasehold interest shall include confirmation in principle that any Superior Landlord is willing to issue a Superior Landlord's Consent) and all other information and documentation and the formal notice referred to in Clause 15.6.1 serve written notice on the Contractor confirming whether or not the Authority (acting reasonably) grants consent (a "Contractor New Site Consent") to the Proposed Acquisition on the terms of the Property Documents. In determining whether the proposed Contractor New Site is an Appropriate Site the Authority may have regard to:-

15.6.2.1. The location requirement set out in Schedule 2 (Specification)

15.6.2.2. The extent (if at all) to which the Contractor New Site represents a residual liability during or following expiry of the Contract Period;

15.6.2.3. The quality of title obtained by the Proposed Acquisition (but taking into account the terms of the proposed Lease/Underlease);

15.6.2.4. Any adverse impact on any existing land in the vicinity of the Contractor New Site owned or occupied by the Authority

15.6.3. If no such notice as is referred to in clause 15.6.2 is served then the Authority is deemed to have granted a Contractor New Site Consent on the last day of such forty (40) Business Day period.

15.6.4. If the Authority serves notice granting a Contractor New Site Consent under clause 15.6.2 above or is deemed to have granted a Contractor New Site Consent pursuant to clause

CONTRACT A

15.6.3 above then :-

- (a) The Authority will enter into the Property Documents in accordance with the terms approved by the Authority;
- (b) The Authority's solicitors shall serve on the Contractor a notice in the form set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England & Wales) Order 2003 (the "Order") in relation to the Lease/Underlease (as applicable) of the Contractor New Site to be granted pursuant to clause 15.6.6 together with the form of the declaration to be sworn by the Contractor as set out in paragraph 7 of Schedule 2 to the Order ("the Tenant's Declaration") and the Parties agree that the provisions of Sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 (as amended) shall be excluded from the Lease/Underlease to be granted and the Contractor shall issue such declaration prior to completion of such Lease/Underlease

- 15.6.5. If the Authority serves notice refusing to grant a Contractor New Site Consent it shall provide full reasons for such refusal and the Contractor shall take such action and/or provide such additional information in order to deal with the Authority's concerns and the provisions of this clause 15.6 shall continue to apply until the Authority grants a Contractor New Site Consent.
- 15.6.6. On or immediately following completion of the Proposed Acquisition by the Authority the Authority will grant and the Contractor will accept a Lease (or Underlease if the Property Interest is a Leasehold) of the Contractor New Site. The term of such Lease or Underlease shall commence on the date of grant and shall expire on the Expiry Date unless terminated earlier in accordance with this Contract.
- 15.6.7. The provisions of Clauses 15.1.1.4, 15.1.1.5, 15.1.3, 15.2 and 15.3 above shall apply as if the Contractor New Site was an Existing Site (with any necessary changes).
- 15.6.8. The Contractor will obtain all Superior Landlord's Consents required to allow the Authority to grant the Lease/Underlease of a Contractor New Site to the Contractor pursuant to Clause 15.6.6.
- 15.6.9. The Contractor confirms it will be responsible for all costs associated with the acquisition of the Property Interest in the Contractor New Sites and any other interest required to use the Contractor New Sites for the Intended Use including but not limited to costs of acquisition, legal and professional

CONTRACT A

costs and expenses Stamp Duty Land Tax VAT HMLR fees and other costs of registration.

15.6A Contractor New Sites at Worksoop and Newark

The Parties acknowledge that the Newark WTS and the Worksoop WTS have been acquired in accordance with the provisions of Clauses 15.6 (Contractor New Sites) and are for the purposes of this Agreement Contractor New Sites and have received a Contractor New Site Consent (notwithstanding that they may have been acquired after the Contractor New Site Longstop Date).

15.7. MRF Option Site

15.7.1. It is acknowledged that in accordance with this Clause 15 the Authority has granted and the Contractor has accepted the MRF Underlease. The term commenced on the date of grant and shall expire on the Expiry Date unless terminated earlier in accordance with this Contract.

15.7.2. The provisions of Clauses 15.1.1.4, 15.1.1.5, 15.1.2 (save for paragraph (f)), 15.1.3, 15.2 and 15.3 shall apply (with any necessary changes) as if references to "Existing Site" were replaced by references to "MRF Option Site" but for the avoidance of doubt in relation to clause 15.1.1.5 the MRF Underlease shall only be granted subject to such matters as have been disclosed to the Contractor as at the date of this Contract or would otherwise be discoverable from the usual searches and enquiries made in public registers and with public authorities as at the date of this Contract. For the avoidance of doubt notwithstanding that the Authority has disclosed to the Contractor an option agreement in respect of the MRF Option Site it shall be the Authority's risk and responsibility to obtain any necessary extension to that option to enable the Authority to meet the requirements set out in Clause 15.7.2 and 15.7.3.

15.7.3. The Authority confirms it will be responsible for all costs associated with the acquisition of the Property Interest in the MRF Option Site and any other interest required to use the MRF Option Site for the Intended Use including but not limited to costs of acquisition, obtaining all necessary Superior Landlord Consents, legal and professional fees costs and expenses Stamp Duty Land Tax VAT and HMLR fees and other costs of registration. For the avoidance of doubt the provisions of this Clause 15.7.5 shall not be interpreted as including an obligation to contribute towards the cost of the MRF.

15.8. Contractor Owned Site

15.8.1. In the event:

15.8.1.1. of early termination of the Contract for

CONTRACT A

any reason and prior to the date of termination the Authority has served notice on the Contractor requiring the grant set out in this Clause; or

15.8.1.2. the Authority serves notice on the Contractor prior to the Expiry Date requiring the grant set out in this Clause,

then the Contractor will procure the grant to the Authority within twenty (20) Business Days of termination or the Expiry Date (as applicable) the Freeth Street Lease.

15.8.2. In the event of early termination of the Contract the term of the Freeth Street Lease shall commence on the date of grant and shall expire on the Expiry Date and in the event the Authority has served notice on the Contractor under clause 15.8.1 above the term of the Freeth Street Lease shall commence on the Expiry Date and shall expire at the end of the fifth year thereafter.

15.8.3. The rent payable by the Authority pursuant to the Freeth Street Lease shall be the Current Market Rental as determined in accordance with clause 7 of the Freeth Street Lease

15.8.4. The provisions of Clauses 15.1.1.4, 15.1.1.5, 15.1.3, 15.2 and 15.3 shall apply (with any necessary changes) as if:-

15.8.4.1. References to the "Leases" and "Underleases" were references to the "Freeth Street Lease";

15.8.4.2. References to the "Contractor" were references to the "Authority";

15.8.4.3. References to the "Authority" and "Authority's solicitors" were references to the "Contractor" and the "Contractor's solicitors"

15.8.4.4. References to the "Existing Sites" were references to the "Contractor Owned Site"

15.8.5. Notwithstanding the provisions of Clause 15.1.1.5 the Authority may raise pre-grant requisitions in respect of any matters post dating the date of this Contract.

15.9. Early Termination

15.9.1. If this Contract is terminated for any reason prior to the Expiry Date, all Leases and Underleases granted to the Contractor shall automatically cease and determine with effect from the date of termination of this Contract (or, if not granted at the time, the obligation to grant any Lease or Underlease (as applicable) shall terminate) and the Contractor shall forthwith deliver to the Authority each Lease

CONTRACT A

and Underlease together with all relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to such Leases and Underleases.

- 15.9.2. The Contractor shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at HM Land Registry and the Land Charges Registry in relation to the Leases and Underleases or any option to acquire any Site.

16. CONSENTS

16.1. Not Used.

16.2. The Contractor shall:

16.2.1. at its own expense obtain and maintain and renew as necessary all Consents which may be required for the carrying out of the Works and the performance of the Services;

16.2.2. comply with the conditions attached to any Consents and procure that no such Consent is breached by it, its Sub-Contractors and/or any person under its control and use all reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Works and/or the Services;

16.2.3. notify the Authority promptly of any notices received (whether from any Relevant Authority or any other person) relating in any way to any Consent and shall provide to the Authority a copy of any such notice within 5 Business Days of receipt by the Contractor.

16.2.4. supply copies to the Authority of any relevant correspondence relating to the discharge of Planning Obligations within 5 Business Days of receipt or sending thereof by the Contractor.

16.3. The Contractor shall not (and shall use all reasonable endeavours to procure that its Sub-Contractors and/or any other person over whom it has control shall not) without the prior consent of the Authority (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before or after the date of the Contract) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this clause, references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.

16.4. The Contractor shall supply free of charge to the Authority's Representative:

16.4.1. a copy of any application for a Planning Permission (with a

CONTRACT A

- copy of all accompanying drawings and other documents) and a copy of any Planning Permission obtained;
- 16.4.2. a copy of any application for a Waste Management Licence (with a copy of all accompanying drawings and other documents) and a copy of any Waste Management Licence obtained;
- 16.5. Further, on an annual basis the Contractor shall provide to the Authority's Representative a comprehensive list of all Consents which are required under statute in respect of the Facilities applied for and/or obtained ("Consents List"). The Consents List shall identify in respect of all Facilities:
 - 16.5.1. the date on which each such Consent application was made and the date on which each such Consent is expected or was obtained; and
 - 16.5.2. any accompanying documents.
- 16.6. As soon as reasonably practicable following a request to do so, the Contractor shall supply free of charge to the Authority's Representative a copy of any document or documents referred to in the Consents List.
- 16.7. If the Contractor and the Authority are unable to procure the transfer of any existing Consent from the Authority or from any third party to the Contractor by the Service Commencement Date, to the extent permitted by law, the Authority agrees that, until the relevant Consents are obtained by the Contractor or transferred to the Contractor the Contractor shall operate as the Authority's agent under the existing Consents relevant to the provision of the Works and Services.

17. NOT USED

18. NOT USED

19. NOT USED

20. THIRD PARTY CONSENTS OF ADJOINING OWNERS

- 20.1. Subject at all times to Schedule 35 (Environmental Criteria) the Contractor shall use all reasonable endeavours not to do or permit or suffer to be done anything which might:-
 - 20.1.1. be or become a danger or unreasonable nuisance (which cannot be prevented by a Contractor using reasonable and practicable measures) or give rise to liability in tort to any Adjoining Owners or to members of the public generally; or
 - 20.1.2. (unless permitted by a Third Party Consent and then only in accordance with the terms of the Third Party Consent) interfere with any Adverse Rights without prejudice to:
 - 20.1.2.1. any claim that the Contractor may have pursuant to Clause 15.1.2 (f); and
 - 20.1.2.2. the agreement that the MRF Underlease is granted subject to only those matters

CONTRACT A

referred to in Clause 15.7.4

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

- 20.2. If the Works and/or Services cannot be carried out without interfering with any Adverse Right the Contractor shall promptly and at its own expense obtain all necessary Third Party Consents and shall pay such sums as may be required for the giving of such Third Party Consent and shall supply to the Authority a copy of every Third Party Consents obtained.
- 20.3. The Contractor shall make good any damage to any roads, footpaths, Conduits, services landscaping and other works on any Adjoining Property which may be caused by the Contractor or any Contractor Related Party.
- 20.4. For the avoidance of doubt Clause 118 (Indemnities) may apply where applicable in accordance with its terms to matters arising under this Clause 20 (Third Party Consents).

21. CONDUCT OF THE WORKS

- 21.1. The Contractor shall carry out the design (including the preparation of Design Data) and the construction, completion, commissioning and testing of the Works so that:-
- 21.1.1. the Works fully comply with and meet all the requirements of this Contract (including without limitation, the Specification and the Contractor's Proposals), Good Industry Practice, Guidance, all Consents and all applicable Legislation;
- 21.1.2. new materials or recycled materials of equivalent quality only will be used in carrying out the Works (unless the Authority agrees otherwise in writing) and all goods used or included in the Works will be of satisfactory quality, and no products or materials will be used or included in the Works which are not in conformity with relevant British Standards (or European equivalent) or codes of practice which at the time of use are widely known to construction contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;
- 21.1.3. all persons employed in connection with the performance of the Works will be skilled and experienced in their several professions, trades and callings or adequately supervised by a person or persons in accordance with Clause 21.1.4;
- 21.1.4. all aspects of the Works will be supervised by sufficient numbers of persons having adequate knowledge of such

CONTRACT A

matters for the satisfactory and safe performance of the Works in accordance with this Contract and having regard to the activities which are carried on at the Sites;

- 21.1.5. the Works are maintained in good order, kept in a safe condition and protected from damage, and shall use all reasonable endeavours in accordance with Good Industry Practice to ensure working areas of the Sites are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the Works; and
 - 21.1.6. adequate retaining and supporting walls are provided to support any Adjoining Property during the carrying out of the Works.
- 21.2. During the carrying out of the Works the Contractor shall:-
- 21.2.1. save in respect of the HWRC Refurbishment Works not use or occupy or permit the Sites (or where relevant parts of Sites) upon which the Works are being undertaken to be used or occupied for any purpose other than the carrying out of the Works or in the case of any Existing Site providing Services to the extent reasonably required to ensure the Contractor's compliance with its obligations under this Contract;
 - 21.2.2. not deposit or manufacture or permit to be deposited or manufactured on the Sites upon which the Works are being undertaken any materials which are not required for the carrying out of the Works;
 - 21.2.3. not sell or dispose of any earth, clay, sand, gravel, chalk or other material from the Sites upon which the Works are being undertaken or permit or suffer the same to be removed, except so far as shall be necessary for the proper execution of the Works, without the consent of the Authority which shall not be unreasonably withheld;
 - 21.2.4. at the Contractor's sole cost transport all surplus materials arising from the Works and arrange for the tipping of the same at such places as may lawfully be used for tipping and the Contractor shall ensure that such materials will not cause or give rise to pollution of the environment as defined by Section 29(3) Environmental Protection Act 1990;
 - 21.2.5. not permit or suffer the storage of materials or the parking of vehicles in the immediate external vicinity of the boundaries of the Sites by the Contractor or any Sub-Contractor other than for reasonable periods necessary for the carrying out of the Works or for loading and unloading or as set out in the Contractor's Proposals;
 - 21.2.6. ensure that all vehicles leaving the Sites are adequately cleaned to prevent the deposit of waste material and debris on any Adjoining Property and if such material or debris is

CONTRACT A

so deposited the Contractor shall forthwith employ such measures as shall be necessary to remove the material and debris and to clean and reinstate such Adjoining Property to the reasonable satisfaction of the owners or occupiers of the Adjoining Property;

- 21.2.7. not, in breach of any Legislation, permit any Contamination from the Sites entering into any rivers or any ditches or services media on the Sites and/or any Adjoining Property and shall not permit or suffer the blockage of any of such rivers, ditches and services media by reason of anything done or omitted on the Sites or any land upon which the Works are being undertaken, and shall comply at the Contractor's expense with any requirement of the Environment Agency or any other Relevant Authority so far as such requirements relate to or affect the Works;
- 21.2.8. not gain access to or egress from the Sites except in accordance with lawful rights of access, any consents or as contemplated by the Contractor's Proposals;
- 21.2.9. not without the written consent of the Authority erect or permit or suffer to be erected on the Sites any temporary structure except site accommodation usual in connection with works of a like nature to the Works or as contemplated by the Contractor's Proposals;
- 21.2.10. not erect or exhibit or permit or suffer to be erected or exhibited on any part of the Sites any signs or trade boards save those previously approved in writing by the Authority (such approval not to be unreasonably withheld or delayed);
- 21.2.11. take all necessary steps in accordance with Legislation with regard to ensuring the health and safety of all:-
- 21.2.11.1. occupants of the Sites;
 - 21.2.11.2. individuals invited onto the Sites; and
 - 21.2.11.3. occupants of Adjoining Properties.
- is not adversely impacted upon by the undertaking of the Works.
- 21.2.12. be responsible at its own cost for obtaining all road closure and/or orders necessary to enable works to proceed;
- 21.2.13. at its own cost enter into and comply with the terms of such agreements under Sections 38 and 278 of the Highways Act 1980 and Section 104 of the Water Industry Act 1990 as may be required in respect of the Works and provide such bonds as the Relevant Authority or undertaking may require in connection with such agreements;
- 21.2.14. notify the Authority immediately of any articles of value or of archaeological or geological interest discovered in the course of carrying out of the Works and (subject to the rights

CONTRACT A

of the Crown) the Authority shall have the sole property in any such articles and they shall be dealt with as the Authority shall reasonably direct provided that any such directions requiring the Contractor do something beyond that reasonably contemplated by Schedule 2 (Specification) shall constitute an Authority Change.

- 21.2.15. ensure that the laying of the Conduits and all service media connections to Conduits required in connection with the Works are correctly made and rectify at the Contractor's own expense any Conduits wrongly laid and any wrong or crossed connection.

22. CONSTRUCTION CONTRACTS

- 22.1. Before the Planned Works Commencement Date for the MRF, the Contractor shall:
- 22.1.1. enter into the MRF Construction Contract with the MRF Construction Sub-Contractor; and
- 22.1.2. procure the delivery to the Authority of the MRF Construction Sub-Contractor's Collateral Warranty in the Agreed Form as set out in Schedule 18 (Construction Sub-Contractor Collateral Warranty) duly executed by the MRF Construction Sub-Contractor together with a copy of the MRF Construction Sub-Contract.
- 22.2. For the avoidance of doubt, the provisions of Clause 8 (Project Documents and Financing Agreements) shall apply to the MRF Construction Contract once it is entered into pursuant to Clause 22.1.1.
- 22.3. **Minor Facilities Construction Contracts**
- 22.3.1. Before each relevant Planned Works Commencement Date, the Contractor shall enter into the relevant Minor Facilities Construction Contracts in substantially the same form as set out in Schedule 17 (Construction Contracts).
- 22.3.2. As soon as reasonably practicable after execution of each Minor Facility Construction Contract the Contractor shall provide the Authority with a certified copy thereof.
- 22.3.3. The Contractor shall comply with its obligations under the Minor Facilities Construction Contracts.
- 22.4. **New WTS Works**
- 22.4.1. The Parties acknowledge the provisions of the Newark Construction Contract and the Worksop Construction Contract;
- 22.4.2. The Contractor shall comply with its obligations under the Newark Construction Contract and the Worksop Construction Contract.

CONTRACT A

23. PROJECT MANAGEMENT

The Contractor and the Authority shall ensure that at all reasonable times during the Works the Authority's Representative and the Contractor's Representative shall be available for consultation and liaison. Further, during the Works the Authority shall use its reasonable endeavours to ensure that the Authority's Representative is available and that the Contractor and its Sub-Contractors are afforded sufficient access to the same to enable the Contractor to discuss ideas and requirements.

24. SITE MEETINGS AND PROGRESS

24.1. The Contractor shall liaise with the Authority's Representative in relation to the Works and the Contractor shall provide regular progress reports in accordance with Clause 24.2 to the Authority's Representative relating to the design and construction of the Works and whether they are on time in accordance with Schedule 12 (Works Programme).

24.2. Without prejudice to the generality of Clause 24.1, the Contractor shall procure that:

24.2.1. monthly progress meetings are held throughout the Works Period in relation to the Works; and

24.2.2. without prejudice to the Contractor's right to hold ad hoc meetings with the Construction Sub-Contractors at its discretion, representatives of the Authority are afforded a reasonable opportunity to attend the regular programmed monthly meetings and any other progress critical meetings and (whether or not such representatives have attended) that a copy of the minutes of such meetings is promptly supplied to the Authority; and

24.2.3. each month during the Works Period, the Authority is provided with a report identifying as-built progress of each Facility against the applicable dates in Schedule 12 (Works Programme) ("Monthly As-Built Progress Reports").

25. DESIGN DEVELOPMENT**25.1. Obligation to finalise Design**

25.1.1. The Contractor shall develop and finalise the Basic Design Proposal for each Facility into a detailed and complete design that complies with the Authority's requirements set out in Schedule 2 (Specification).

25.1.2. The Authority confirms that as at the date of this Contract it has reviewed such of the Contractor's Proposals and/or other documentation submitted by the Contractor to the Authority prior to the date hereof as have been (or will be within 20 Business Days) initialled by the Authority and that the documents that have been initialled are not Reviewable Design Data.

25.2. Submission of Reviewable Design Data

CONTRACT A

- 25.2.1. The Authority may review the Reviewable Design Data in accordance with Schedule 16 (Review Procedure) and the provisions of this Clause 25.
- 25.2.2. In respect of each Facility, not less than 28 Days prior to
- 25.2.2.1. each Works Commencement Date;
 - 25.2.2.2. each Planning Application; and
 - 25.2.2.3. implementing any Change
- the Contractor shall (to the extent applicable) provide the Authority with the Reviewable Design Data and the design of any variations developed in accordance with Clause 107 (Authority and Contractor Changes).
- 25.2.3. Without limiting the Contractor's obligations under this Clause 25, the Authority shall notify the Contractor in accordance with Clause 25.2.2 if it becomes aware as a result of or during the Review Procedure of any circumstances where the Basic Design Proposal as developed by the Contractor is inconsistent with Schedule 2 (Specification) and Schedule 14 (Basic Design Proposal). Such notification shall be provided to the Contractor as soon as is reasonably practicable in the circumstances and in any event within 10 Business Days after receipt of the Reviewable Design Data. The Authority shall, if such notification is given, provide the Contractor with detailed particulars of the inconsistency.
- 25.3. In respect of the Works other than Works in relation to the MRF, the Contractor shall have due regard to (but shall not be bound by) the Authority's comments provided under Clause 25.2.3 (if any). The Contractor shall as soon as reasonably practicable in the circumstances after receipt of the Authority's comments and detailed particulars provided under Clause 25.2.3 notify the Authority in reasonable detail of the intended course of action that the Contractor proposes to adopt (if any) in relation to such comments.
- 25.4. Not Used
- 25.5. No approval, proposals, comment, inspection or testing in relation to any of the Reviewable Design Data or the Works by the Authority shall affect or diminish the obligations of the Contractor under this Contract.
- 25.6. **No construction prior to review**
- 25.6.1. In respect of the Works to the MRF (but not any other Works for the avoidance of doubt), the Contractor shall not commence or permit the commencement of the construction of the part or parts of the Works to which any Reviewable Design Data relate until it has submitted the relevant Reviewable Design Data for review and is entitled to proceed in accordance with Schedule 16 (Review Procedure).

CONTRACT A

25.7. Review of Design Data

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

25.8. Not Used**25.9. Rectification of Contractor's Proposals**

25.9.1. If it should be found that the Contractor's Proposals and/or the Works do not fulfil the Specification, the Contractor shall at its own expense amend the Contractor's Proposals and rectify the Works or Services or any part affected.

25.9.2. Such amendment and rectification shall have the effect that:-

25.9.2.1. the Contractor's Proposals shall satisfy the Specification; and

25.9.2.2. following the amendment or rectification the structural, mechanical and electrical performance of the Facilities will be of an equivalent standard of performance to that set out in the Contractor's Proposals prior to their amendment or rectification (for the purpose of comparison disregarding the fault which requirement the amendment or rectification to be made).

26. CHANGES TO CONTRACTOR'S PROPOSALS

26.1. Without prejudice to Clause 25.9 (Rectification of Contractor's Proposals), the Contractor shall be entitled to propose variations to the Contractor's Proposals by submitting the relevant variation to the Authority for review under Schedule 16 (Review Procedure) provided that (subject to Clause 31.2) the Contractor shall not be required to submit variations which relate to management of the Works Programme which do not materially prejudice the Contractor's ability to achieve Service Commencement by the applicable Planned Service Commencement Date.

26.2. Save in respect of those matters referred to in the proviso to Clause 26.1 the Contractor shall not implement any variation to the Contractor's Proposals until the Authority consents to the variation in accordance with the Review Procedure. Once consented to, a proposed variation will form part of the Contractor's Proposals.

27. NOT USED**28. EFFECT OF THE AUTHORITY'S AGREEMENT**

28.1. The agreement, consent, certification or approval by the Authority or

CONTRACT A

the Authority's Representative is required for any matter where:

- 28.1.1. this Contract provides that such must be sought or obtained; and/or
- 28.1.2. the Contractor seeks such agreement voluntarily.
- 28.2. Subject to the express terms of this Contract, the giving of such agreement, consent, certification or approval shall not under any circumstances limit, diminish, obviate or reduce the Contractor's obligation to design and construct the Facilities and make the Services Available in accordance with this Contract.
- 28.3. Further, and for the avoidance of doubt, in the event that the Authority or the Authority's Representative provide any assistance, proffer an opinion or give advice to the Contractor the same shall not, subject to the express terms of this Contract, diminish or limit the Contractor's obligations under this Contract and in particular shall not detract from the Contractor's responsibilities under Clause 28.1 above.

29. **SITE MATTERS**

- 29.1. Without prejudice to any express provisions of this Contract, the Site Conditions shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract) the Contractor shall be deemed to have:-
 - 29.1.1. carried out a ground physical and geophysical investigation and to have inspected and examined the Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Sites;
 - 29.1.2. satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Sites, the load bearing and other relevant properties of the Sites, the risk of injury or damage to property affecting the Sites, the nature of the materials (whether nature or otherwise) to be excavated, the existence of any overhead or underground cables, pipes, drains and other utilities and the nature of the design, works and materials necessary for the execution of the Works;
 - 29.1.3. satisfied itself as to the adequacy of the means and rights of access to and through the Sites and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Sites);
 - 29.1.4. satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority) with access to or use of, or rights in respect of, the Sites with particular regard to Adjoining Owners; and
 - 29.1.5. satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference,

CONTRACT A

whether public or private, being caused to third parties.

- 29.2. Without prejudice to any express provisions of this Contract the Contractor shall not be entitled to make any claim in relation to Site Conditions against the Authority of any nature whatsoever, on any grounds including the fact that incorrect or insufficient information on any matter relating to the Sites was given to it by any person, whether or not the Authority, its contractors or agents.

30. **HEALTH SAFETY AND CDM REGULATIONS**

- 30.1. The Contractor shall be responsible for the observance by itself, its staff and Sub-Contractors, and its and their agents and representatives of all current and relevant health and safety precautions appropriate in accordance with Good Industry Practice for the protection of itself, its staff, the Sub-Contractors and any other persons invited on to or visiting the Site or the Facilities including all precautions required to be taken by or under any Legislation.

- 30.2. The Contractor shall be responsible for the observance by itself and its Contractor Related Parties of all current and relevant rules, regulations and requirements of Relevant Authorities binding upon the Contractor and/or Contractor Related Parties concerning building works and fire prevention.

30.3. **CDM**

- 30.3.1. To the extent that any of the Works come within the scope of the CDM Regulations, the Contractor shall be the client for the purposes of the CDM Regulations and the Contractor agrees with and warrants to the Authority that it shall during the subsistence of this Contract and without charge act as such client and shall make and forward to the Health & Safety Executive a declaration in accordance with Regulations 4(3) and 4(4) of the CDM Regulations.

- 30.3.2. The Contractor shall make available to the Authority upon notice and without charge a copy of any health and safety file in respect of each completed Facility.

- 30.3.3. On termination or expiry of this Contract the Contractor shall hand over to the Authority any health and safety file in respect of each completed Facility.

- 30.3.4. The Contractor shall observe, perform, discharge and/or procure the observance, performance and discharge of all obligations, requirements and duties arising under the CDM Regulations in connection with the Works.

31. **MANAGEMENT OF CONSTRUCTION CONTRACTS**

- 31.1. The Contractor shall ensure that regular programmed meetings and other progress critical meetings are fully and properly minuted in accordance with the Contractor's Quality Management System.

- 31.2. The Contractor shall on a monthly basis from the Works Commencement Date send to the Authority's Representative copies of

CONTRACT A

all certificates, instructions, variations or equivalent contract documentation issued under the terms of the MRF Construction Contract sorted into chronological order.

31.3. The Contractor shall:

31.3.1. take reasonable steps to ensure that the Construction Sub-Contractor and all other persons employed by the Contractor in connection with the Works comply with all relevant Legislation relating to employment including (without limitation) the Race Relations Act 1976 and Sex Discrimination Act 1975;

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

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

32. **NOT USED**

33. **MONITORING AND INSPECTION**

33.1. **Right of Inspection**

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

33.1.2. For the avoidance of doubt, the provisions of Clause 33.1.1 apply provided always that the Authority shall and shall procure that its representatives or advisers shall at all times comply with all relevant site rules in relation to any such Site.

33.2. **Right to open up**

33.2.1. Subject to Clause 33.2.2 and provided that in doing so the Authority uses all reasonable endeavours to minimise disruption caused to the Contractor in carrying out the Works, the Authority's Representative shall have the right at any reasonable time on reasonable notice prior to the relevant Service Commencement Date for the Facility in question to request the Contractor to open up and inspect any part or parts of the Works where the Authority's

CONTRACT A

Representative reasonably believes that such part or parts of the Works is or are defective and the Contractor shall comply with such request.

- 33.2.2. Prior to exercising his right pursuant to Clause 33.2.1 above, the Authority's Representative shall notify the Contractor of his intention to exercise such right, setting out detailed reasons and providing reasonable prior notice.
- 33.2.3. If, following the exercise by the Authority's Representative of his right pursuant to Clause 33.2.1, the inspection shows that the relevant part or parts of the Works are not defective, any delay, increased cost, loss or other detriment caused to the Contractor by the exercise of such rights shall, subject to (and in accordance with) the provisions of Clause 36 (Compensation Events), be treated as a Compensation Event.
- 33.2.4. If, following the exercise by the Authority's Representative of his right pursuant to Clause 33.2.1, the inspection shows that the relevant part or parts of the Works is or are defective, the Contractor shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by the Contractor at no cost to the Authority and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Works.
- 33.2.5. If, following the exercise by the Authority's Representative of his right pursuant to Clause 33.2.1, the Authority's Representative is of the opinion that the inspection shows that the relevant part or parts of the Works is or are defective and the Contractor does not agree with such opinion, the matter shall be determined in accordance with Clause 116 (Dispute Resolution).
- 33.2.6. Without prejudice to the rights of the Authority's Representative pursuant to this Clause 33.2 the parties acknowledge that the exercise of such rights shall not in any way affect the obligations of the Contractor under this Contract save as expressly set out in this Clause 33.

33.3. Health and Safety Requirements

The Authority and its representative shall at all times comply with any health and safety requirements when exercising its rights under this Clause 33 (Monitoring and Inspection).

33.4. Supply of Information

The Contractor shall supply to the Authority and any representative or adviser of the Authority visiting any of the Sites pursuant to this Clause 33 such information in respect of the Works as may reasonably be required.

CONTRACT A

33.5. Increased Monitoring

If, following any viewing, visit or inspection made by the Authority, it is discovered that there are defects in the Works or that the Contractor has materially failed to comply with the Specification or the Contractor's Proposals, the Authority may (without prejudice to any other right or remedy available to it) by notice to the Contractor increase the level of its monitoring in relation to the Works of the Contractor until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it is capable of performing and will perform all its obligations under this Contract.

34. EXTENSIONS OF TIME**34.1. Notice**

If at any time the Contractor becomes aware that there will be or is likely to be a delay in the Works, such that a Planned Works Commencement Date or a Planned Service Commencement Date may not be achieved, the Contractor shall as soon as reasonably practicable and in any event within 20 Business Days of becoming aware of the likely delay give notice to the Authority to that effect specifying:

- 34.1.1. the reason for the delay or likely delay; and
- 34.1.2. an estimate of the likely effect of the delay on the Works including the Planned Works Commencement Date or any Planned Service Commencement Date (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with Clause 34.3 (Duty to Mitigate)).

34.2. Supply of Information

Following service of a notice by the Contractor pursuant to Clause 34.1 (Notice), the Contractor shall promptly supply to the Authority any further information relating to the delay which:

- 34.2.1. is received by the Contractor; or
- 34.2.2. is reasonably requested by the Authority

34.3. Duty to Mitigate

The Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to Clause 34.1 (Notice).

35. DELAYS TO THE WORKS AND EXISTING CONTAMINATION

35.1. If the carrying out of the Works or any part thereof is delayed (whether before or after the Planned Service Commencement Date) or any anticipated failure to meet a Planned Service Commencement Date is notified to the Authority by the Contractor as being attributable to:-

- 35.1.1. a Compensation Event, then the provisions of Clause 36 (Compensation Events) shall apply; or

CONTRACT A

- 35.1.2. a Relief Event, then the provisions of Clause 104 (Relief Events) shall apply; or
- 35.1.3. a Force Majeure Event, then the provisions of Clause 89 (Force Majeure) shall apply.

subject always to the right of any Party where applicable to refer the matter to Dispute Resolution.

- 35.2. In respect of the Works, the Contractor shall be entitled to treat the presence of Existing Contamination as defined in Schedule 35 (Environmental Criteria) and the consequences thereof (including without limitation any remediation works, investigative works and/or monitoring reasonably required) as a Compensation Event and the provisions of Clause 36 (Compensation Events) shall apply.

36. COMPENSATION EVENTS

- 36.1. Save to the extent provided in Clause 103 (Service Delay) Compensation Events are only applicable in relation to the Works.

36.2. **If as a direct result of the occurrence of a Compensation Event**

36.2.1. the Contractor is unable to achieve Service Commencement on or before the relevant Planned Service Commencement Date, or, following the Planned Service Commencement Date, the Long Stop Date;

36.2.2. the Contractor is unable to comply with its obligations under this Contract; and/or

36.2.3. the Contractor incurs costs or loses revenue (including Third Party Income)

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

- 36.3. **Subject to Clause 36.4 below, to obtain relief and/or claim compensation the Contractor must:**

36.3.1. as soon as practicable, and in any event within 20 Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs or lose revenue (including Third Party Income), give to the Authority a notice of its claim for an extension of time for Service Commencement, payment of compensation and/or relief from its obligations under the Contract such notice to be in writing in the Agreed Form as set out in Schedule 48 (Pro Forma Notice to the Authority). For the avoidance of doubt, in the event that the Contractor shall fail to provide the notice required under this Clause 36.3.1 in the Agreed Form, the provisions of Clause 36.5 below shall apply in respect of the period from the date which such notice should have been served until such date (if any) as the Contractor provides the Agreed Form of notice (Pro Forma Notice to

CONTRACT A

the Authority).

36.3.2. within 15 Business Days of receipt by the Authority of the notice referred to in Clause 36.3.1 above, give full details of the Compensation Event and the extension of time and/or any Estimated Change in Project Costs and/or loss of revenue (including Third Party Income) claimed; and

36.3.3. demonstrate to the reasonable satisfaction of the Authority that:

36.3.3.1. the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue (including Third Party Income) and/or any delay in the achievement of the Planned Services Commencement Date and/or breach of the Contractor's obligations under this Contract; or, following the Planned Services Commencement Date, delay in achieving Service Commencement before the Long Stop Date. In the case of delay the Contractor shall provide as part of its supporting evidence in accordance with this Clause 36.3.3 the Monthly As-Built Progress Reports provided pursuant to Clause 24.2.3 to demonstrate that any delay was caused by the Compensation Event and not by any other event; and

36.3.3.2. the Estimated Change in Project Costs and/or loss of revenue (including Third Party Income), time lost, and/or relief from the obligations under the Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

36.4. In the event that the Contractor has complied with its obligations under Clause 36.3 above, then:

36.4.1. the Planned Service Commencement Date or, following the Planned Service Commencement Date, the Long Stop Date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;

36.4.2. in the case of an additional cost being incurred or revenue (including Third Party Income) being lost by the

CONTRACT A

Contractor:

36.4.2.1. on or before the Service Commencement Date relevant for a Facility; or

36.4.2.2. as a result of Capital Expenditure being incurred by the Contractor at any time,

the Authority shall compensate the Contractor for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue (including Third Party Income) actually lost (to the extent it could not reasonably have been mitigated) within 30 Days of its receipt of a written demand by the Contractor supported by all relevant information;

36.4.3. in the case of a payment of compensation for the Estimated Change in Project Costs and/or without double counting, loss of revenue (including Third Party Income) that does not result in Capital Expenditure being incurred by the Contractor referred to in Clause 36.4.2.2 above but which reflects a change in the costs being incurred or revenue received by the Contractor after the relevant Service Commencement Date, the Authority shall compensate the Contractor in accordance with Clause 36.7 below by an adjustment to the Unitary Charge; and/or

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

36.5. In the event that such information is provided after the dates referred to in Clause 36.3 above, then the Contractor shall not be entitled to any extension of time, compensation or relief from its obligations under the Contract in respect of the period for which the information is delayed.

36.6. If the parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under the Contract, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause, the parties shall resolve the matter in accordance with Clause 116 (Dispute Resolution).

36.7. Any payment of compensation referred to in Clause 36.4.3 above shall be calculated in accordance with Clause 111 (Financial Adjustments) and Schedule 40 (Unitary Charge Adjustment Protocol).

CONTRACT A

37. PROTESTER ACTION

37.1. The Contractor shall take such actions as are reasonable, proportionate and lawful to deal with protester action and where necessary shall co-operate with the emergency services. The Contractor shall be responsible for the consequences of any delays or disruption consequent upon any such disruption.

38. NOT USED**39. HWRC REFURBISHMENT WORKS AND NEW WTS WORKS**

Without limiting any other remedy which the Authority may have under Schedule 6 (Payment Mechanism) and Schedule 7 (KPIs) the Contractor shall complete (a) the HWRC Refurbishment Works within 5 years of the Commencement Date and (b) the New WTS Works by 31 December 2015, failing which the Authority shall be entitled to enter any relevant Site and perform such works itself and shall be entitled to recover the costs incurred from the Contractor as a debt (or set off in accordance with Clause 70 (Set Off)). The New WTS Works shall be deemed to be completed in respect of a Site upon the production to the Authority of the Construction Completion Certificate in respect of the relevant Site.

40. COMPLETION OF THE WORKS

40.1. The provisions of this Clause 40 shall apply to all the Works (other than the HWRC Refurbishment Works and New WTS Works) including for the avoidance of doubt the MRF.

40.2. The Contractor shall give the Authority at least 10 Business Days prior written notice of the date on which it proposes to inspect a relevant Facility at each relevant Site with a view to the issue of an Acceptance Certificate for those Works in accordance with the MRF Contract or the relevant Minor Facilities Construction Contract and the Authority's Representative and other representatives shall be entitled to attend such inspection. The Contractor shall keep the Authority informed of any alterations in the proposed date and each Party shall act reasonably in relation to any delays to the timetable notified.

40.3. The Contractor or its agent shall have due and proper regard to any reasonable representations made by the Authority's Representative regarding acceptance of the relevant part of the Works and any defects or items to be included on a list of Snagging Items.

40.4. The Contractor shall provide the Authority with all information that it may reasonably require in relation to determining acceptance of the relevant part of the Works within a reasonable time of such request. PROVIDED THAT no such reasonable requirement shall have the effect of changing or delaying the timetable for so determining Acceptance.

40.5. The Authority's Representative shall issue the Acceptance Certificate for the relevant Facility when the Contractor and the Authority agree that the Acceptance Criteria in respect of the relevant part of the Works have been satisfied. In the event that the Contractor and the Authority

CONTRACT A

are unable to agree that all Acceptance Criteria have been satisfied in respect of the relevant part of the Works the matter shall be determined (at the referral of either Party) under the provisions of Clause 116 (Dispute Resolution).

40.6. Not Used

40.7. The Acceptance Date for each Facility shall be:

40.7.1. the date on which an Acceptance Certificate is issued in respect of the Facility (which date may for the avoidance of doubt be earlier than the Planned Service Commencement Date for that Facility) or such earlier date agreed by the Parties;

40.7.2. in the event of referral to Dispute Resolution Procedure pursuant to Clause 40.5 above, the date on which it is determined pursuant to Clause 116 that the relevant Facility met the Acceptance Criteria.

40.8. Following the issue of the Acceptance Certificate under Clause 40.6 the Contractor shall procure that the Snagging Items (if any) are attended to as soon as reasonably practicable in the circumstances and the Contractor shall keep the Authority informed regarding the progress in addressing such Snagging Items.

40.9. **Effect of Acceptance Certificate for Minor Facilities**

40.9.1. The Acceptance Certificate shall be final and binding upon the Parties as to the end of the relevant Works and the commencement of the relevant Service Period. The Authority's obligation to pay the applicable Availability Payment pursuant to Schedule 6a (Payment Mechanism) shall commence from the relevant Service Commencement Date. The Acceptance Certificate shall be without prejudice to:

40.9.1.1. the Authority's right to withhold Availability Payments for Unavailability pursuant to Schedule 6a (Payment Mechanism) whether or not the reason for the Unavailability arose or could have been detected prior to the issue of the Acceptance Certificate; and

40.9.1.2. the Authority's rights and remedies under the MRF Construction Sub-Contract Collateral Warranty.

41. **DEPOSIT OF AND ACCESS TO AS-BUILT DRAWINGS**

41.1. The Contractor shall provide to the Authority, in respect of the relevant Facility a set of As-Built Drawings on the earlier of the date falling 20 Business Days after the date they become available to the Contractor or within 6 Months after the Acceptance Certificate Date in respect of the relevant Facility. The Contractor shall promptly update the As-Built

CONTRACT A

Drawings supplied to the Authority to reflect any changes from time to time and promptly provide a set of such amended As-Built Drawings to the Authority.

- 41.2. Copyright in the As-Built Drawings shall not pass to the Authority but the Authority may make or obtain copies of all or any part of the As-Built Drawings but only for the purpose of the Contract.
- 41.3. A set of As-Built Drawings shall be kept by the Authority. The Authority will allow access to the As-Built Drawings only to such persons as they consider have legitimate interests in viewing and/or using the As-Built Drawings resulting from the exercise by the Authority of their rights under Clause 108 (Authority Step In) and on termination or expiry of the Contract in circumstances which any of such Equipment forming part of the Works passes into the ownership or control of the Authority or any replacement contractor or sub-contractor

CONTRACT A

PART THREE – SERVICE PERIOD**42. PRINCIPAL OBLIGATIONS DURING SERVICE PERIOD**

42.1. The Contractor shall provide the Services throughout the Contract Period:

42.1.1. in accordance with:

42.1.1.1. the Contract;

42.1.1.2. Good Industry Practice;

42.1.1.3. Legislation;

42.1.1.4. the terms and requirements of any Consents and Third Party Consents but not any Superior Landlord Consents (save those for the carrying out of the Works for which consent from the Landlord has been properly secured by the Authority in accordance with Clause 15 (Land Issues)) and subject at all times to the terms of Clause 15);

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

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

42.1.3.1. the Authority and the Authority's employees;

42.1.3.2. the WCAs and their employees and collection contractors;

42.1.3.3. any lawful visitor to any of the Sites and Facilities;

42.1.4. subject to Clause 15 in accordance with the terms of any Leases and Underleases as applicable to which the Contractor is a party.

43. SHEFFIELD OFF-TAKE CONTRACT

The Contractor shall enter into the Sheffield Contract in the form set out at Schedule 41 (Sheffield Contract) in respect of the Sheffield Waste on or before the RPP Date and thereafter the provisions of Clause 8 relating to Project Documents shall apply to the Sheffield Contract. The Contractor's obligations to Handle Residual Waste under the Sheffield Contract are to be measured under Schedule 6 (Payment Mechanism) and Schedule 7 (KPIs) Provided that for the avoidance of doubt it is acknowledged that the Contractor shall be able (but not obliged) to Handle more than 60,000 tonnes per Contract Year of Residual

CONTRACT A

Waste under the Sheffield Contract and the provisions of paragraphs 2.3 and 2.8 of the Payment Mechanism shall apply as applicable.

44. EXCLUSIVITY

44.1. Subject to the provisions of this Clause 44 (Exclusivity) and Schedule 32A (Mansfield and Ashfield Protocol), the Authority shall procure (at the Authority's sole discretion either by entering into the WCA Agreement, Directing the WCAs or otherwise) that from the date of this Contract the Contractor shall have the exclusive right to have delivered to it (or delivered at its direction in accordance with the terms of this Contract) all Contract Waste arising in the Authority's Area in accordance (where applicable) with Schedule 28 (Delivery Points) and Schedule 30 (Facility Input Specifications).

44.2. The provisions of Clause 44.1 (in relation to exclusivity) above shall not apply:

44.2.1. subject to Clause 45 (Eastcroft) and Clause 45A (Priority of Sheffield Waste), to the Eastcroft Waste and the Additional Eastcroft Waste;

44.2.2. to the tonnages (if applicable) and categories of Waste which would otherwise be Contract Waste set out in Schedule 29 (WCA Baseline) which the Parties agree the WCAs shall withhold for Recycling in each Contract Year;

44.2.3. to New Recyclable Waste which the Authority exercises its right pursuant to Clause 47 (New Recyclable Waste) to withhold;

44.2.4. to Recyclable Waste which the Authority exercises its right pursuant to Clause 109 (Recycling Step-In) to withhold;

44.2.5. to Excess Residual Waste which the Authority exercises its right pursuant to Clause 48 (Capacity) to withhold; and

44.2.6. to the Mansfield and Ashfield Residual Tonnage following the Mansfield and Ashfield Removal Date but prior to any Mansfield and Ashfield Re-Introduction Date;

provided that, for the avoidance of doubt in the event that any such Waste specified under Clauses 44.2.1 to 44.2.6 inclusive shall be received by or delivered to the Contractor, such Waste shall be deemed to be Contract Waste;

44.3. Save as provided in:

44.3.1. Clauses 44.1 and 44A (breach of which provisions shall for the avoidance of doubt constitute a Compensation Event);

44.3.2. Schedule 6 (Payment and Performance Mechanism);

44.3.3. Clause 45 (Eastcroft) during any periods of shut down of Eastcroft;

44.3.4. Clause 46 (Changes in WCA Waste) in respect of changes

CONTRACT A

in WCA Waste;

44.3.5. Clause 47 (New Recyclable Waste) in respect of New Recyclable Waste;

44.3.6. Clause 48 (Capacity) in respect of Excess Residual Waste; and

44.3.7. any other express provision of this Contract

the Contractor shall have no right or remedy against the Authority on account of the tonnage, volume or composition of Contract Waste being greater, lower or different from that which the Contractor forecasted and/or envisaged in preparing the Base Case, in making financial and operational assumptions and in entering into the Contract.

44A **PRIORITY OF SHEFFIELD WASTE**

The Authority shall not be entitled to deliver or procure or direct the delivery of Additional Eastcroft Waste (a 'direction') at any time to the extent that the effect of any such direction is likely to or does in fact reduce the amount of Annual Planned Sheffield Tonnage below 60,000 tonnes in any relevant Contract Year.

45. **EASTCROFT**

45.1. During any periods of shut down of Eastcroft the Contractor shall implement the Eastcroft Contingency Arrangements in accordance with Schedule 28 (Delivery Points and Contingency Delivery Points) in respect of any Waste which would otherwise constitute Eastcroft Waste ("Eastcroft Diverted Waste").

45.2. The Contractor shall in implementing the Eastcroft Contingency Arrangements work in good faith and use reasonable endeavours (and liaise with the WCAs as appropriate) to mitigate and reduce any adverse impact of the Eastcroft shut down.

45.3. In the event that in any Contract Year the Contractor shall receive Eastcroft Diverted Waste (as identified under Clause 45.4):

45.3.1. such Eastcroft Diverted Waste shall be handled and assessed hereunder as Contract Waste; and

45.3.2. provided that the Contractor complies with its obligations under the Eastcroft Contingency Arrangements the Contractor shall not be liable for:

45.3.2.1. Tipping Away Payments and/or

45.3.2.2. failure by the Contractor to meet the Performance Standards

directly relating to or arising from the Handling of Eastcroft Diverted Waste.

45.4. The Parties shall (acting in good faith) cooperate to identify the levels of Eastcroft Diverted Waste in the Contract Year which is being assessed. The Authority undertakes in this respect to use all reasonable endeavours to provide such detailed information as to

CONTRACT A

tonnages delivered to Eastcroft and periods of shutdown at Eastcroft in such Contract Year as shall be reasonably requested by the Contractor and the Contractor shall use this information in preparing tonnage projections pursuant to Schedule 23a (Interface Plan).

- 45.5. In the event of disagreement as to the levels of Eastcroft Waste, Eastcroft Diverted Waste or any other matter arising under this Clause 45 (Eastcroft) the matter shall be determined in accordance with Clause 116 (Dispute Resolution).

46. **CHANGES IN WCA WASTE**

- 46.1. The tonnages and/or categories of Waste (which would otherwise constitute Contract Waste) the WCAs and/or the Authority may withhold for Recycling and Composting in each Contract Year of the Contract Period and other agreed WCA procedures are set out in Schedule 29 (WCA Baseline).
- 46.2. Changes to the WCA Baseline are not and shall not be deemed an Authority Default.
- 46.3. Changes to the WCA Baseline are not and shall not be deemed a Compensation Event except in the circumstance set out in Clause 46.7 below.
- 46.4. If the WCA Baseline for any WCA has changed, or is likely to change, the Authority shall issue an Authority Notice of Change in respect of such alteration in the WCA Baseline in accordance with Clauses 107.1 and 107.2 (Authority and Contractor Changes) and the procedure set out in Clauses 107.3 to 107.13 shall apply save that:
- 46.4.1. if the WCA Baseline has already changed the Authority shall not be entitled to withdraw the Authority Notice of Change and nor shall it be deemed withdrawn except by agreement;
- 46.4.2. the parties shall agree or it shall be determined in accordance with Clause 116 (Dispute Resolution) the date on which the change in the WCA Baseline took effect and if necessary any adjustment in the Unitary Charge (and other consequential changes to the Contract) shall be applied retrospectively from the agreed or determined date;
- 46.4.3. the Authority may (subject to Clause 107 (Authority and Contractor Changes)), include in the Authority Notice of Change (or may issue a second Authority Notice of Change following the Contractor's Estimate) changes in the Services required to mitigate the effect of the change in WCA Baseline;
- 46.4.4. the Parties shall each use their reasonable endeavours to work together in good faith (and liaise with the WCAs as appropriate) to mitigate and reduce any adverse impact of the change in WCA Baseline.
- 46.5. On it becoming known to the Contractor that the WCA Baseline has changed or is likely to change and unless the Authority has already

CONTRACT A

issued an Authority Notice of Change the Contractor shall in accordance with Clause 103 (Service Delays) and Clause 128.8 (Notices) issue a notice to the Authority (a "WCA Notice of Change") setting out details of the matter and providing reasonable evidence in support.

- 46.6. The Authority shall respond within 20 Business Days of receipt of a WCA Notice of Change by either:
- 46.6.1. issuing an Authority Notice of Change relating to the matter;
or
- 46.6.2. notifying the Contractor in writing that it disputes the fact that there is a change in the WCA Baseline.
- 46.7. If the Authority does not respond in accordance with either Clauses 46.6.1 or 46.6.2 above the change in WCA Baseline set out in the WCA Notice of Change shall be treated as a Compensation Event and the provisions of Clause 36 (Compensation Events) and Clause 103 (Service Delays) shall apply.
- 46.8. If the Parties cannot agree whether there is a change or there is likely to be a change to the WCA Baseline the matter shall be determined in accordance with Clause 116 (Dispute Resolution).
- 46.9. Following the application of the Authority Change procedure or the Compensation Event procedure resulting from a change in the WCA Baseline Schedule 29 (WCA Baseline) shall be deemed amended accordingly and the provisions of this Clause 46 shall apply to future changes in the WCA Baseline as amended. The Parties agree that as at the RPP Date the WCA Baseline has been updated to the RPP Date and the Contractor waives any right to issue a WCA Notice of Change in respect of any previous change to the extent incorporated in the WCA Baseline as so updated to the RPP Date.
- 46.10. The Authority will at all times act in good faith in relation to the reporting and identification of changes in the WCA Baseline and will use all reasonable endeavours to provide such information in relation thereto as the Contractor shall reasonably require.

47. **RECYCLING AND NEW RECYCLABLE WASTE**

Obligation to Recycle Recyclable Waste

- 47.1. The Contractor shall Recycle the Recyclable Waste up to the Design Capacity of the MRF provided that the Contractor shall use reasonable endeavours to Recycle any Recyclable Waste which is delivered to agreed Delivery Points by the WCAs which is over the Design Capacity of the MRF.

New Recyclable Waste

- 47.2. If the Authority identifies a category of Contract Waste that was not a Recyclable Waste at Financial Close which it believes may be capable of Recycling (a "New Recyclable Waste"), the Authority shall issue an Authority Notice of Change in accordance with Clauses 107.2 and 107.3 (Authority and Contractor Changes) requesting the Contractor to

CONTRACT A

Recycle specific levels of tonnage (expressed as a maximum based on reasonable projections) of such New Recyclable Waste and the procedure set out in Clauses 107.4 to 107.14 (Authority and Contractor Changes) shall apply save that:

47.2.1. If:

47.2.1.1. the Contractor responds in its Estimate that it is unable to Recycle the New Recyclable Waste and acting in good faith the Authority is able to demonstrate that it can secure (and does so secure) alternative arrangements to Recycle the New Recyclable Waste; or

47.2.1.2. acting in good faith the Authority is able to demonstrate that it is able to secure arrangements with a third party contractor to Recycle the New Recyclable Waste at a lower price per tonne than the Contractor proposes in its Estimate,

the Authority shall be entitled to withhold the New Recyclable Waste up to the maximum tonnages specified in the Authority Notice of Change from the Contractor and enter into arrangements with an alternative contractor in respect of the New Recyclable Waste and the Contractor shall not be obliged to implement the Authority Change specified in the Authority Notice of Change served under Clause 47.2 above.

47.2.2. If either the Authority is unable in the circumstances specified in Clause 47.2.1.1 to secure alternative arrangements to Recycle the New Recyclable Waste or is unable to demonstrate that it is able to secure arrangements with third parties in accordance with 47.2.1.2 then the Authority shall at its option either withdraw the Authority Notice of Change or shall proceed with such Authority Change on the basis of the Estimate served under Clause 47.2, for the avoidance of doubt any New Recyclable Waste withheld from the Contractor pursuant to this Clause 47 shall be deemed to be Recycled for the purposes of the Key Performance Indicators.

47.2.3. In the event that the Authority exercises its right to withhold the New Recyclable Waste as specified in Clause 47.2.1, then it shall be deemed to have served a further Authority Notice of Change providing for the withholding of the New Recyclable Waste specified for the remainder of the Contract Period and the provisions of Clauses 107.4 to 107.14 (Authority and Contractor Changes) shall apply.

47.2.4. The Parties shall agree or it shall be determined in accordance with Clause 116 (Dispute Resolution) the date

CONTRACT A

on which the New Recyclable Waste was withheld by the Authority and if necessary any adjustment in the Unitary Charge (and other consequential changes to the Contract) shall be applied retrospectively from the agreed or determined date.

- 47.2.5. The Authority may subject to Clause 107 include in the Authority Notice of Change referred to under Clause 47.2.2 (or may issue a second Authority Notice of Change following the Contractor's Estimate) changes in the Services required to mitigate the effect of the Authority withholding the New Recyclable Waste.
- 47.2.6. The Parties shall each use their reasonable endeavours in good faith (and liaise with the WCAs as appropriate) to mitigate and reduce any adverse impact of the Authority withholding the New Recyclable Waste.
- 47.3. On it becoming known to the Contractor that the Authority has withheld or is likely to withhold a New Recyclable Waste and unless the Authority has already issued an Authority Notice of Change under Clause 47.2, in accordance with Clause 128.8 (Notices) the Contractor shall issue a notice to the Authority (a New Recycling Notice of Change) setting out details of the matter and providing reasonable evidence in support.
- 47.4. The Authority shall respond within 20 Business Days of receipt of a New Recycling Notice of Change by either:
- 47.4.1. issuing an Authority Notice of Change relating to the matter;
or
- 47.4.2. notifying the Contractor in writing that it disputes the fact that there is has withheld a New Recyclable Waste.
- 47.5. Withholding New Recyclable Waste by implementing the procedures set out in Clause 47.2 is not and shall not be deemed an Authority Default.
- 47.6. If the Authority does not respond in accordance with either Clauses 47.4.1 or 47.4.2 above the withholding by the Authority of the New Recyclable Waste as set out in the New Recycling Notice of Change shall be a Compensation Event.
- 47.7. If the Parties cannot agree whether the Authority has withheld a New Recyclable Waste the matter shall be determined in accordance with Clause 116 (Dispute Resolution).
- 47.8. Following the application of the Authority Change procedure or the Compensation Event procedure resulting from a withholding by the Authority of a New Recyclable Waste the provisions of this Clause 47 shall apply to any future withholding of any other New Recyclable Waste.

48. CAPACITY**Capacity of the Facilities**

CONTRACT A

- 48.1. From the Service Commencement Date in respect of each Facility the Contractor shall ensure that for each Contract Year:
- 48.1.1. the Facility in question is capable of Handling and has the capacity to Handle the Projected Tonnages for that Facility relevant to that Contract Year; and
- 48.1.2. the Landfill Sites are in accordance with the Specification capable of Handling the annual Planned Landfill Tonnages.

Capacity of the MRF

- 48.2. If in accordance with Clause 47.1 (Obligation to Recycle Recyclable Waste) the Recyclable Waste is in excess of the Design Capacity of the MRF ("Excess Recyclable Waste") the Contractor shall use reasonable endeavours to Recycle the Excess Recyclable Waste.
- 48.3. In the event that:
- 48.3.1. the Contractor is unable to Handle the Excess Recyclable Waste by way of Recycling; and
- 48.3.2. acting in good faith the Authority is able to demonstrate that it can secure (and does so secure) alternative arrangements to Recycle the Excess Recyclable Waste by way of Recycling;

the Authority shall be entitled to instruct the WCAs to deliver any Excess Recyclable Waste which actually arises to treatment facilities owned, operated or managed by any third party or by the Authority itself and shall serve or shall be deemed to have served an Authority Notice of Change providing for the withholding of the Excess Recyclable Waste for the remainder of the Contract Period and the provisions of Clauses 107.4 to 107.14 shall apply.

Contract Capacity

- 48.4. If in preparing the Waste Flow Schedule pursuant to the Schedule 23a (Interface Plan) in respect of any forthcoming Contract Year the Projected Tonnages indicate both that:-
- 48.4.1. the amount of Contract Waste anticipated to be delivered to the Contractor is such that the Contract Capacity will be exceeded (the amount in tonnes of such Contract Waste over the Contract Capacity to be known as the "Excess Tonnage"); and
- 48.4.2. (on the assumption that not less than 60,000 tonnes of Sheffield Tonnage shall be sent to the Sheffield Contract in that Contract Year) there remains Residual Waste which is compliant with the ERF Input Specification then in respect of the amount of such Residual Waste up to a maximum of an amount equal to the tonnage of the Excess Tonnage (the "Excess Residual Waste"), the Authority shall be entitled to propose an Authority Change in accordance with Clause 107 (Authority and Contractor Changes) and require the Contractor to make proposals to Handle any Excess

CONTRACT A

Residual Waste.

48.5. If:

48.5.1. the Contractor confirms in its Estimate that it is unable to Handle the Excess Residual Waste other than by Landfill and acting in good faith the Authority is able to demonstrate that it can secure (and does so secure) alternative arrangements to Handle and dispose of such Waste by means other than Landfill; or

48.5.2. acting in good faith the Authority is able to demonstrate it is able to secure (and does so secure) arrangements with an alternative contractor to Handle and dispose of the Excess Residual Waste (other than by Landfill) at a lower price per tonne than the Contractor proposes in its Estimate for Handling and disposing of such Excess Waste other than by Landfill,

the Authority shall be entitled to instruct the WCAs to deliver any Excess Residual Waste which actually arises to treatment facilities owned, operated or managed by any third party or by the Authority itself. For the avoidance of doubt, the Authority shall not be entitled to arrange for any party other than the Contractor to dispose of Excess Residual Waste by way of Landfill.

49. **NOT USED**

50. **NOT USED**

51. **NOT USED**

52. **DIVERSION AND TIPPING AWAY**

52.1. The Parties recognise that delay in achieving the Planned Service Commencement Dates and any Unavailability in respect of a Delivery Point which results in diversion of the WCAs from the Delivery Points shall cause loss, inconvenience, cost and expense to the WCAs and the Authority.

52.2. During any period of delay in achieving any Planned Service Commencement Date or Unavailability of any Facility:

52.2.1. the Contractor shall implement the Contingency Arrangements set out in Schedule 28 (Delivery Points and Contingency Delivery Points) in order to continue to Handle Contract Waste;

52.2.2. the remedies of the Authority set out in Schedule 6 (Payment and Performance Mechanism) shall apply where applicable.

52.3. During Planned Maintenance the provisions of Clause 66 (Planned Maintenance) shall apply.

53. **OWNERSHIP OF WASTE**

53.1. As between the Authority and the Contractor all Contract Waste (and

CONTRACT A

for the avoidance of doubt any Non Contract Waste) received by or in the possession of the Contractor or any of its Sub-Contractors (or their sub-contractors) shall thereupon become and be deemed to be acquired by and in the ownership and at the risk of the Contractor who shall take full responsibility for it.

54. CONTRACT WASTE

- 54.1. In all circumstances and throughout the Service Period the Contractor shall Handle Contract Waste in priority to Non Contract Waste.
- 54.2. Ad Hoc Waste shall be Handled in accordance with the protocol set out in Schedule 23 (Service Delivery Plan) and paid for in accordance with Schedule 6a (Payment Mechanism).

55. DUTY OF CARE

- 55.1. Without prejudice to the Contractor's general obligation to comply with all Legislation applicable to it the Contractor shall at all times comply with its duty of care under Section 34 of the EPA and with any regulation, code of practice or Guidance issued pursuant to it by the Government or Relevant Authority which is binding upon it. Such compliance shall include without limitation making and retaining suitable and sufficient records, transfer notes and weighbridge records.
- 55.2. The Contractor shall have a duty to warn the Authority if any person for whom the Authority is responsible, any WCA or any third party may in the reasonable opinion of or to the knowledge of Contractor be in breach of the duty of care under Section 34 of the EPA and/or is acting in breach or contrary to any Consent or Third Party Consent. For the avoidance of doubt this duty to warn shall be to assist the Authority in managing environmental considerations within the Authority's Area and not to transfer risk in the Facilities or the Sites from the Contractor to the Authority.
- 55.3. The Contractor shall promptly notify the Authority of all circumstances which shall or might reasonably be regarded as a breach of this Clause 55 and shall act at all times in good faith in respect of this Clause 55.
- 55.4. For the avoidance of doubt the provisions of Clause 118 (Indemnities) may apply to the extent set out therein in the event of breach by the Contractor of the provisions of this Clause 55 (Duty of Care).

56. ENVIRONMENT AGENCY AND RELEVANT AUTHORITIES

- 56.1. Without prejudice to its obligations to comply with Legislation, Guidance, Consents and to provide the Services in accordance with Good Industry Practice, the Contractor shall ensure that it does not wilfully and knowingly invite or solicit any Relevant Authority (including for the avoidance of doubt the Environment Agency) to undertake any review of the Services and/or the Assets, Facilities and Sites (a "Review") without first consulting the Authority in writing and inviting the Authority to be present at any Review meetings with or inspections undertaken by the Relevant Authority.
- 56.2. If the Contractor fails to consult and invite the Authority where it is

CONTRACT A

obliged to do so pursuant to Clause 56.1 prior to any Review the Authority reserves the right in its absolute discretion to reject any associated Contractor Notice of Change in accordance with Clause 107 (Authority and Contractor Changes) and/or Qualifying Change in Law Notice in accordance with Clause 105 (Change in Law) and/or any other request or claim by the Contractor for an adjustment to the Unitary Charge or otherwise which directly results from the Review in question resulting from any requirement of the Relevant Authority and the Contractor shall be liable for any costs or expenses arising from such Review.

57. **NON CONTRACT WASTE**

57.1. The Contractor shall be entitled at its discretion to handle Non Contract Waste at the Facilities as follows:

57.1.1. in respect of the Newark WTS and the Worksop WTS, the Contractor shall be entitled without the consent of the Authority to Handle Non Contract Waste subject to the provisions of paragraph 2.3 of Schedule 6a (Payment Mechanism);

57.1.2. in respect of the MRF, the Contractor shall be entitled to Handle up to 25,000 tonnes of Non Contract Waste in any Contract Year without the consent of the Authority and in accordance with the provisions of paragraph 2.5 and the Non Contract Waste Protocol each as set out in Schedule 6a (Payment Mechanism) shall apply;

57.1.3. if in respect of the MRF, the Contractor proposes to Handle more than 25,000 tonnes of Non Contract Waste in any Contract Year in accordance with the provisions of the Non Contract Waste Protocol set out in Schedule 6a (Payment Mechanism) shall apply;

57.1.4. in respect of any other Non Contract Waste which the Contractor proposes to Handle at any of the Facilities by agreement with the Authority from time to time.

58. **NOT USED**59. **HEALTH AND SAFETY**

59.1. The Contractor shall at all times retain a person to be responsible for the health and safety matters as required by the Health and Safety at Work Act 1974 and notify full details of such person to the Authority. Whilst on Authority owned premises (not being the Sites) the Contractor shall require its staff, licensees and visitors to comply with the lawful requirements of the Authority's Safety Adviser. The Contractor shall provide and maintain, at all its premises and the Sites, an accident book which shall be open to inspection by the Authority's Safety Adviser, Authority's Representative or his representative.

59.2. The Contractor shall have regard to the Authority's health and safety policy contained in the Authority Policies when preparing its own

CONTRACT A

statement.

- 59.3. The Contractor shall supply a copy of its general statement of safety policy to the Authority, for approval no later than 30 Business Days following the date of this Contract, and shall review its policy and safe working procedures whenever necessary in the light of changing Legislation, working practices, accidents or similar events and shall inform the Authority's Representative of any consequent revisions.
- 59.4. The Contractor shall procure that it and any Contractor Related Parties at all times take such precautions as are appropriate in accordance with Good Industry Practice to protect the health and safety of all persons employed in the provision of the Works and Services or otherwise entitled to be at or in the vicinity of the Sites.

60. QUALITY ASSURANCE AND QUALITY MANAGEMENT SYSTEMS

- 60.1. The Contractor shall procure that all aspects of the Works and Services are carried out and monitored in accordance with appropriate quality management systems in accordance with Schedule 2 (Specification) ("Quality Management Systems").
- 60.2. The Quality Management Systems shall be reflected in appropriate Quality Manuals and shall comply with:
 - 60.2.1. BS EN ISO 9001 or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard, such other quality standard as the Parties may agree; and
 - 60.2.2. Good Industry Practice.
- 60.3. The Contractor shall prepare, implement and comply with the Quality Manuals.

61. PERFORMANCE MONITORING

61.1. Contractor Responsibility

- 61.1.1. The Contractor acknowledges and agrees that, notwithstanding any provision of the Contract which contemplates that the Authority will or may from time to time:-
 - 61.1.1.1. inspect any part of the Works or the Facilities or the Sites;
 - 61.1.1.2. check compliance by the Contractor with its obligations;
 - 61.1.1.3. confirm or indicate approval of or non objection to proposals made by the Contractor;
 - 61.1.1.4. request the Contractor to make a change to the Works or Services; or
 - 61.1.1.5. otherwise seek to influence the manner in which the Project is conducted by the

CONTRACT A

Contractor,

it shall always be fully the responsibility of the Contractor, and not the responsibility of the Authority, to ensure that the Project is conducted in all respects in accordance with the Contractor's obligations under this Contract, and subject to Clause 36 (Compensation Events) and Clause 103 (Service Delay) and any other express provisions of the Contract to the contrary no such action by or on behalf of the Authority will in any way limit or affect such obligations.

61.2. Contractor Monitoring

The Contractor shall diligently carry out a monthly performance monitoring exercise in accordance with the procedures set out in Schedule 6 (Payment and Performance Mechanism) and Schedule 25 (Reporting Requirements).

61.3. Authority Monitoring

61.3.1. The Authority may elect to undertake its own performance monitoring exercise at any stage during the Contract Period for any purpose including in order to ensure that the Facilities, Sites and Services are being provided in accordance with this Contract. In that respect the Authority shall have the right acting reasonably to audit the Contractor's quality management systems including examining and inspecting Works or Services on or off Site to establish the adequacy of the quality management system documentation.

61.4. Monitoring Costs

Each party shall bear its own cost of performance monitoring.

62. EQUIPMENT

62.1. On or before the Commencement Date in consideration of the sum of £1 paid by the Contractor receipt of which is hereby acknowledged and subject to Clause 62.3 below the Authority shall transfer title and possession to the Transferred Equipment to the Contractor.

62.2. Without prejudice to the provisions of Clause 62.1 above the Contractor shall from the Service Commencement Date:

62.2.1. provide to a suitable standard all Equipment necessary for the provision of the Services;

62.2.2. maintain all Equipment in accordance with Clause 66 (Planned Maintenance);

62.2.3. use its reasonable endeavours to ensure that all Equipment and related contracts, agreements, guarantees, warranties, bonds and insurances are assignable/novatable to the Authority or any third party who may provide the Services on expiry or termination;

62.2.4. at the end of each Contract Year prepare and provide to the

CONTRACT A

Authority an updated Equipment List;

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

62.3. In respect of each item of Transferred Equipment the Authority warrants to the Contractor as at the Commencement Date that:

62.3.1. the Authority has good title to such Transferred Equipment free from any charge or encumbrances and that the Transferring Equipment will not be the subject of any leasing, hiring or hire purchase or agreement for payment on deferred terms or assignment or factoring or similar agreement; and

62.3.2. that such Transferred Equipment is physically present at the site in relation to which it is identified in the Schedule 11 (Equipment List).

63. CIVIL DEFENCE AND EMERGENCIES

63.1. If an emergency arises during the Contract Period (and whether or not an emergency has arisen shall be determined in the case of any dispute by the Authority's Representative acting reasonably) which cannot be dealt with by performance of the Services the Contractor shall use its reasonable endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Authority in writing to ensure that the emergency is dealt with and normal operation of the Facilities and Services resumes as soon as is reasonably practicable and any such requirement of the Authority shall be confirmed as soon as practicable by an Authority Notice of Change.

63.2. To permit the Authority's Representative to deal with the threat of emergencies the Contractor will provide the names, addresses and out of office hours telephone numbers for two members of the Contractor's staff of sufficient standing and seniority to successfully implement a plan (the "Local Emergency Plan").

63.3. At any time being no later than 2 months from the date of this Contract the Contractor shall supply its Local Emergency Plan to the Authority's Representative.

64. TUPE

64.1. The provisions of Schedule 10 shall apply in relation to employment matters as set out therein.

65. EMPLOYEES AND AUTHORITY POLICIES

65.1. Whilst engaged at any Sites belonging to the Authority the Contractor shall have regard to the Authority's Policies relating to the conduct of staff and security arrangements of which it has been notified in writing by the Authority prior to the date of this Contract and shall ensure that

CONTRACT A

its staff and those of any Sub Contractors do likewise. In the event that the Authority wishes to impose any further or amended Authority Policies from time to time any such imposition or amendment shall be notified to the Contractor in advance and introduced by the Authority as an Authority Notice of Change in accordance with Clause 107 (Authority and Contractor Changes).

- 65.2. The Contractor shall at least 20 Business Days before the date on which the Contractor first carries out any of the Works or provides any of the Services provide the Authority with a written list of the names and addresses of all employees or other persons who it expects may require admission to each Site in connection with the carrying out of the Works or provision of the Services, specifying the capacities in which those employees or other persons are concerned with the Works or Services and giving such other particulars as the Authority may require. The Contractor shall update this information as and when any such individuals are replaced or complemented by others where reasonably practicable, not less than 5 Business Days before their inclusion. Where the Contractor unreasonably proposes a significant number of amendments to the list, the Authority reserves the right to make an appropriate administrative charge. The decision of the Authority on whether any person is to be refused admission to a Site shall be final and conclusive and the Authority shall not be obliged to give reasons for its decision.
- 65.3. The Authority reserves the right to refuse to admit to the Sites any person, employed or engaged by the Contractor or a Sub-Contractor, whose admission would, in the reasonable opinion of the Authority, present a risk to themselves or an Authority Related Party or a WCA or property, and shall not be obliged to give any reasons for such refusal. The Contractor shall comply with and/or procure compliance with any notice issued by the Authority from time to time requiring the removal from any of the Sites of any such persons and shall not employ such persons again upon the Project without the written consent of the Authority.
- 65.4. The decision of the Authority as to whether any person is to be refused admission to the Sites pursuant to Clause 65.3 (Refusal of Admission) shall be final and conclusive, and the Authority shall not be obliged to give any further details of the reasons for its decision beyond a statement that the decision is made pursuant to Clause 65.3 (Refusal of Admission). If the Authority declines to give any reason or fails to give reasonable reasons for exercising its rights under Clause 65.2 (Admission to the Sites) and 65.3 (Refusal of Admission), the Authority shall indemnify the Contractor and keep the Contractor indemnified from and against any injury, claims, costs and expenses (including legal expenses) and or damage suffered or incurred by the Contractor, provided that the Contractor or the relevant one of its Sub-Contractors has used its reasonable endeavours to redeploy that person elsewhere and/or to mitigate the claim.
- 65.5. During the 12 months preceding the Expiry Date or once notice

CONTRACT A

terminating this Contract for whatever reason has been given the Contractor shall enable and assist the Authority and such other persons as the Authority may determine to communicate with and meet the Relevant Employees and their trade unions or other employee representatives.

- 65.6. Both before and after termination of this Contract, the Contractor shall give reasonable assistance and comply with all reasonable requirements that the Authority may (acting reasonably) specify with a view to ensuring that an orderly and efficient handover to the Authority or to any Successor Contractor is achieved.

66. **PLANNED MAINTENANCE**

- 66.1. For the avoidance of doubt this Clause 66 (Planned Maintenance) applies to all Facilities and does not apply in relation to the Sites or to Contamination or ground conditions in respect of the Sites.
- 66.2. **The Contractor shall ensure on a continuing basis that at all times its maintenance and operating procedures are sufficient to ensure that:-**
- 66.2.1. **the Services are Available;**
 - 66.2.2. **it can maintain the design intention of the Facilities to achieve their full working life; and**
 - 66.2.3. **the Facilities are handed back to the Authority on the Expiry Date in a condition complying with this Clause 66 (Planned Maintenance).**
- 66.3. On the Termination Date or the Expiry Date all Facilities shall be in such serviceable condition and state of repair (allowing for fair wear and tear) as to enable its efficient operation for a period of five years following such date in the case of the Expiry Date or for the unexpired term plus five years (in the case of the Termination Date) assuming:
- 66.3.1. such Facility would be used to provide services similar in all material respects to the Services; and
 - 66.3.2. that the maintenance regime detailed in the Maintenance Programme continued to apply throughout such period to no less a standard that is required under this Contract.
- 66.4. For the avoidance of doubt, the condition and state of repair of the Facilities shall be assessed on or prior to hand back of such facility to the Authority and such assessment shall be final and the Authority shall not be able to and shall waive any right to claim that the Facilities were not in such a condition by reason of any event or circumstances or evidence arising after termination or expiry of this Contract.
- 66.5. The Contractor shall develop a detailed maintenance programme ("Maintenance Programme") for each Facility setting out the maintenance to be carried out at the relevant Facility and the Contractor shall develop such Maintenance Programme in accordance with the principles set out at Clause 66.2.

CONTRACT A

- 66.6. The Contractor shall deliver to the Authority's Representative within 3 months of the Service Commencement Date of each Facility a complete and accurate copy of the relevant Maintenance Programme. The Contractor shall keep the Maintenance Programme up to date in accordance with Good Industry Practice and promptly supply updates as and when any changes are made thereto.
- 66.7. Throughout the Contract Period, the Contractor shall comply with the relevant Maintenance Programme. In respect of the MRF and HWRCs the Maintenance Programme shall provide that all maintenance is undertaken outside the Opening Hours identified in Schedule 2 (Specification) or as otherwise to ensure that the Facilities remain Available in accordance with Schedule 22 (Availability).
- 66.8. Not Used
- 66.9. Without prejudice to the provisions of Clause 66.7 above, the Contractor shall give notice to the Authority's Representative of any maintenance to be carried out by the Contractor pursuant to any Maintenance Programme if it is to be carried out at times materially different from those specified in such Maintenance Programme. Any such different times shall be set so as to minimise the disruption to the Authority and the WCAs and/or delivery of the Services and shall require prior agreement of the Authority's Representative under the Review Procedure (such agreement not to be unreasonably withheld or delayed).
- 66.10. Within 10 Business Days after each anniversary of the Commencement Date the Contractor shall produce to the Authority a report setting out the following:
- 66.10.1. the works, services or other matters carried out by way of maintenance in the previous Contract Year detailing whether such works services or other matters were in accordance with the Maintenance Programme and, if not, an explanation as to why such works, services or other matters were carried out or not carried out (as the case may be); and
- 66.10.2. statistics identifying in all material respects the consolidated maintenance records of the various components of each Facility and where reasonably required by the Authority any further information relating to the statistics that the Authority may reasonably require in order to verify the report.
- 66.11. The Contractor shall promptly provide to the Authority such information as the Authority reasonably requires in order to verify the report referred to in Clause 66.10 above.

67. SURVEYS

For the avoidance of doubt, this Clause 67 (Surveys) shall apply to Facilities and Equipment rather than to the Sites and Contamination and ground conditions at Sites.

- 67.1. **If the Authority reasonably believes that the Contractor is in**

CONTRACT A

breach of its obligations under Clause 66 (Planned Maintenance) then it may carry out (or procure) a survey of the Assets and Facilities to assess whether such Assets and Facilities have been and are being maintained by the Contractor in accordance with its obligations under Clause 66 (Planned Maintenance). This right may not be exercised more often than once every 2 years.

- 67.2. The Authority shall notify the Contractor in writing a minimum of 14 Days in advance of the date on which it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least 7 Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Services.
- 67.3. When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The cost of the survey shall, except where Clause 67.4 below applies, be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of any survey.
- 67.4. If a survey shows that the Contractor has not complied or is not complying with its obligations under Clause 66 (Planned Maintenance), the Authority shall:
- 67.4.1. notify the Contractor of the standard that the condition of the relevant Assets and the Facilities should be in to comply with its obligations under Clause 66 (Planned Maintenance);
 - 67.4.2. specify a reasonable period within which the Contractor shall carry out such rectification and/or maintenance work; and
 - 67.4.3. be entitled to be reimbursed by the Contractor for the cost of the survey referable to the Assets or Facilities in question.
- 67.5. The Contractor shall carry out such rectification and/or maintenance work within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.
- 67.6. If the Authority is or becomes aware of a breach by the Contractor of its obligations under Clause 66 (Planned Maintenance) then the Authority shall be entitled to enter the relevant Facilities (without prejudice to any other right of access it may possess) and remedy such breach and shall be entitled to recover any costs or expenses incurred from the Contractor as a debt (or set off in accordance with Clause 70 (Set Off)).

CONTRACT A

68. **PERFORMANCE DEFAULTS AND UNAVAILABILITY**

- 68.1. If the Contractor fails to make the Facilities Available and/or defaults in providing the Services to the Performance Standards the Authority may pay a reduced Availability Payment and/or make Performance Deductions and/or issue a Warning Notice in accordance with and to the extent set out in Schedule 6 (Payment and Performance Mechanism).

CONTRACT A

PART FOUR – PAYMENT PROVISIONS**69. INVOICING AND PAYMENT**

- 69.1. The Authority shall pay the Contractor the Unitary Charge in respect of each Payment Period calculated in accordance with the provisions of Schedule 6 (Payment and Performance Mechanism).
- 69.2. All payments under this Contract shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made.
- 69.3. Within 28 Days of the end of each Payment Period the Contractor shall issue an invoice (in a form to be agreed between the parties) to the Authority for that relevant payment period.
- 69.4. Subject to the provisions of Schedule 6a (Payment Mechanism) the Authority shall pay the amount of any invoice submitted by the Contractor pursuant to Clause 69.3 within 28 Days of the date upon which the Authority receives that invoice.
- 69.5. If either party (acting in good faith) disputes all or any part of the Unitary Charge payable pursuant to Schedule 6a (Payment Mechanism), the undisputed amount of the Unitary Charge shall be paid by the Authority in accordance with Schedule 6a (Payment Mechanism) and the provisions of this Clause 69.5 shall apply. The parties shall use all reasonable endeavours to resolve the dispute in question within 10 Business Days of the dispute arising. If they fail so to resolve it, either party may refer the matter to be determined in accordance with Clause 116 (Dispute Resolution).
- 69.6. If a sum is disputed and is subsequently agreed or determined by the Dispute Resolution to be due, interest shall accrue in accordance with Clause 71 (Late Payments) from the due date (for such sum being the date upon which under Clause 69.5 such sum (if undisputed) was due and payable) until the date of payment.
- 69.7. Any sum disputed and subsequently determined by the Dispute Resolution to be due shall be paid within the period of 5 Business Days from the date of such agreement or determination.
- 69.8. The Authority may withhold payment of any disputed amount pending agreement or determination of the Contractor's entitlement in relation to the disputed amount.

70. SET-OFF

- 70.1. **The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.**
- 70.2. **If the payment or deduction of any amount referred to in Clause 70.1 above is disputed then any undisputed element shall be paid**

CONTRACT A

and the disputed element shall be dealt with in accordance with Clause 116 (Dispute Resolution).

71. LATE PAYMENTS

71.1. Save where otherwise provided, the parties will pay interest on any amount payable under this Contract not paid on the due date from the period from that date to the date of payment at a rate equal to 3% above the base rate from time to time of the Bank of England (the "Prescribed Rate").

72. UTILITIES

72.1. Subject to the provisions of Clause 73 (NNDR), the Contractor shall be responsible for paying all utility costs and charges incurred in providing the Services and making the Facilities Available.

73. NNDR

73.1. The Contractor shall pay and Authority shall reimburse the cost of any NNDR payable on the Facilities in accordance with Schedule 6a (Payment Mechanism).

74. VALUE ADDED TAX

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

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

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

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

75. LANDFILL TAX

75.1. The Contractor shall be responsible for payment of Landfill Tax at the then applicable rate on all Contract Waste which is Landfilled and the Authority shall reimburse the Contractor for the payment of Landfill Tax in accordance with and to the extent set out in Schedule 6a (Payment Mechanism).

76. THIRD PARTY INCOME

76.1. Save where otherwise expressly provided in this Contract, any Third Party Income arising from the sale of Recyclable Waste and/or

CONTRACT A

Compostable Waste shall be at the entire risk and account of the Contractor.

- 76.2. In the event that the Authority is required to compensate the Contractor for lost Third Party Income, the level of compensation payable shall be assessed on the basis set out in Schedule 40a (Compensation for lost Third Party Income).

77. FEES, COSTS AND EXPENSES

- 77.1. Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Contract

78. BEST VALUE AND CONTINUOUS IMPROVEMENT

- 78.1. The Contractor acknowledges that:
 - 78.1.1. the Authority is subject to the Best Value Duty; and
 - 78.1.2. the provisions of this Clause 78 are intended to assist the Authority in discharging its Best Value Duty in relation to the Services.
- 78.2. The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in Clauses 78.3 to 78.29, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 78.3. The Contractor shall undertake or refrain from undertaking such actions as the Authority shall reasonably request to enable the Authority to comply with Part 1 of the 1999 Act, including:
 - 78.3.1. supporting and assisting the Authority in preparing Best Value Performance Plans and conducting Best Value Reviews in relation to waste management of which the Services forms part;
 - 78.3.2. complying with requests for information, data or other assistance made by the Authority in pursuant of its Best Value Duty including to:
 - 78.3.2.1. enable the Authority to prepare a Best Value Performance Plan;
 - 78.3.2.2. enable the Authority to conduct a Best Value Review;
 - 78.3.2.3. facilitate the audit of the Authority's Best Value Performance Plan by the Authority's auditor pursuant to Section 7 of the 1999 Act;
 - 78.3.2.4. facilitate the Authority preparing any statement, in response to the Authority's auditor's report, pursuant to Section 9 of the 1999 Act;

CONTRACT A

- 78.3.2.5. facilitate any inspection undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;
- 78.3.2.6. assist the Authority in relation to any action taken by the Secretary of State under Section 15 of the 1999 Act;
- 78.3.2.7. enable the Authority to comply with any Government Departmental Direction
- 78.3.2.8. enable the Authority to report on Best Value Performance Indicators;
- 78.3.2.9. assist the Authority in any Comprehensive Performance Assessment;
- 78.3.2.10. enable the Authority to comply with the Publication of Information Direction 2000 (England and Wales);
- 78.3.3. complying with all requests by the Authority to procure the attendance of specific officers or employees of the Contractor or any Sub Contractor (or any of its or their sub contractors) at any meetings of the Authority at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than four times in any one year);
- 78.3.4. permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
 - 78.3.4.1. the Sites and the Facilities; and
 - 78.3.4.2. any document or data relating to the Services;
 - 78.3.4.3. any Sub Contractor, agent or employee of the Contractor.
- 78.4. The Contractor shall, on each Customer Satisfaction Survey Date undertake (or procure the undertaking of) a Customer Satisfaction Survey the purpose of which shall include:
 - 78.4.1. assessing the level of satisfaction among Service Users with the Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services;
 - 78.4.2. assisting in the preparation of the Contractor's Annual

CONTRACT A

Services Plan;

- 78.4.3. monitoring the compliance by the Contractor with the Contract; and
- 78.4.4. assisting the Authority in the preparation of its Best Value Performance Plans and the conduct of its Best Value Reviews.
- 78.5. The Customer Satisfaction Survey shall be undertaken by means of distributing to Service Users within 10 Business Days of each Customer Satisfaction Survey Date a questionnaire in a form to be agreed with the Authority (acting reasonably).
- 78.6. The content of the questionnaire referred to in Clause 78.5 and the method of undertaking the Customer Satisfaction Survey shall comply with all applicable Legislation and Guidance.
- 78.7. The Authority shall provide reasonable assistance and information (subject to compliance with all Legislation) to the Contractor to enable the Contractor to undertake the Customer Satisfaction Survey.
- 78.8. Within one month of each Customer Satisfaction Survey Date, the Contractor shall prepare a summary of the results of the Customer Satisfaction Survey in such form as the Authority shall reasonably require and promptly upon a written request from the Authority provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Contractor) as the Authority shall reasonably require.
- 78.9. Without prejudice to any other provision in this Contract the Contractor shall at its own cost, provide to the Authority a written report (the "Annual Service Report") in accordance with the requirements set out in the Specification and the Best Value Assistance and Reporting Method Statement.
- 78.10. The Contractor shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require to verify and audit the information and other material contained in the Annual Service Report.
- 78.11. If, in the Authority's reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report, and the Best Value Duty, then the Authority may serve a written notice upon the Contractor (a "Best Value Service Change Notice") stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires.
- 78.12. The Contractor shall, within 28 Business Days of the date of a Best Value Service Change Notice, provide the Authority at its own cost with a written statement (the "Annual Service Plan") containing the Contractor's proposals to achieve the change to the Services (or the relevant part) in accordance with the Best Value Service Change

CONTRACT A

Notice.

- 78.13. As soon as practicable after the Authority receives the Annual Service Plan the parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Authority may modify the Best Value Service Change Notice, in which case the Contractor shall, as soon as practicable, and in any event not more than 21 Business Days after the receipt of such modification, notify the Authority of any consequential changes to the Annual Service Plan.
- 78.14. If the parties cannot agree on the contents of the Annual Service Plan then the dispute will be determined in accordance with Clause 116 (Dispute Resolution).
- 78.15. As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to Clause 116 (Dispute Resolution) the Authority shall:
- 78.15.1. confirm in writing the Annual Service Plan; or
 - 78.15.2. withdraw the Best Value Service Change Notice.
- 78.16. If the Authority does not confirm the Annual Service Plan within 14 Business Days of the Annual Service Plan having been agreed or otherwise determined pursuant to Clause 116 (Dispute Resolution) then the Annual Service Plan shall be deemed to have been withdrawn.
- 78.17. If the Authority confirms the Annual Service Plan the Authority shall propose a change in the Service in accordance with Clause 107 (Authority and Contractor Changes).
- 78.18. To the extent that the implementation of the proposals in the Annual Service Plan will result in a decrease in the costs of the Contractor, the Unitary Charge shall be adjusted downwards in accordance with Clause 111 (Financial Adjustments) to reflect a sharing in the decrease in costs 50: 50 as to the Authority and Contractor respectively.
- 78.19. To the extent that the implementation of the proposals in the Annual Service Plan will result in an increase in the costs of the Contractor, the Unitary Charge shall be adjusted upwards in accordance with Clause 111 (Financial Adjustments).
- 78.20. The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Best Value Service Change Notice and an Authority Notice of served pursuant to sub Clause 78.17.
- 78.21. On or before each Best Value Review Date the Authority may instigate a Best Value Review in relation to such of its services or functions of which the Services form part and thereafter the following provisions of this Clause 78 shall apply.
- 78.22. The parties agree that any such Best Value Review shall be carried out in accordance with the applicable Legislation.
- 78.23. The Authority shall carry out the Best Value Review at its own cost.
- 78.24. In carrying out the Best Value Review, the Authority may take into

CONTRACT A

account the results of any:

78.24.1. Annual Service Reports; and/or

78.24.2. Customer Satisfaction Survey

and shall consult with the Contractor on any proposals to change the Services to enable the Authority to comply with its Best Value Duty.

- 78.25. If in the Authority's reasonable opinion the results of the Best Value Review or Comprehensive Performance Assessment disclose that the provision, performance or delivery of the Services (or any part) may be more efficient, effective or economic having regard to the Best Value Duty then the Authority may serve a Best Value Service Change Notice on the Contractor stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires.
- 78.26. The Contractor shall, within 20 Business Days of the date of receipt of a Best Value Service Change Notice, at its own cost provide the Authority with a written statement (the "Best Value Review Plan") containing the Contractor's proposals to achieve the change to the Services (or the relevant part) in accordance with the Best Value Service Change Notice.
- 78.27. As soon as practicable after the Authority receives the Best Value Review Plan the parties shall discuss and agree the issues set out in the Best Value Review Plan. In such discussions the Authority may modify the Best Value Service Change Notice, in which case the Contractor shall, as soon as practicable, and in any event not more than 15 Business Days after the receipt of such modification, notify the Authority of any consequential changes to the Best Value Review Plan.
- 78.28. If the parties cannot agree on the contents of the Best Value Review Plan then the dispute shall be determined in accordance with Clause 116 (Dispute Resolution).
- 78.29. As soon as practicable after the content of the Best Value Review Plan has been agreed or otherwise determined pursuant to Clause 116 (Dispute Resolution) the Authority shall:
- 78.29.1. confirm in writing the Best Value Review Plan; or
- 78.29.2. withdraw the Best Value Service Change Notice.
- 78.29.3. If the Authority does not confirm the Best Value Review Plan within 20 Business Days of the Best Value Review Plan having been agreed or determined in accordance with Clause 116 (Dispute Resolution) then the Best Value Service Change Notice shall be deemed to have been withdrawn.
- 78.29.4. If the Authority confirms the Best Value Review Plan the Authority shall propose a change in the Service in accordance with Clause 107 (Authority and Contractor Changes).

CONTRACT A

- 78.29.5. To the extent that the implementation of the proposals contained in the Best Value Review Plan will result in a decrease in the costs of the Contractor, the Unitary Charge shall thereafter be adjusted downwards in accordance with Clause 111 (Financial Adjustments). To reflect the sharing in the decrease in costs 50:50 as to the Authority and Contractor respectively.
- 78.29.6. To the extent that the implementation of the proposals contained in the Best Value Review Plan will result in an increase in the costs of the Contractor, the Unitary Charge shall thereafter be adjusted upwards in accordance with Clause 111 (Financial Adjustment).
- 78.29.7. The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Best Value Service Change Notice and an Authority Notice of Change served pursuant to this Clause.

79. BENCHMARKING AND MARKET TESTING

- 79.1. Schedule 32 (Benchmarking and Market Testing) shall apply in respect of benchmarking and market testing of the relevant Services.
- 79.2. Schedule 32A (Mansfield and Ashfield Protocol) shall apply in respect of the Mansfield and Ashfield Residual Waste).

CONTRACT A

PART FIVE – TERMINATION AND EXPIRY**80. TERMINATION ON CONTRACTOR DEFAULT**

- 80.1. The Authority shall be entitled to terminate this Contract by notice in writing to the Contractor (subject to the remaining provisions of this Clause 80.2) if the Contractor commits a Contractor Default.
- 80.2. If a Contractor Default has occurred and the Authority wishes to terminate this Contract, it must serve a termination notice on the Contractor.
- 80.3. The termination notice referred to in Clause 80.2 must specify:
- 80.3.1. the type and nature of Contractor Default that has occurred giving reasonable details; and
 - 80.3.2. that this Contract will terminate on the day falling 60 Business Days after the date the Contractor receives the termination notice unless the Contractor puts forward an acceptable rectification programme within 30 Business Days (the "Rectification Programme") (such Rectification Programme to be approved by the Authority (such approval not to be unreasonably withheld or delayed)) (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the Rectification Programme) or rectifies the Contractor Default within 60 Business Days.
- 80.4. If the Contractor either rectifies the Contractor Default within the time period specified in the termination notice, or implements the Rectification Programme, if applicable, in accordance with its terms the termination notice will be deemed to be revoked and the Contract will continue.
- 80.5. If the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice (or in accordance with any accepted Rectification Programme) or fails to provide an acceptable Rectification Programme or at all, the Contract will terminate on the date falling 60 Business Days after the date of receipt of the termination notice.
- 80.6. If the Contractor provides a Rectification Programme and fails to implement such rectification programme in accordance with its terms, the Contract will terminate on the date falling 60 Business Days after the date of notification to the Contractor.

81. COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT

- 81.1. On termination of the Contract under Clause 80 (Termination for Contractor Default) the Authority shall pay the Contractor such compensation as may be calculated in accordance with the provisions of paragraph 1 of Schedule 44 (Compensation on Termination).

82. VOLUNTARY TERMINATION BY AUTHORITY

- 82.1. The Authority may terminate this Contract at any time on or

CONTRACT A

before the Expiry Date by complying with its obligations under Clauses 82.2 to 82.4 below.

82.2. If the Authority wishes to terminate this Contract under this Clause it must give notice to the Contractor stating:

82.2.1. that the Authority is terminating this Contract under this Clause 82 (Voluntary Termination by Authority);

82.2.2. that this Contract will terminate on the date falling 90 Business Days after the date of receipt of the notice; and

82.2.3. whether the Authority has chosen to exercise its option Clause 93 (Transfer of Assets on Termination).

82.3. This Contract will terminate on the date falling 90 Business Days after the date of receipt of the notice referred to in Clause 82.2 above.

83. **COMPENSATION ON TERMINATION FOR VOLUNTARY TERMINATION**

83.1. On termination under Clause 82 (Voluntary Termination) above, the Authority shall pay the Contractor compensation in accordance with the provisions of paragraph 2 of Schedule 44 (Compensation on Termination).

84. **TERMINATION ON AUTHORITY DEFAULT**

84.1. If an Authority Default has occurred and the Contractor wishes to terminate the Contract it must serve a termination notice on the Authority within 45 Business Days of becoming aware of the Authority Default.

84.2. The termination notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.

84.3. This Contract will terminate on the day falling 45 Days after the date the Authority receives the termination notice, unless the Authority rectifies the Authority Default within 30 Days of receipt of the termination notice.

85. **COMPENSATION ON TERMINATION FOR AUTHORITY DEFAULT**

85.1. On termination of the Contract under Clause 84 (Termination on Authority Default), the Authority shall pay the Contractor compensation in accordance with the provisions of paragraph 2 of Schedule 44 (Compensation on Termination).

CONTRACT A

86. NOT USED87. NOT USED88. TERMINATION FOR PERSISTENT BREACH

88.1. If a particular breach of the Contractor's obligations other than any breach for which Performance Deductions could have been awarded, or a reduced Availability Payment made has occurred more than six times in any twelve month period then the Authority may serve a notice on the Contractor:

88.1.1. specifying that the notice is a formal warning notice;

88.1.2. giving reasonable details of the breach; and

88.1.3. stating that the breach is a breach which, if it recurs or continues, may result in a termination of this Contract.

88.2. If, following service of such a warning notice under Clause 88.1 ("Warning Notice") the breach specified has continued beyond 30 Days or recurred three or more times within the six month period after the date of service of the Warning Notice, then the Authority may serve another notice on the Contractor:

88.2.1. specifying that it is a final Warning Notice;

88.2.2. stating that the breach specified has been the subject of a Warning Notice served within the 6 month period prior to the date of service of the final Warning Notice; and

88.2.3. stating that if the breach continues or recurs two or more times within the 6 month period after the date of service of the final Warning Notice, this Contract may be terminated for Contractor Default .

88.3. A Warning Notice may not be served in respect of any breach which has previously been counted in the making of a separate Warning Notice.

89. TERMINATION ON FORCE MAJEURE

89.1. No party shall be entitled to bring a claim for a breach of obligations under this Contract by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Contract for a Contractor Default if a Contractor Default arises from a Force Majeure Event (but without prejudice to Clauses 89.5 or 89.7 below)

89.2. Nothing in Clause 89.1 above shall affect any entitlement to make deductions or any deductions made as a result of Schedule 6b (Performance Mechanism) in the period during which the Force Majeure Event is subsisting.

89.3. On the occurrence of a Force Majeure Event, the Affected Party

CONTRACT A

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

- 89.4. As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 89.5. If no such terms are agreed on or before the date falling 120 Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than 180 Days, then, subject to Clause 89.7 below, either party may terminate this Contract by giving 30 Days' written notice to the other Party.
- 89.6. If this Contract is terminated under Clause 89.5 above or Clause 89.7 below
- 89.6.1. compensation shall be payable by the Authority in accordance with Clause 90 (Compensation on Termination for Force Majeure); and
- 89.6.2. the Authority may require the Contractor to transfer its title, interest and rights in and to any Assets to the Authority in accordance with Clause 93 (Transfer of Assets on Termination).
- 89.7. If the Contractor gives notice to the Authority under Clause 89.5 above that it wishes to terminate this Contract, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of its receipt stating that it requires this Contract to continue. If the Authority gives the Contractor such notice, then:
- 89.7.1. the Authority shall pay to the Contractor the Unitary Charge from the day after the date on which this Contract would have terminated under Clause 89.5 as if the Services were being fully provided; and
- 89.7.2. this Contract will not terminate until expiry of written notice (of at least 30 Days) from the Authority to the Contractor that it wishes this Contract to terminate.
- 89.8. The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with industry good practice to overcome or minimise the consequences of the Force Majeure Event.

CONTRACT A

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

90. **COMPENSATION ON TERMINATION FOR FORCE MAJEURE**

90.1. On termination under Clause 89 (Termination for Force Majeure) above, the Authority shall pay to the Contractor compensation in accordance with the provisions of paragraph 3 of Schedule 44 (Compensation on Termination).

91. **TERMINATION FOR CORRUPT GIFTS AND FRAUD**

91.1. The Contractor warrants that in entering the Contract it has not committed any Prohibited Act.

91.2. If the Contractor or any Sub Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with sub-Clauses 91.2 to 91.8 below.

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

91.4. If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and the Contract will terminate, unless within 30 Days of receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.

91.5. If the Prohibited Act is committed by a Sub Contractor or by an employee of that Sub Contractor not acting independently of that Sub Contractor, then the Authority may give notice to the Contractor of termination and the Contract will terminate, unless 30 Days of receipt of such notice the Contractor terminates the relevant Project Document and procures the performance of such part of the Works and/or Services by another person.

91.6. If the Prohibited Act is committed by an employee of a Sub Contractor acting independently of that Sub Contractor, then the Authority may give notice to the Contractor of termination and the Contract will terminate, unless within 30 Days of receipt of such notice the Sub Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.

91.7. If the Prohibited Act is committed by any other person not

CONTRACT A

specified in Clauses 91.2 to 91.6 above, then the Authority may give notice to the Contractor of termination and the Contract will terminate unless within 30 Days of receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub Contractors) and (if necessary) procures the performance of such part of the Works and/or Services by another person.

91.8. Any notice of termination under this Clause 91 shall specify:

91.8.1. the nature of the Prohibited Act;

91.8.2. the identity of the party whom the Authority believes has committed the Prohibited Act;

91.8.3. the date on which the Contract will terminate, in accordance with the applicable provision of this Clause; and

91.8.4. the Authority's chosen option under Clause 93 (Transfer of Assets on Termination).

92. **COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD**

92.1. On termination of the Contract in accordance with Clause 91 (Termination for Corrupt Gifts and Fraud), then the Authority shall pay the Contractor compensation in accordance with the provisions of paragraph 4 of Schedule 44 (Compensation on Termination).

93. **TRANSFER OF ASSETS ON TERMINATION**

On termination for whatever reason the Authority shall have the option to require the Contractor to transfer to the Authority all of its right, title and interest in and to the Assets at nil cost to the Authority in accordance with the provisions of Clause 101 (Exit Provisions on Expiry or Termination).

94. **GROSS UP OF TERMINATION PAYMENTS**

94.1. If any amount of compensation payable by the Authority under Clauses 85 (Compensation on Termination for Authority Default), 90 (Compensation on Termination for Force Majeure), 92 (Compensation for Corrupt Gifts and Fraud), 83 (Compensation on Voluntary Termination) and 87 (Compensation on Termination for Refinancing Breach) is subject to Tax 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 in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

95. **NOT USED**

96. **CONTRACTOR'S ACCOUNTS**

96.1. The accounts of the Contractor shall be maintained as foreseen in the

CONTRACT A

Financial Model.

97. **SET OFF ON TERMINATION**

97.1. Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation under Clause 85 (Compensation on Termination for Authority Default), Clause 90 (Compensation on Termination for Force Majeure) Clause 92 (Compensation on Termination for Corrupt Gifts and Fraud) and Clause 83 (Compensation on Voluntary Termination), save to the extent that after such an amount has been set off, the termination payment made would be in an amount greater than or equal to the Relevant Termination Amount.

98. **METHOD OF PAYMENT**

98.1. The Authority shall pay to the Contractor the Termination Sum together with interest on any Relevant Termination Amount at the Corporate Debt Rate on or before the date falling 60 Days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Relevant Termination Amount element of the Termination Sum in accordance with Clause 98.2 below.

98.2. The Authority may, other than on an Authority Default, elect to pay the Adjusted Estimated Fair Value of the Contract or the Relevant Termination Amount element of the Termination Sum:

98.2.1. in instalments as follows:

98.2.1.1. in respect of the Relevant Termination Amount or that element of the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Relevant Termination Amount (where the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Relevant Termination Amount) on the dates (the "Instalment Dates") and in the amounts that the Contractor would have been required to pay principal under the terms of the Initial Financing Agreement had the Termination Date not occurred and the sum remaining after deducting the Relevant Termination Amount from the Adjusted Estimated Fair Value of the Contract shall be paid in equal instalments on the Instalment Dates;

98.2.1.2. where the Adjusted Estimated Fair Value of the Contract is less than the

CONTRACT A

Relevant Termination Amount, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal under the terms of the Initial Financial Agreement had the Termination Date not occurred; or

98.2.2. as the parties may otherwise agree.

98.3. From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Corporate Debt Rate and be payable on the next occurring Instalment Date.

98.4. If the Authority has elected to pay in accordance with Clause 98.2 (Instalments) above, it may (on 28 Days prior written notice to the Contractor) elect to pay the Adjusted Estimated Fair Value of the Contract or the Relevant Termination Amount element of the Termination Sums in full on any Instalment Date.

98.5. If the Authority:

98.5.1. fails to make a payment to the Contractor in accordance with Clauses 98.2.1 and/or 98.2.2 and/or 98.3 above; or

98.5.2. breaches Clause 113 (Assignment and Sub-Contracting),

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract, the Relevant Termination Amount element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

98.6. The amount of the Relevant Termination Amount shall be derived from the Initial Financing Agreements as varied from time to time (subject at all times to Clause 8 (Project Documents and Financing Agreements).

99. SURVEYS ON EXPIRY AND TERMINATION

For the avoidance of doubt, the provisions of this Clause 99 shall apply in respect of the Facilities and shall not apply to the Site Conditions or any Contamination. The provisions of Clause 29 (Site Matters) shall apply to Site Conditions and the provisions of Schedule 35 (Environmental Criteria) shall apply in respect of Contamination.

99.1. Retention Fund

99.1.1. If the Contractor has been notified under Clause 99.2 (Final Survey) that rectification and/or maintenance work is required, 12 months prior to the Expiry Date the Authority shall deduct the costs of that work as quantified by that survey from the Unitary Charge payable after such date and pay such amount into an interest bearing account (the "Retention Fund Account") until the Contract has expired or terminated.

CONTRACT A

99.2. Final Survey

- 99.2.1.** 18 months prior to the Expiry Date, the Authority shall be entitled to require the carrying out a final survey of the Assets to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under Clause 66 (Planned Maintenance).
- 99.2.2.** The Authority shall notify the Contractor in writing a minimum of 7 Days in advance of the date it wishes to carry out the final survey. The Authority shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least 2 Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor's ability to provide the Service.
- 99.2.3.** The Authority shall appoint a suitably qualified and experienced independent surveyor and shall procure that the independent surveyor uses all reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor shall afford the independent surveyor, appointed (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey. The cost of the final survey shall be borne by the Authority.
- 99.2.4.** If the Final Survey shows in respect of any particular Facility that the Contractor has not complied with or is not complying with its obligations under Clause 66 (Planned Maintenance) the Authority shall:
- 99.2.4.1.** notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Facility in question to the standard they would have been in if the Contractor had complied or was complying with its obligations under Clause 66 (Planned Maintenance);
 - 99.2.4.2.** specify a reasonable period within which the Contractor must carry out such work; and
 - 99.2.4.3.** recover the cost of the Final Survey to the extent relating to that Facility from the Contractor by means of either:

CONTRACT A

99.2.4.3.1. a withdrawal from the Retention Fund Account; or

99.2.4.3.2. a deduction from the next Unitary Charge.

99.2.5. The Contractor shall carry out such rectification and/or maintenance work to the Authority's reasonable satisfaction within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

99.2.6. If and to the extent that the Contractor carries out the necessary rectification and/or maintenance work to Authority's reasonable satisfaction within the specified period, the Authority shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account. If the amount in the Retention Fund Account is insufficient to cover the Contractor's costs the Contractor shall bear the balance of its costs itself.

99.2.7. If and to the extent that the Contractor fails to carry out the necessary rectification and/or maintenance work to the Authority's reasonable satisfaction within the specified period, the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account to pay for such work or, where there are insufficient funds in the Retention Fund Account, make deductions from the Unitary Charge to pay for such work.

99.2.8. If:

99.2.8.1. all the rectification and/or maintenance work identified by the Independent Surveyor has been carried out to the Authority's reasonable satisfaction; and

99.2.8.2. all such other work has been paid for by the Contractor; and

99.2.8.3. no other termination notice given in accordance with this Contract is outstanding,

then the Authority shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

100. TREATMENT OF ASSETS AT EXPIRY DATE

100.1. On or before a date falling no later than 12 months prior to the Expiry Date, the Authority shall notify the Contractor in writing

CONTRACT A

whether it wishes:-

- 100.1.1. to retender the provision of the Service; or
 - 100.1.2. the Contractor to transfer all of its rights, title and interest in and to the Assets to the Authority at nil cost to the Authority; or
- 100.2. If the Authority wishes to retender the provision of the Service then:-
- 100.2.1. the retendering shall be carried out on the basis that the Authority will contract with a successor contractor to provide the new service on and from the Expiry Date; and
 - 100.2.2. the Contractor shall do all necessary acts (including entering into any contracts) which are reasonable and within its legal power and control to ensure that the successor contractor obtains all of its rights, title and interest in and to the Assets with effect on and from the Expiry Date; and
 - 100.2.3. the Authority will bear all costs of any retendering of the Contract on expiry.

101. EXIT PROVISIONS ON EXPIRY OR TERMINATION

101.1. Transfer of Assets

101.1.1. On the earlier of:

- 101.1.1.1. the Termination Date; or
- 101.1.1.2. the Expiry Date

the Contractor shall take all due and necessary steps that are within its lawful power to transfer the Assets to the Authority or to a new contractor as the case may be and as directed by the Authority for consideration of £1 receipt of which shall be deemed. Such steps shall include (without limitation) and at nil cost to the Authority:

- 101.1.1.3. to the extent that it is able in accordance with the terms of such agreements and contracts, novating or assigning relevant and current supply, disposal and transport agreements and contracts for the onward sale of Recyclable Waste and Compostable Waste;
- 101.1.1.4. entering into the Freeth Street Lease with the Authority;
- 101.1.1.5. transferring to the extent that it is able in accordance with the terms of such arrangements those contractual rights and revenues referred to in limb (e) of the

CONTRACT A

definition of Assets;

101.1.1.6. procuring the transfer of Intellectual Property Rights in accordance with the provisions of Clause 125 (Intellectual Property Rights and IT Systems Licences);

101.1.1.7. reversion of the Leases and Sub-Leases as appropriate in accordance with Clause 15 (Land Issues);

101.1.1.8. transferring ownership, title and all beneficial rights in the Equipment which is listed in the Final Equipment List (prepared pursuant to Clause 62 (Equipment)) which are owned by the Contractor to the Authority and entering into such instruments as are necessary to effect such transfer;

101.1.1.9. in respect of any Project Equipment which is listed in the Final Equipment List which is leased from any third party or which have been taken on hire purchase or other similar arrangement, subject to and where provided for under the terms of the relevant lease hire purchase or other arrangement assign or novate such arrangements; and

101.1.1.10. in respect of Project Equipment which is listed in the Final Equipment List, procure the transfer of the benefit of any manufacturers guarantees, warranties, licences and service records in respect of the Project Equipment.

101.1.2. For the avoidance of doubt the provisions of Clause 118 (Indemnities) may apply in accordance with the terms of that Clause to any liability incurred by the Contractor or any of its Sub-Contractors relating to the Assets prior to Expiry or Termination.

101.1.3. The Contractor shall use all reasonable endeavours to transfer (to the extent that it can lawfully do so) any Consent relevant to each Facility to the Authority or its nominated contractor and shall include the option for the Authority to require the surrender of any relevant Permit or Waste Management Licence.

101.2. Provision of Information

101.2.1. On or before the Expiry Date or Termination Date, except to the extent that the Authority directs otherwise, the

CONTRACT A

Contractor shall provide to the Authority in hard copy and (where practicable) electronically in a commonly used format:

- 101.2.1.1. Contractor's Records in accordance with Clause 124 (Contractor's Records). Such records shall be organised, indexed and filed in a manner which will enable a competent person to access and understand them without undue difficulty;
- 101.2.1.2. Transfer notes in relation to all Contract Waste in situ at all Facilities;
- 101.2.1.3. Copies of all operating and maintenance manuals relating to Assets and any associated Equipment or components within them; and
- 101.2.1.4. Workforce information in accordance with Clause 64 (TUPE).

CONTRACT A

PART SIX – PERFORMANCE AND CHANGE**102. OPEN BOOK**

- 102.1. The parties shall (subject to any restrictions imposed by law or in relation to Commercially Sensitive Information) use their reasonable endeavours to operate on an open book basis in respect of their obligations under this Contract and shall (unless prevented by statute, court order, injunction or similar process) provide access to such information as is required to fulfil these obligations and nothing in this Clause 102 shall prejudice or otherwise qualify the Authority's position as a local authority or imply a fetter on the Authority's statutory financial or audit responsibilities.
- 102.2. Nothing in this Clause 102 shall:
- 102.2.1. oblige any party acting in accordance with Good Industry Practice to incur any additional material cost or expense;
 - 102.2.2. relieve any party of any obligation to pay any sum due and payable under this Contract; or
 - 102.2.3. oblige the Contractor or any Contractor Related Party to release any Commercially Sensitive Information.

103. SERVICE DELAY

- 103.1. The Parties have agreed that the provisions of Clause 36 (Compensation Events) shall apply:-
- 103.1.1. Generally in respect of the Works pursuant to Clause 36 (Compensation Events); and
 - 103.1.2. In respect of the Project and this Contract other than the Works only in respect of those Authority obligations which are expressly stated in Clause 103.3 below.

This Clause 103 (Service Delay) shall apply without prejudice to the application of Clause 36 (Compensation Events) in respect of the Works.

- 103.2. For the avoidance of doubt, where an obligation of the Authority under this Contract is not referred to in Clause 103.3, subject to the provisions of Clause 119 (Exclusive Remedies) this Clause 103 shall not operate as a waiver by the Contractor of or otherwise to reduce or prejudice in any way the rights of the Contractor in respect of a breach of such obligations whether arising under this Contract, in common law, statute, in equity (including tort) or howsoever otherwise.
- 103.3. Accordingly in the circumstances set out in Clause 103.1.2 the Contractor shall only be entitled to claim relief and/or compensation in accordance with the provisions of Clause 36 (Compensation Events) in respect of the following provisions or matters:
- 103.3.1. Clause 12.4 (Authority Title Warranties) and Schedule 9 (Authority Title Warranties);
 - 103.3.2. Clause 12.5 (Ancillary Documents);

CONTRACT A

- 103.3.3. Clause 15 and Schedule 8 (Site and Property Agreements);
 - 103.3.4. [Not Used];
 - 103.3.5. [Not Used];
 - 103.3.6. subject always to the provisions therein, Clause 44 (Exclusivity) and Clause 44A (Priority of Sheffield Waste);
 - 103.3.7. Clause 46 (Changes in WCA Waste) to the extent provided therein;
 - 103.3.8. Clause 47 (Recycling and New Recyclable Waste) to the extent provided therein;
 - 103.3.9. Not Used;
 - 103.3.10. Clause 62 (Equipment);
 - 103.3.11. Clause 67 (Surveys);
 - 103.3.12. Clause 99 (Surveys on Expiry and Termination);
 - 103.3.13. Clause 108.7 (Authority Step in);
 - 103.3.14. Clause 109 (Recycling Step in);
 - 103.3.15. Clause 110 (Right of Access);
 - 103.3.16. the presence of Existing Contamination (subject to Schedule 35 (Environmental Criteria) and the consequences thereof (including without limitation any remediation works, investigative works and/or monitoring reasonably required);
 - 103.3.17. subject always to the provisions of Clause 128.8 (Notices) breach by the Authority of an express obligation to provide a response, notice, consent or refusal or other communication whatsoever under this Contract within the timescale specified in this Contract for such a response (including without limitation pursuant to Schedule 16 (Review Procedure));
 - 103.3.18. Not Used.
- 103.4. If and to the extent that a Service Period Compensation Event occurs the provisions of Clause 36 (Compensation Events) shall apply.
- 103.5. For the avoidance of doubt, neither Clause 36 (Compensation Events) nor this Clause 103 (Service Delay) shall vary the Planning Longstop Date in any circumstances.

104. **RELIEF EVENTS**

- 104.1. **If and to the extent that a Relief Event:-**
- 104.1.1. **is the direct cause of a delay in Service Commencement in respect of any Facility or Service; and/or**
 - 104.1.2. **adversely affects the ability of the Contractor to perform any of its obligations under this Contract,**
- then the Contractor is entitled to apply for relief from any rights of**

CONTRACT A

the Authority arising under Clause 80 (Termination on Contractor Default) (and to the extent only provided in Schedule 22 (Availability) its obligations under this Contract).

104.2. Save as provided in Schedule 22 (Availability) to obtain relief, the Contractor must (using the applicable agreed form as set out in Schedule 48 (Pro Forma Notices)):-

104.2.1. as soon as is practicable, and in any event within 14 Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Authority a notice of its claim for relief from its obligations under the Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

104.2.2. within 14 Days of receipt by the Authority of the notice referred to in Clause 104.2.1 above, give full details of the relief claimed; and

104.2.3. demonstrate to the reasonable satisfaction of the Authority that:-

104.2.3.1. the Contractor and its Sub-contractors could not have avoided such occurrence or its consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

104.2.3.2. the Relief Event directly caused the delay to the relevant Planned Service Commencement Date or, following the Planned Service Commencement Date, delay in achieving Service Commencement by the Long Stop Date; or

104.2.3.3. the time lost and/or relief from the obligations under the Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and

104.2.3.4. the Contractor is using reasonable endeavours to perform its obligations under the Contract.

104.3. In the event that the Contractor has complied with its obligations under Clause 104.2 above, then:-

104.3.1. the Planned Service Commencement Date or, following

CONTRACT A

the Planned Service Commencement Date, the Long Stop Date, shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

- 104.3.2. the Authority shall not be entitled to exercise its rights to terminate the Contract under Clause 80.2 (Termination on Contractor Default) and, subject to Clause 104.4 below, shall give such other relief as has been requested by the Contractor.
- 104.4. Nothing in clause 104.3 above shall affect any entitlement to make deductions or any deductions made as a result of Schedule 6b (Performance Mechanism) during the period in which the Relief Event is subsisting.
- 104.5. In the event that information required by Clause 104.2 above 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.
- 104.6. 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 materially inaccurate or misleading.
- 104.7. 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 the Planned Service Commencement Date or the Long Stop Date and/or relief from other obligations under this Contract, the parties shall resolve the matter in accordance with Clause 116 (Dispute Resolution).

105. CHANGE IN LAW

- 105.1. If a Qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects each Party using the applicable agreed form as set out in Schedule 48 (Pro Forma Notices), giving details of its opinion of:
- 105.1.1. any necessary change in the Works the Facilities, the Equipment, plant and or the Services;
- 105.1.2. whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;
- 105.1.3. whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve any Planned Service Commencement Date and/or meet the Specification and Service Standards during the implementation of any relevant Qualifying Change in Law ;
- 105.1.4. any loss of revenue (including Third Party Income) that will result from the relevant Qualifying Change in Law;

CONTRACT A

105.1.5. any Estimated Change in Project Costs change in costs that directly result from the Qualifying Change in Law; and

105.1.6. any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Contract Period,

in each case giving in full detail the procedure for implementing the change in the Facilities, Site, Works, Equipment, and/or the Services. Such notice delivered by one party to the other shall be known as a Qualifying Change in Law Notice if it states that, in the opinion of the party issuing it, the Change in Law is a Qualifying Change in Law.

105.2. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in accordance with Clauses 105.3 to 105.7 below.

105.3. As soon as practicable after receipt of any notice from either party under Clause 105.1, the parties shall discuss and agree the issues referred to in Clause 105.1 and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law; including:-

105.3.1. providing evidence that the Contractor has or will use reasonable endeavours (including where reasonably practical the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;

105.3.2. 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 that foreseeable Changes in Law at that time have been taken into account by the Contractor;

105.3.3. giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the shareholders or their Affiliates carry on business; and

105.3.4. 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 Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clause 105.1.

105.4. If the parties agree or it is determined under Clause 116 (Dispute Resolution) that the Contractor is required to incur additional Capital Expenditure due to a Qualifying Change in Law (excluding the Contractor's Share of any Capital Expenditure agreed or determined to be required as a result of a General Change in Law

CONTRACT A

under this Clause), then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it.

- 105.5. The Contractor's Share and the Newark and Worksop Capital Expenditure shall be solely for the account of the Contractor.
- 105.6. If the Contractor has used reasonable endeavours to obtain funding for the Capital Expenditure referred to in Clause 105.4, but has been unable to do so within 60 Days of the date that the agreement or determination referred to in Clause 105.4 occurred, then the Authority shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling 30 Days after the Capital Expenditure has been incurred.
- 105.7. Any compensation payable under this Clause by means of an adjustment to or reduction in the Unitary Charge shall be calculated in accordance with Clause 111 (Financial Adjustments).
- 105.8. Without prejudice to the foregoing provisions of this Clause 105 (Change in Law), in relation to a Change in Law arising from or relating to the Sheffield ERF and/or the Sheffield Contract, the Contractor shall only be entitled to claim an adjustment to the Unitary Charge to the extent that the Change in Law is a Sheffield Change in Law.

106. PAYMENT OF IRRECOVERABLE VAT

- 106.1. The Authority shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law.
- 106.2. Any such payment shall be made within 28 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.
- 106.3. For the purposes of this Clause 106 "Irrecoverable VAT" means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in performing the Works or the Services or any of the obligations or provisions under the Contract (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Contractor is not entitled to repayment or credit from HM Customs & Excise in respect of such input VAT.

107. AUTHORITY AND CONTRACTOR CHANGES

- 107.1. For the avoidance of doubt, the Parties agree that no Authority Change or Contractor Change shall occur or be deemed to have occurred through course of conduct or otherwise but only through the application of the provisions of this Clause 107 (Changes).

Authority Changes

- 107.2. The Authority has the right to propose changes to the Works and/or the Services (other than Changes made in accordance with

CONTRACT A

Clause 107.14 (Small Works Changes)) in accordance with this Clause 107. The Authority shall not propose a change to the Works and/or Service which:

- 107.2.1. requires the Works and/or Services to be performed in a way that infringes Legislation or is inconsistent with Good Industry Practice;**
- 107.2.2. would cause any Consent to be revoked (or would require a new Consent required to implement the relevant change in Service which is likely to be unobtainable);**
- 107.2.3. would, if implemented, result in a change in the nature of the Project (ie so that it is no longer a waste management project);**
- 107.2.4. would materially and adversely affect the Contractor's ability to deliver the Services;**
- 107.2.5. would materially and adversely affect the health and safety of any person; or**
- 107.2.6. the Authority does not have the legal powers to require the implementation of.**

If the Authority requires a change to the Works and/or the Services, it must serve an Authority Notice of Change on the Contractor in accordance with Clause 107.2.

107.3. The Authority Notice of Change shall:

- 107.3.1. set out the change in the Works or Services required in sufficient detail to enable the Contractor to calculate and provide the Estimated Change in Project Costs in accordance with Clause 107.3 (the "Estimate");**
- 107.3.2. in the event that the Authority Change will require Capital Expenditure, state whether the Authority intends to pay the Contractor the costs involved in implementing the Authority Change or whether the Authority requires the Contractor to use its reasonable efforts to obtain funding in accordance with Clause 107.9; and**
- 107.3.3. require the Contractor to provide to the Authority within 21 Days of receipt of the Authority Notice of Change the Estimate.**

107.4. As soon as practicable and in any event within 21 Days after having received the Authority Notice of Change, the Contractor shall deliver to the Authority the Estimate. The Estimate shall include the opinion of the Contractor on:

- 107.4.1. whether relief from compliance with obligations is required, including the obligations of the Contractor to achieve each Planned Service Commencement Date and**

CONTRACT A

- meet the requirements of the Specification and the Payment and Performance Mechanism during the implementation of the Authority Change;
- 107.4.2. any impact on the provision of the Services;
 - 107.4.3. any amendment required to this Contract and/or any Project Document or Ancillary Document as a result of the Authority Change;
 - 107.4.4. any Estimated Change in Project Costs that results from the Authority Change;
 - 107.4.5. any loss of revenue (including Third Party Income) that results from the Authority Change;
 - 107.4.6. any Capital Expenditure that is required or no longer required as a result of the Authority Change;
 - 107.4.7. any regulatory approvals which are required; and
 - 107.4.8. the proposed method of certification of any construction or operational aspects of the Works or the Services required by the proposed Authority Change if not covered by the procedures specified in Clause 40 (Completion of Works).
- 107.5. As soon as practicable after the Authority receives the Estimate, the parties shall discuss and agree the issues set out in the Estimate, including:
- 107.5.1. providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
 - 107.5.2. 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 by the Contractor; and
 - 107.5.3. 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 Authority Change concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clause 107.3.1 and/or 107.3.2 and/or 107.3.3.

In such discussions the Authority may modify the Authority Notice of Change, and (if the estimated increase in Capital Expenditure in respect of the Authority Change is expected to exceed £200,000 (Indexed) and it is practical for the Contractor to do so) the Authority may require the Contractor to seek and

CONTRACT A

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 14 Days after receipt of such modification, notify the Authority of any consequential changes to the Estimate.

- 107.6. If the Contractor does not intend to use its own resources to implement an Authority Change it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirements that the Contractor should not be worse off as a result of the implementation of the Authority Change) when procuring any work, services, supplies, materials or equipment required in relation to the Authority Change.
- 107.7. If the parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with Clause 116 (Dispute Resolution).
- 107.8. As soon as practicable after the contents of the Estimate have been agreed or otherwise determined in accordance with Clause 116 (Dispute Resolution), the Authority shall:
- 107.8.1. confirm in writing the Estimate (as modified if applicable); or
 - 107.8.2. withdraw the Authority Notice of Change.
- 107.9. If the Authority does not confirm in writing the Estimate (as modified) within 30 Days of the contents of the Estimate having been agreed in accordance with Clause 107.4 or determined pursuant to Clause 107.6 then the Authority Notice of Change shall be deemed to have been withdrawn. Where there is such a withdrawal (either pursuant to this Clause 107.9 or Clause 107.8 above the Authority shall pay to the Contractor the reasonable additional third party costs incurred by the Contractor in preparing such Estimate provided that:
- 107.9.1. the Contractor has used all reasonable endeavours to submit a reasonably priced Estimate;
 - 107.9.2. the Contractor has made available to the Authority a cost breakdown of the Estimate including an estimate of third party costs to be incurred by the Authority if the Authority Notice of Change is withdrawn or deemed to be withdrawn;
 - 107.9.3. the Authority has:-
 - 107.9.3.1. approved the estimate of third party costs referred to in Clause 107.9.2 above and the type of third party prior to any third party costs being incurred; and
 - 107.9.3.2. agreed that, given the nature of the

CONTRACT A

proposed 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 Services or the Works and the work required in submitting an accurate Estimate in compliance with this Clause 107.9; and

- 107.9.4. 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.
- 107.10. In the event that the Estimate (as modified) involves estimated Capital Expenditure then (unless the Authority has elected to fund such costs in accordance with Clause 107.3.2) the Contractor shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to it.
- 107.11. If the Contractor has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within 60 Days of the date that the Authority confirmed the Estimate, then the Contractor shall have no obligation to carry out the Authority Change, unless the Authority agrees within 20 Days of the end of such period to pay the costs for which funding is not available on the basis provided for in Clause 107.12 below.
- 107.12. 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.
- 107.13. In the event that the Estimate has been confirmed by the Authority, then the adjustment to the Unitary Charge shall be calculated in accordance with Clause 111 (Financial Adjustments)
- 107.14. Where the Authority agrees to pay the costs for which funding is not available pursuant to Clause 107.10 above:
- 107.14.1. the Authority and the Contractor shall agree:
- 107.14.1.1. 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 Authority Change to the extent borne by the Authority; and
- 107.14.1.2. where payment for part of a change in Service or Works reflects the carrying out of, or specific progress towards,

CONTRACT A

an element within the Authority Change, an objective means of providing evidence confirming that the part of the Authority Change corresponding to each occasion when payment is due under the payment Schedule appears to have been duly carried out,

(such payment and evidence to be determined in accordance with Clause 116 (Dispute Resolution), in the event of the Authority and the Contractor failing to agree as to its terms);

107.14.2. the Authority shall make a payment to the Contractor within 15 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 Authority Change has been carried out; and

107.14.3. if payment is not made in accordance with Clause 107.13.2, the Authority shall pay interest to the Contractor on the amount unpaid from the date 15 Business Days after receipt of the relevant invoice until paid at the Prescribed Rate.

Small Works Changes

107.15. If agreed by the Parties, 28 Days prior to the Planned Service Commencement Date for a Facility and the commencement of each subsequent Contract Year for the first 5 years, and within 30 Business Days of any request in any subsequent Contract Year, the Contractor shall propose a schedule of rates to be agreed with the Authority (the "Small Works Rates"), such agreed rates to be applied in respect of any request from the Authority for Small Works to be completed during that Contract Year.

107.16. The value of any Small Works shall be calculated on the basis that:

107.16.1. the labour element shall be calculated in accordance with the Small Works Rates or, where such rates are not applicable, in accordance with rates which are fair and reasonable plus 11 per cent; and

107.16.2. the materials element shall be charged at the cost of materials to the Contractor or to the contractor carrying out the work (net of all discounts) plus 11 per cent.

107.17. The Contractor and the Authority shall agree the timing of any Small Works, so as to minimise any inconvenience to the Authority. The Contractor shall take all reasonable steps to

CONTRACT A

minimise the duration of any Small Works.

107.18. Any dispute between the parties relating to Small Works shall be determined in accordance with Clause 116 (Dispute Resolution).

Contractor Changes in Service

107.19. If the Contractor wishes to introduce a change in the Works or Services, it must serve a Contractor Notice of Change on the Authority.

107.20. The Contractor Notice of Change must:

107.20.1. set out the proposed change to the Works or Services in sufficient detail to enable the Authority to evaluate it in full;

107.20.2. specify the Contractor's reasons for proposing the change to the Works or Services;

107.20.3. request the Authority to consult with the Contractor with a view to deciding whether to agree to the change to the Works or Services and, if so, what consequential changes the Authority requires as a result;

107.20.4. indicate any implications of the change to the Works or Services;

107.20.5. Indicate, in particular, whether a variation to the Unitary Charge is proposed (and, if so, give a detailed cost estimate of such proposed change); and

107.20.6. indicate if there are any dates by which a decision by the Authority is critical.

107.21. The Authority shall evaluate the Contractor's proposed change to the Works or Services in good faith, taking into account all relevant issues, including whether:

107.21.1. a change in the Unitary Charge will occur;

107.21.2. the change affects the quality of the Works or Services or the likelihood of successful delivery of the Services;

107.21.3. the change will interfere with the relationship of the Authority with third parties;

107.21.4. the financial strength of the Contractor is sufficient to perform the changed Works or Services; or

107.21.5. the residual value of the Assets is reduced; or

107.21.6. the change materially affects the risk or costs to which the Authority is exposed.

107.22. As soon as practicable after receiving the Contractor Notice of Change the parties shall meet and discuss the matter referred to in it. During their discussions the Authority may propose modifications or accept or reject the Contractor Notice of Change.

107.23. If the Authority accepts the Contractor Notice of Change (with or

CONTRACT A

without modification), the relevant change to the Services within 20 Business Days of the Authority's acceptance. 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 Contract or any relevant Project Document or Ancillary Document which are necessary to give effect to the change to the Services.

- 107.24. If the Authority rejects the Contractor Notice of Change, it shall not be obliged to give its reasons for such a rejection.
- 107.25. Unless the Authority's acceptance specifically agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge as a result of a change to the Works or Services proposed by the Contractor.
- 107.26. If the change to the Works or Services proposed by the Contractor causes or will cause the Contractor's costs or those of a Sub-Contractor to decrease, the Unitary Charge shall be adjusted downwards to reflect a 50/50 sharing in the decrease in the cost of providing the Works and/or Services between the Authority and the Contractor.
- 107.27. The Authority cannot reject a change to the Works or Services which is required in order to conform to a Change in Law. The cost of introducing a change to the Works or Services resulting from a Change in Law (including any resulting variation in the Unitary Charge) shall be dealt with in accordance with Clause 105 (Change in Law) and to the extent not dealt with shall be borne by the Contractor.
- 107.28. Where any Authority Change or Contractor Change relates to:
- 107.28.1. changes to the WCA Baseline; or
 - 107.28.2. a New Recyclable Material; or
 - 107.28.3. Excess Tonnage
- the provisions of Clause 46 (Changes in WCA Waste), Clause 47 (New Recyclable Materials) and Clause 48 (Capacity) respectively shall apply in addition to the provisions of this Clause 107.

CONTRACT A

PART SEVEN – STEP-IN AND ACCESS**108. AUTHORITY STEP-IN**

- 108.1. If the Authority reasonably believes that it needs to take action in connection with the Services:
- 108.1.1. because a serious risk exists to the health or safety of persons or property or to the environment; and/or
 - 108.1.2. to discharge a statutory duty
- then the Authority shall be entitled to take action in accordance with Clauses 108.2 to 108.5 below. For the avoidance of doubt, the Authority shall not be entitled to take such action in respect of the element of the Services comprised in the Sheffield Contract.
- 108.2. If Clause 108.1 applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:
- 108.2.1. the action it wishes to take;
 - 108.2.2. the reason for such action;
 - 108.2.3. the date it wishes to commence such action;
 - 108.2.4. the time period which it believes will be necessary for such action; and
 - 108.2.5. to the extent practicable, the effect on the Contractor and its obligation to carry out the Works and/or provide the Services during the period such action is being taken.
- 108.3. Following service of such notice, the Authority shall take such action as notified under Clause 108.2 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.

Step - in without Contractor Breach

- 108.4. If the Contractor is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:
- 108.4.1. the Contractor shall be relieved from its obligations to carry out the Works and/or provide such part of the Services; and
 - 108.4.2. in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Unitary Charge due from the Authority to the Contractor

CONTRACT A

shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

Step-in on Contractor Breach

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

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

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

Performance by the Authority and mitigation

108.6. Provided always that the Required Action has not been taken as a result of the Contractor being in breach of its obligations, the Authority:

108.6.1. shall ensure that it acts in accordance with Good Industry Practice in carrying out or procuring the carrying out of the Required Action; and

108.6.2. will indemnify the Contractor against any Direct Losses suffered or incurred by the Contractor including any loss of Third Party Income arising as a direct result of any Required Action or any breach by the Authority of this Clause 108.

108.7. In the event that Required Action has been taken as a result of the Contractor being in breach of its obligations, the indemnity set out in Clause 108.6.2 shall not apply but the Authority shall set off any Third Party Income actually received by the Authority in connection with taking the Required Action against the Authority's costs of operation in taking the Required Action for the purposes of Clause 108.5.2

109. RECYCLING STEP-IN

109.1. The Recycling and Composting Performance Standards will be measured every Contract Year in respect of the previous 12 months period (the Recycling and Composting Measurement Points). The first Recycling and Composting Measurement Point will be 12 months from the Service Commencement Date. If the Contractor fails to meet the Recycling or Composting Performance Standards on two consecutive Recycling and Composting Measurement Points (a Recycling or Composting Failure), the following will apply:

109.2. The Authority shall without prejudice to all other rights and remedies

CONTRACT A

available to it under the Contract be entitled from a date no greater than six months from the Recycling or Composting Failure to direct the WCAs to deliver such part of the Contract Waste that is source separated and/or commingled Recyclable Waste to an alternative disposal contractor (an Alternative Contractor) for the purposes of Recycling or Composting such Waste (but for no other purposes) provided that:

- 109.2.1. the volume of waste so directed shall be no greater than is necessary for the Contractor and the Alternative Provider between them to achieve the Recycling or Composting Performance Standards;
- 109.2.2. the entitlement of the Authority under this Clause 109 shall extend only until such time as the Contractor is able to satisfy the Authority (acting reasonably) that it will be able to achieve the Recycling or Composting Performance Standards after which all Contract Waste shall once again be delivered to the Contractor and the provisions of this Clause 109 shall apply again;
- 109.2.3. this arrangement shall not be an Authority Change and no compensation shall be payable to the Contractor;
- 109.2.4. in respect of the period in which the Recycling or Composting is being undertaken by an Alternative Provider the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by such measures in full over that period, less an amount equal to all the Authority's reasonable net costs less any Third Party Income actually received incurred in implementing the Alternative Recycling, or Composting provided that the Authority shall only be entitled to deduct net costs directly related to Alternative Recycling or Composting of such waste and no other costs relating to any other form of disposal (including without limitation Landfill Tax) shall be recouped by the Authority; and
- 109.2.5. if the Authority exercises its right pursuant to Clause 109.1 to undertake Alternative Recycling or Composting the Contractor shall be relieved of its obligations to provide such part of the Services, the waste diverted from the Contract shall be deemed to have been Recycled or Composted as appropriate for the purposes of this Contract and no additional WCA cost shall be borne by the Contractor under Clause 52 (Diversion and Tipping Away) by virtue of the Delivery Points being different than in this Contract.
- 109.2.6. The Authority shall take all steps reasonably necessary and consistent with Good Industry Practice to mitigate the consequences of carrying out or procuring the carrying out of Alternative Recycling or Composting.

CONTRACT A

110. RIGHTS OF ACCESS

- 110.1. The Authority or a representative of the Authority may enter upon any property used by the Contractor to perform the Service, to inspect the construction, operation and maintenance of the Project and to monitor compliance by the Contractor with its obligations.
- 110.2. The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of sub-Clause 110.1 above, subject to the Contractors and Sub-contractors construction or operational requirements not being adversely affected and to reimbursement of any reasonable costs or expenses of the Contractor.
- 110.3. If the Authority is or becomes aware of a breach by the Contractor of its obligations under Clause 66 (Planned Maintenance) then the Authority may exercise its right of access and remedy such breach and shall be entitled to recover any costs or expenses incurred from the Contractor as a debt.
- 110.4. The Authority and its representative shall at all times comply with any health and safety requirements when exercising its rights under this Clause.
- 110.5. If the Authority or its representative causes material damage to any Asset in exercising any right under this Clause, then the Authority shall be liable to the Contractor for the reasonable costs directly caused by such damage.

CONTRACT A

PART EIGHT - FINANCE AND AUDIT**111. FINANCIAL ADJUSTMENTS****Updating the Base Case and Financial Model**

- 111.1. Whenever an Adjustment Event occurs, the financial consequence shall (save where otherwise provided in this Contract or where the Parties agree otherwise) be determined in accordance with this Clause 111 and the Unitary Charge adjusted (if applicable) in accordance with Schedule 40 (Unitary Charge Adjustment Protocol).
- 111.2. Where for the purposes of this Clause 111 the Base Case is to be adjusted by reference to an Adjustment Event, this shall be carried out by the Contractor, in consultation with the Authority, to reflect the impact of any prior Adjustment Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Adjustment Event in respect of which such adjustment is being undertaken, including the effect of the Estimated Change in Project Costs.

Application to the Base Case and Financial Model

- 111.3. Where, pursuant to this Contract, either party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case, the adjustment to the Unitary Charge due shall be that required to ensure that, by reference to the Base Case adjusted under this Clause 111, the Contractor is left in a no better and no worse position taking into account and subject to the provisions of Schedule 40 (Unitary Charge Adjustment Protocol) than under the version of the Base Case applicable immediately prior to the relevant adjustment and shall be ascertained in accordance with the applicable part of Schedule 40 (Unitary Charge Adjustment Protocol).

No Better and no Worse

- 111.4. Any reference in this Contract to "no better and no worse" or to leaving the Contractor in a "no better and no worse position" shall be construed by reference (inter alia) to:-
- 111.4.1. notwithstanding any other provisions of this Clause 111, the applicable provision of Schedule 40 (Unitary Charge Adjustment Protocol) to which this Clause 111 shall be subject;
- 111.4.2. the Contractor's rights, duties and liabilities under or arising pursuant to performance of this Contract, the Financing Agreements and any other Project Document or Ancillary Document; and
- 111.4.3. the Contractor's ability to perform its obligations and exercise its rights under this Contract, the Financing Agreements, the Project Documents or Ancillary Documents and the Construction Contract so as to ensure that:
- 111.4.4. the ability of the Contractor to comply with this Contract is

CONTRACT A

not adversely affected as a consequence of the Qualifying Variation.

Replacement of Base Case and Financial Model

111.5. Any Base Case produced following adjustments in accordance with this Clause 111 shall become the Base Case for the purposes of this Contract until its further amendment in accordance with this Contract.

112. ERRORS IN BASE CASE AND FINANCIAL MODEL

112.1. The Financial Model and Base Case shall be the sole responsibility of the Contractor and the Contractor shall be liable for any errors or omissions therein.

112.2. For the avoidance of doubt the Contractor shall not be entitled to claim any adjustment to the Unitary Charge or otherwise arising from any such errors or omissions.

113. CUSTODY OF FINANCIAL MODEL AND BASE CASE

113.1. Immediately on execution of this Contract, the Contractor shall deliver two (2) copies of the Financial Model and Base Case to the Authority (both on disc and in hard copy).

113.2. Either party shall have the right to inspect and audit the Financial Model and Base Case, at all reasonable times.

113.3. Unless otherwise agreed between the Parties, any amendments to the Financial Model and Base Case shall reflect, be consistent with and be made only in accordance with the provisions of this Contract, and shall in all cases be subject to the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed). In the event that the Parties fail to agree any proposed amendments to the Financial Model and Base Case, the matter shall be referred for resolution in accordance with Clause 116 (Dispute Resolution).

113.4. Following the approval of any amendment of the Financial Model and Base Case by the Authority, the Contractor shall promptly deliver two (2) copies of the revised Financial Model and Base Case to the Authority, in the same form as the original form (or such other form as may be agreed by the Parties from time to time).

114. AUDIT ACCESS AND OMBUDSMAN CO-OPERATION

114.1. Notwithstanding the provisions of Clause 123 (Freedom of Information and Confidentiality) the Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of the Authority.

114.2. Where reasonably requested by the auditor referred to under Clause 114.1, at the expense of the Contractor, the Contractor shall provide documents, or to procure the provision of documents, relating to the Project, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

114.3. The Contractor shall co-operate fully with the Local Ombudsman as defined in the Local Government Act 1974 and with the Authority in the

CONTRACT A

investigation of a complaint against the Authority which relates to the defective or non-performance of this Contract by the Contractor.

115. **CONVERSION**

It is agreed by the Contractor that this Contract is corporately financed and if after the date of this Contract the Contractor seeks a Conversion the Contractor shall be required to obtain the Authority's consent to such Conversion which consent shall be at the Authority's sole discretion.

CONTRACT A

PART NINE – DISPUTES AND REMEDIES**116. DISPUTE RESOLUTION****116.1. Disputes**

Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this Clause 116.

116.2. Consultation

If a dispute arises in relation to any aspect of this Contract, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

116.3. Adjudication

Without prejudice to Clause 116.2, either Party may give the other notice at any time of its intention to refer the dispute to adjudication ("the Notice of Adjudication"). The Notice of Adjudication shall include a brief statement of the issue to be referred and the redress sought. The party giving the Notice of Adjudication ("the Referring Party") shall on the same day and by the same means of communication send a copy of the Notice of Adjudication to an adjudicator selected in accordance with Clause 116.4 (Identity of Adjudicator).

116.4. Identity of Adjudicator

116.4.1. The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts selected in accordance with the following:

116.4.1.1. there shall be two (3) panels of experts, one (1) in respect of construction matters (the "Construction Panel"), one (1) in respect of operational and maintenance matters (the "Operational Panel") and one (1) in respect of environmental matters (the "Environmental Panel"). All the experts on each panel shall be wholly independent of the Contractor, the Authority, the relevant Sub-Contractor and any of the major competitors of the Contractor or relevant Sub-Contractor;

116.4.1.2. the Construction Panel shall be comprised of three (3) experts who shall be selected jointly by the Contractor and the Authority. Such appointments shall take place within twenty (20) Business Days of the date of this Contract;

116.4.1.3. the Operational Panel shall be comprised of three (3) experts who shall be selected jointly by the Contractor and the Authority. Such appointments shall take

CONTRACT A

- place within twenty (20) Business Days of the Commencement Date;
- 116.4.1.4. the Environmental Panel shall be comprised of three (3) experts who shall be selected jointly by the Contractor and the Authority within sixty (60) Business Days of the date of this Contract;
- 116.4.1.5. if any member of a panel resigns during the Contract Period, a replacement expert shall be selected by the Contractor and the Authority as soon as practicable;
- 116.4.1.6. in the event that the nominated Adjudicator is unable or unwilling to confirm acceptance of his appointment as Adjudicator within two (2) Business Days of receipt of the Notice of Adjudication, or if the parties disagree as to the relevant panel of experts to be used, the Referring Party may apply to the President for the time being of TeCSA who shall within 3 Business Days of any such application nominate an Adjudicator to determine the issue set out in the Notice of Adjudication.
- 116.4.1.7. if the Authority and the Contractor are unable to agree on the identity of the experts to be selected to the panels, the President for the time being of the TeCSA shall appoint such expert(s) within thirty (30) Days of any application for such appointment by either party.

116.5. Referral of the Dispute

- 116.5.1. Within five (5) Business Days of the service of the Notice of Adjudication, or as soon thereafter as the Adjudicator is appointed, the Referring Party shall serve its statement of case ("the Referral Notice") on the Adjudicator and the other party ("the Responding Party").
- 116.5.2. The Referral Notice shall include a copy of this Contract, details of the circumstances giving rise to the dispute as set out in the Notice of Adjudication, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.

116.6. Response to the Referral

The Responding Party shall serve its statement of case ("the Response") on the Adjudicator and the Referring Party within a period of time to be directed by the Adjudicator. The Response shall include any arguments in response to the Referral Notice of the dispute set out

CONTRACT A

in the Notice of Adjudication and any additional evidence on which the Responding Party relies.

116.7. Procedure

Subject to Clause 116.11, the Adjudicator shall have absolute discretion as to how to conduct the adjudication, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Contract. The Parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.

116.8. Adjudicator's Decision

116.8.1. In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within twenty eight (28) Days after the date of receipt of the Referral Notice (or such other period as the Parties may agree after the dispute has been referred). The Adjudicator shall be entitled to extend the said period of twenty eight (28) Days by up to 14 Days with the consent of the Referring Party.

116.8.2. The Adjudicator shall state any reasons for his decision.

116.8.3. Unless and until revised, cancelled or varied by the English courts, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

116.9. Adjudicator's Costs

116.9.1. Subject to Clause 116.19 (Costs):

116.9.1.1. the Adjudicator's costs of any referral shall be borne as the Adjudicator shall specify or, in default, equally by the Parties;

116.9.1.2. each Party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.

116.10. Adjudicator as Expert

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

116.11. Adjudicator's Powers

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

CONTRACT A

116.12. Confidentiality

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 123 (Freedom of Information and Confidentiality) disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

116.13. Liability of Adjudicator

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

116.14. Reference to the Courts

If:

116.14.1. there is any dispute in respect of matters referred to in Clause 10 (Parent Company Guarantee), 79 (Benchmarking and Market Testing), 90 (Compensation on Termination for Force Majeure), 81 (Compensation on Termination for Contractor Default), 85 (Compensation on Termination for Authority Default), 92 (Compensation on Corrupt Gifts), 105 (Change in Law), 107 (Authority and Contractor Changes) or Clause 115 (Conversion);

116.14.2. either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with Clause 116.8 (Adjudicator's Decision); or

116.14.3. both Parties agree,

then either Party may (at any time in respect of disputes referred to in Clause 116.14.1 and in respect of other disputes within ninety (90) Days of receipt of the Adjudicator's decision or where the Adjudicator fails to give a decision pursuant to Clause 116.8) give notice to the other Party of its intention to refer the dispute to the courts of England and Wales for final determination.

116.15. Parties' Obligations

The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this Clause 116.

116.16. Similar Disputes

If any dispute arising under this Contract raises issues which relate to any dispute between the Contractor and the Construction Sub-

CONTRACT A

Contractor arising under the Construction Contract or otherwise affects the relationship or rights of the Contractor and/or the Construction Sub-Contractor under the Construction Contract (the "Construction Contract Dispute") then the Contractor may include as part of its submissions made to the Adjudicator or to the court submissions made by the Construction Sub-Contractor.

116.17. Jurisdiction over Sub-Contractors

The Adjudicator shall not have jurisdiction to determine the Construction Contract Dispute but the decision of the Adjudicator and/or the courts shall, subject to clause 116.14 (Reference to the Courts), be binding on the Contractor and the Construction Sub-Contractor insofar as it determines the issues relating to the Construction Contract Dispute.

116.18. Sub-Contractors' Submissions

116.18.1. Any submissions made by the Construction Sub-Contractor shall:

116.18.1.1. be made within the time limits applicable to the delivery of submissions by the Contractor; and

116.18.1.2. concern only those matters which relate to the dispute between the Authority and the Contractor under this Contract.

116.19. Costs

116.19.1. Where any Construction Sub-Contractor makes submissions in any reference before:

116.19.1.1. the Adjudicator:

116.19.1.1.1. the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds (2/3) by the Contractor;

116.19.1.1.2. the costs of the Adjudication shall be in the discretion of the Adjudicator;

116.19.1.2. the courts, the costs of the litigation shall be in the discretion of the court;

116.20. Authority's Liability

The Authority shall have no liability to the Construction Sub-Contractor arising out of or in connection with any decision of the Adjudicator or courts or in respect of the costs of the Construction Contract in participating in the resolution of any dispute under this Contract.

116.21. Access to Documents

CONTRACT A

116.21.1. The Contractor shall not allow the Construction Sub-Contractor access to any document relevant to issues in dispute between the Authority and the Contractor save where:

116.21.1.1. the document is relevant also to the issues relating to the Construction Contract Dispute; and

116.21.1.2. the Contractor has first delivered to the Authority a written undertaking from the Construction Sub-Contractor addressed to the Authority that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or the courts or any professional adviser engaged by the Construction Sub-Contractor to advise in connection with the dispute; or

117. **MITIGATION**

Each of the Authority and the Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.

118. **INDEMNITIES**

118.1. **The Contractor shall subject to Clauses 118.2 to 118.5 be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against all liability for:**

118.1.1. **death or personal injury;**

118.1.2. **loss of or damage to property (including property belonging to the Authority or for which it is responsible (other than the Works or the Facilities) (“Authority Property”));**

118.1.3. **breach of statutory duty;**

118.1.4. **third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) associated with such third party actions, claims or demands; and**

which may arise out of or in consequence of:

118.1.4.1. **in the case of Clauses 118.1, 118.2 and 118.4 the design, construction, operation or maintenance of the Facilities or Assets or the performance**

CONTRACT A

or non-performance by the Contractor of its obligations under this Contract or the presence on the Authority's property of the Contractor or a sub-contractor of any tier of the Contractor or their employees or agents; or

118.1.4.2. in the case of Clause 118.1.3 (breach of statutory duty) which may arise out of the failure by the Contractor to comply with its obligations under this Contract.

118.2. The Contractor shall not be responsible or be obliged to indemnify the Authority, its officers, employees or agents or contractors for:

118.2.1. any of the matters referred to in Clauses 118.1 above which arises as a direct result of the Contractor acting on the written instruction of the Authority;

118.2.2. any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority, its employees, agents or contractors or by the breach by the Authority of its obligations under this Contract;

118.2.3. Indirect Losses except to the extent that such Indirect Losses are recovered under a Required Insurance;

118.2.4. Losses arising from a Force Majeure Event (except to the extent that such Loss is covered under a Required Insurance) which shall be borne by the Contractor and the Authority each as to its own losses;

118.2.5. Tradeable Landfill Allowances (or any fines imposed under the Waste Emissions and Trading Act 2003 and associated regulations (or any other legislation from time to time) in respect of the Landfilling of Contract Waste without possessing any required Tradeable Landfill Allowances) or any actual or deemed loss of income in connection with the trading of Tradeable Landfill Allowances;

118.2.6. Subject as provided below in this Clause 118.2.6 any injury, loss damage cost or expense or other liability arising out of or in relation to Contamination (which for the avoidance of doubt shall be dealt with in accordance with Schedule 35 (Environmental Matters). PROVIDED THAT this exclusion shall not apply to liability of the Contractor in respect of the matters referred to in Clause 118.1.1 arising from or in connection with any Contamination in respect of which the Contractor provides an indemnity to the Authority under paragraphs 2.1.2, 2.2.1 and 2.3.1 of Schedule 35 (Environmental Criteria);

118.2.7. WCA Claims;

CONTRACT A

118.2.8. Tipping Away Payments (which for the avoidance of doubt shall be dealt with in accordance with Schedule 6a (Payment Mechanism)).

118.3. **An indemnity by either party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.**

118.4. **Uninsured Losses**

The maximum amount for which the Contractor shall be liable to indemnify under Clause 118.1 in respect of Losses against which the Contractor is not required to maintain insurance pursuant to Clause 120 (Insurance) (including for the avoidance of doubt any excesses or deductibles relating to the Required Insurances) shall be:

118.4.1. subject to Clause 118.4.2, in respect of such Losses arising in a Contract Year [REDACTED] (Indexed) in aggregate in that Contract Year. (PROVIDED THAT liability arising pursuant to Clause 118.1.3 (breach of statutory duty) shall not exceed [REDACTED] (Indexed) in aggregate in any Contract Year and such liability shall form part of and not be in addition to the [REDACTED] cap referred to in this Clause 118.4.1). For the avoidance of doubt, any Losses in excess of this amount arising in respect of a Contract Year may not be carried over and claimed from the Contractor in subsequent Contract Years; and

118.4.2. [REDACTED] (Indexed) in aggregate in respect of all such Losses arising during and in respect of the Contract Period.

118.5. For the purposes of Clause 118.4 (Uninsured Losses), "arising" means that the cause of action arose during that Contract Year and not necessarily that the claim was determined, quantified or fell due in that Contract Year. Causes of action that straddle more than one Contract Year shall be apportioned pro rata to the Contract Years in question.

118.6. **Insured Losses**

In respect of Losses other than those referred to in Clause 118.4 the aggregate maximum amount for which the Contractor shall be liable to indemnify the Council under the indemnities contained in Clause 118.1 shall be the greater of:

118.6.1. the amount recovered under the Required Insurances in respect of such Losses; or

118.6.2. the amount which would have been recovered if Insurance had been maintained pursuant to Clause 120 (Insurance).

118.7. The Authority shall subject to Clause 118.8 be responsible for, and shall release and indemnify the Contractor on demand from and against all liability for:

118.7.1. death or personal injury;

CONTRACT A

118.7.2. third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis), which may arise out of, or in consequence of the default or negligence or wilful act of the Authority or a breach by the Authority of its obligations under this Contract.

118.8. The Authority shall not be responsible or be obliged to indemnify the Contractor under Clause 118.7 for:

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

118.8.2. any Indirect Losses;

118.8.3. Losses arising from a Force Majeure Event which shall be borne by the Authority and the Contractor each as to its own losses.

118.9. Conduct of claims

This Clause 118.9 shall apply to the conduct, by a party from whom an indemnity is sought under this Contract, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity but shall apply only to the extent compatible with the requirements of any relevant insurer. 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:

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

118.9.2. subject to Clauses 118.9.3, 118.9.4 and 118.9.5 and on the giving of a notice by the Beneficiary pursuant to Clause 118.9.1 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;

CONTRACT A

- 118.9.3. with respect to any claim conducted by the Indemnifier pursuant to Clause 118.9.2:
- 118.9.3.1. the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - 118.9.3.2. the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
 - 118.9.3.3. 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;
- 118.9.4. 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 Contract if:
- 118.9.4.1. the Indemnifier is not entitled to take conduct of the claim in accordance with Clause 118.9.2; or
 - 118.9.4.2. the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Business Days of the notice from the Beneficiary under Clause 118.9.1 or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - 118.9.4.3. the Indemnifier fails to comply in any material respect with the provisions of Clause 118.9.3;
- 118.10. 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 118.9.2 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 118.9.5, then the Indemnifier shall be released from any liability under its indemnity under Clause 118.1 or Clause 118.8 (as the case may be) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to Clause 118.9.2 in respect of such claim;
- 118.11. 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

CONTRACT A

Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

118.11.1. 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

118.11.2. the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

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

118.12. any person taking any of the steps contemplated by Clauses 118.9.1 to 118.12 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract.

118.13. This Clause 118 is concerned with the provision of indemnities and financial limits to such indemnities and is subject always to Clause 120 (Insurance).

119. **EXCLUSIVE REMEDIES AND ACCRUED RIGHTS**

119.1. **Payment and Performance Mechanism being sole right of the Authority**

Subject to:

119.1.1. **any other express right of the Authority pursuant to this Contract;**

119.1.2. **the Authority's right to claim, on or after termination of this Contract, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Contract by the Contractor, save to the extent that the same has already been recovered by the Authority pursuant to this Contract or has been taken into account to calculate any compensation payable by the Authority pursuant to Clauses 90 (Compensation on Termination for Force Majeure), 81 (Compensation on Termination for Contractor Default), 85 (Compensation on Termination for Authority Default), 83 (Compensation on Termination for Voluntary Termination) or 92 (Compensation on Termination for Corrupt Gifts and Fraud)**

the sole remedy of the Authority in respect of failure to provide the Services or to make the Facilities Available at any stage after the

CONTRACT A

relevant Service Commencement Date in accordance with this Contract shall be the operation of Schedule 6 (Payment and Performance Mechanism).

119.2. Compensation on termination being sole remedy of Contractor

119.2.1. Any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Contract or any Project Document or Ancillary Document. The compensation payable under Clauses 85 (Compensation on Authority Default), 90 (Compensation on Termination for Force Majeure), 92 (Compensation for Corrupt Gifts and Fraud), 83 and (Compensation on Voluntary Termination by the Authority) shall be the sole remedy of the Contractor against the Authority in respect of termination of the Contract but without prejudice to any liability arising prior to the Termination Date (but not from termination itself) that has not been taken into account in determining the amount of Termination Compensation payable.

119.3. Accrued Rights

The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination that has not been taken into account in determining the amount of compensation payable.

119.4. Compensation Events

Subject to any other express right or remedy (including (without limiting the generality of the foregoing under any indemnity or Termination in respect of an Authority Default) of the Contractor pursuant to this Contract the sole remedy of the Contractor in respect of a breach of this Contract by the Authority which is a Compensation Event under either or both of Clause 36 (Compensation Events) and Clause 103 (Service Delay) shall be to claim the compensation and other reliefs and rights available to it pursuant to Clause 36 (Compensation Events) and Clause 103 (Service Delay).

119.5. Equitable relief

Nothing in this Clause 119 shall prevent or restrict the right of the Authority to seek injunctive relief, a decree of specific performance or other discretionary remedies of the court.

119.6. Requirement to recover under insurance

Where any event giving rise to a claim pursuant to this Contract by either Party against the other Party is or would be covered by insurance (whether a Required Insurance or otherwise) required to be maintained pursuant to this Contract, the Parties shall seek first to recover any losses under such insurance before making any claim

CONTRACT A

against the other party PROVIDED THAT the amount of any deductible or excess in relation to such insurance shall not be deemed to be 'covered by insurance' for the purposes of this Clause 119.6.

119.7. No double counting

Notwithstanding any other provision of this Contract neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred (or any failure of the other Party) to the extent that it has already been fully compensated in respect of that loss pursuant to the Contract or otherwise (including without limitation through an insurance policy whether a Required Insurance or otherwise).

119.8. Statutory Targets

119.8.1. For the avoidance of doubt, wherever in this Contract the Contractor undertakes to comply with Legislation (including any statutory requirements) such an undertaking shall refer to legislation or statutory requirements applicable in the Contractor or Contractor Related Parties. The Contractor shall not whether expressly or by implication be responsible for performance of the statutory duties of the Authority or the consequences of failure to perform such statutory duties save to the extent that such responsibility and the penalty applicable for failing to discharge such responsibility is expressly set out in this Contract and this exclusion shall include responsibility for the Statutory Targets.

119.8.2. For the avoidance of doubt, (but without prejudice to the express remedies of the Authority under Schedule 6 (Payment and Performance Mechanism), Schedule 7 (KPIs) or to the calculation of Post Termination Service Amounts), the Contractor shall not be liable to the Authority to pay any sum in respect of:

119.8.2.1. any Tradeable Landfill Allowance which may be required by the Authority; or

119.8.2.2. any fine to which the Authority or any other person may be subject as a result of the Authority Landfilling any Contract Waste in the absence of appropriate Tradeable Landfill Allowance in respect of such Contract Waste; or

119.8.2.3. any actual or deemed loss of income in connection with the trading of Tradeable Landfill Allowances

whether arising out of or in connection with the performance or non performance of its obligations under this Contract by the Contractor or on termination or howsoever otherwise.

CONTRACT A

120. INSURANCE

- 120.1. Subject to the provisions of this Clause 120 (Insurance) the Contractor shall during the Contract Period take out and maintain or procure the maintenance of the insurances described in Part 1 and Part 2 of Schedule 36 (Required Insurance) and any other insurances as may be required by law. These insurances must be effective in each case on the date specified in Schedule 36 (Required Insurances) or if no date is specified not later than the date on which the relevant risk commences.
- 120.2. No party to this Contract shall (and the Contractor shall use all reasonable endeavours to procure that none of its Sub-Contractors of any tier shall) take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any Required Insurance policy in which that party is an insured, a co-insured or additional insured person noted on the policy.
- 120.3. The insurances referred to in Clauses 120.1 shall:
- 120.3.1. where the Authority is to be a co-insured party in accordance with Schedule 36 (Required Insurances) name the Contractor as co-insured with any other party maintaining the insurance;
 - 120.3.2. provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 6 in Part 3 of Schedule 36 (Required Insurances);
 - 120.3.3. contain a clause waiving the insurers' subrogation rights against the Authority, its employees and agents in accordance with Endorsement 12 in Part 3 of Schedule 36 (Required Insurances);
 - 120.3.4. provide for 30 Days prior written notice of their cancellation, non-renewal or amendment to be given to the Authority in accordance with Endorsement 7 in Part 3 of Schedule 36 (Required Insurances);
 - 120.3.5. in respect of Physical Damage Policies provide for payment of any proceeds in received by the Contractor to be applied in accordance with Clause 121 (Reinstatement after Insured Event);
- 120.4. The Contractor shall provide to the Authority:
- 120.4.1. copies on request of all Required Insurance policies (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and
 - 120.4.2. evidence that the premiums payable under all

CONTRACT A

insurances policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 120 (Insurance) and Schedule 36 (Required Insurances).

- 120.5. Renewal certificates in relation to the insurances referred to in Clauses 120.1 shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event on or before the renewal date.
- 120.6. If the Contractor is in breach of Clauses 120.1 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.
- 120.7. The Contractor shall give the Authority notification within 30 Days after any claim in excess of £100,000 (Indexed) on any of the insurance policies referred to in this Clause accompanied by full details of the incident giving rise to the claim;
- 120.8. Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.
- 120.9. The insurance premiums referred to in Clauses 120.1 shall be the responsibility of the Contractor.
- 120.10. The insurances referred to in this Clause shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.
- 120.11. **Professional Indemnity Insurance**
 120.11.1. The Contractor shall procure that the MRF Construction Sub-Contractor shall take out and maintain professional indemnity insurance in accordance with the terms of the relevant Collateral Warranty.
- 120.12. **Premium Risk Share**
 120.12.1. Schedule 37 (Premium Risk Share Mechanism) shall apply.
- 120.13. **Brokers letter of Undertaking**
 The Contractor shall use reasonable endeavours to procure that the form of Brokers letter of Undertaking set out in Part 4 of Schedule 36 (Required Insurances) shall be supplied to the Authority on renewal of the Required Insurances.

121. REINSTATEMENT AFTER INSURED EVENT

- 121.1. All insurance proceeds received under any policy referred to in Part 1.1 and Part 2.1 of the Schedule 36 (Required Insurances) (the Physical Damage Policies) shall be applied to repair, reinstate and replace each part of parts of the Assets in respect of which the

CONTRACT A

proceeds were received.

121.2. The Contractor shall set up and at all times maintain the Joint Insurance Account. All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of £250,000 (Indexed) shall be paid into the Joint Insurance Account.

121.3. Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "Relevant Incident") in an amount in excess of £2,500,000 (two and a half million) (Indexed):

121.3.1. the Contractor shall deliver as soon as practicable and in any event within 28 Days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary (the "Reinstatement Works") to repair, reinstate or replace (the "Reinstatement Plan") the Assets which are the subject of the relevant claim or claims in accordance with Clause 121.4 below. The Reinstatement Plan shall set out:

121.3.1.1. If not the Construction Sub-Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority; and

121.3.1.2. the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Authority which approval shall not be unreasonably delayed.

121.3.2. provided that the Authority is satisfied that the Reinstatement Plan will enable the Contractor to comply with Clause 121.3.3 below within a reasonable timescale:

121.3.2.1. the Reinstatement Plan will be adopted;

121.3.2.2. the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the approved Reinstatement Plan approved by the Authority;

CONTRACT A

- 121.3.2.3.** prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the "Relevant Proceeds") (together with any interest accrued) may be withdrawn by the Contractor from Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in sub Clause 121.3.2.2 above, and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;
- 121.3.2.4.** the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this Clause 121 and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual requirements referred to in Clause 121.3.2.2 it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds;
- 121.3.2.5.** the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;
- 121.3.2.6.** after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with Clause 121.3.3 below the Authority shall permit withdrawal

CONTRACT A

by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under Clause 121.3.2.3 above, in respect of the Relevant Incident, together with any interest accrued; and

121.3.2.7. subject to the provisions of Clause 118 (Indemnities) the Contractor shall be solely responsible for the payment of any deficiency;

121.3.3. Where insurance proceeds are to be used in accordance with this Contract to repair, reinstate or replace any Facility and/or Asset, the Contractor shall carry out the work in accordance with the Specification, the Contractor's Proposals and the Basic Design Proposals for the relevant Facility so that on completion of the work the provisions of the Contract are complied with.

122. UNINSURABLE RISKS

122.1. Nothing in Clause 120 to this Clause 122 shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the Contractor or a Contractor Related Party.

122.2. If a risk usually covered by contractors' "all risks" insurance, property damage insurance, third party liability insurance, delay in start up and business interruption insurance (but not loss of profits) or statutory insurances becomes Uninsurable then:

122.2.1. the Contractor shall notify the Authority within 5 Business Days of the risk becoming Uninsurable; and

122.2.2. if both parties agree, or it is determined in accordance with Clause 116 (Dispute Resolution) that the risk is Uninsurable and that:

122.2.2.1. the risk being Uninsurable is not caused by the actions of the Contractor or any Sub-Contractor of the Contractor (of any tier); and

122.2.2.2. the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating the same or substantially similar PFI businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by this clause)

CONTRACT A

be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company

the parties shall meet to discuss the means by which the risk should be managed (including considering the issue of self-insurance by either party).

122.3. If the requirements of Clause 122.2 above are satisfied, but the parties cannot agree as to how to manage the risk, then:

122.3.1. in respect of third party liability insurance only the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the amount calculated in accordance with Clause 90 (Compensation on Termination for Force Majeure) and the Contract will terminate, or elect to allow the Contract to continue and Clause 122.3.2 below shall thereafter apply in respect of such risk; and

122.3.2. in respect of contractors' "all risks" insurance, property damage insurance, third party liability insurance (if the Authority elects to allow the Contract to continue in accordance with Clause 122.3.1 above), delay in start up and business interruption insurance (but not loss of profits) or statutory insurances the Contract shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and the Contract will continue, or an amount equal to the amount calculated in accordance with Clause 90 (Compensation on Termination for Force Majeure) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable whereupon the Contract will terminate; and

122.3.3. where pursuant to Clauses 122.3.1 and 122.3.2 this Contract continues then the Unitary Charge shall be reduced in each year for which the relevant insurance is

CONTRACT A

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 Uninsurable (Indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a year only the reduction in the Unitary Charge shall be pro rated to the number of months for which the risk is Uninsurable; and

- 122.3.4. where pursuant to Clauses 122.3.1 and 122.3.2 this Contract continues the Contractor shall approach the insurance market at least every four months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Contract.

Terms and Conditions that become Unavailable

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

122.4.1. any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing; and/or

122.4.2. the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,

(other than, in each case, by reason of one or more actions of the Contractor and/or any Sub-Contractor of the Contractor (of any tier)) then Clause 122.5 below shall apply.

- 122.5. If it is agreed or determined that Clause 122.4 applies then the Authority shall waive the Contractor's obligations in Clause 120.1 and/or Schedule 36 (Required Insurance) in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Contract as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in Clause 122.4 above continue to apply to such Insurance Term.
- 122.6. To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution, that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market which if

CONTRACT A

included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Contract, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at Schedule 37 (Premium Risk Sharing Mechanism).

- 122.7. Where the Authority has exercised the waiver pursuant to Clause 122.5 above, it shall be entitled to deduct from the annual Unitary Charge the "Adjusted Amount", such amount being an amount equal to the amount paid for the particular Insurance Term in the preceding year (using a reasonable estimate of such amount where a precise figure is not available) less any annual amount paid or payable by the Contractor to maintain and/or procure the maintenance of any (whether full or partial) alternative or replacement insurance in respect of such Insurance Term pursuant to Clause 122.6.
- 122.8. While Clause 122.4 applies, the annual Unitary Charge shall be reduced each Contract Year by the Adjusted Amount, Indexed from the date that the particular Insurance Term is no longer available.
- 122.9. The Contractor shall notify the Authority as soon as reasonably practicable and in any event within 5 Days of becoming aware that Clause 122.4.1 and/or Clause 122.4.2 are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.
- 122.10. In the event that Clause 122.4.1 and/or Clause 122.4.2 apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four months to establish whether Clause 122.4.1 and/or Clause 122.4.2 remain applicable to the Insurance Term. As soon as the Contractor is aware that Clause 122.4.1 and/or Clause 122.4.2 has ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Contract.
- 122.11. Contractor's option to continue
- 122.11.1. If pursuant to Clause 122.3.2 the Authority elects to make

CONTRACT A

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

- 122.11.2. The Contractor shall serve written notice on the Authority of its intention to exercise this option. The provisions of Clause 122.3 will then apply to any loss subsequent to the loss in respect of which the Contractor has exercised its option and the process will recommence.

122.12. Authority Variation

- 122.12.1. The Authority may during the Contract Period determine that the Required Insurances are no longer sufficient to protect the Authority's interest. In these circumstances the Authority will be entitled to require the Contractor to purchase additional insurance cover to give the Authority the protection it has determined is needed. This will be deemed to be a Authority Notice of Change pursuant to the provisions of Clause 107 (Authority and Contractor Change). For the avoidance of doubt, the requirement to increase the insured amount as detailed in Clause 122.13 (Increase in Insured Amounts) is not subject to the provisions of this Clause 122.12 (Authority Variation).

- 122.12.2. In the event of additional insurance covers being purchased by the Contractor in accordance with Clause 122.12 (Authority Variation), the provisions of Clause 122.2 (Uninsurable Risks) shall apply to such insurances.

122.13. Increase in Insured Amounts

The limit of indemnity in respect of the insurance procured pursuant to paragraph 3.2 of Part 2 of Schedule 36 (Required Insurances) and the maximum deductibles for each of the Required Insurances shall be Indexed, provided such limit of indemnity shall only be increased on each renewal date such that the limit that is Indexed becomes equal to or exceeds the next whole insurable amount or deductible available in the insurance market.

CONTRACT A

PART TEN - GENERAL**123. FREEDOM OF INFORMATION AND CONFIDENTIALITY**

- 123.1. The parties agree that the provisions of this Contract and each Project Document or Ancillary Document shall, subject to Clause 123.2 below, not be treated as Confidential Information and may be disclosed without restriction.
- 123.2. Clause 123.1 above shall not apply to provisions of this Contract or a Project Document or Ancillary Document designated as Commercially Sensitive Information in Schedule 45 (Commercially Sensitive Contract Provisions) to this Contract which shall, subject to Clause 123.4 below, be kept confidential for the periods specified in that Schedule.
- 123.3. The parties shall keep confidential all Confidential Information received by one party from the other party and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
- 123.4. Clauses 123.2 and 123.3, shall not apply to:
- 123.4.1. any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations;
 - 123.4.2. any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause;
 - 123.4.3. any disclosure to enable a determination to be made under Clause 116 (Dispute Resolution) or in connection with a dispute between the Contractor and any of its Sub-Contractors;
 - 123.4.4. any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or Relevant Authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
 - 123.4.5. any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 123.4.6. any provision of information to an Affiliate of the Contractor providing funding to the Contractor under any Financing Agreement or such Affiliate's professional

CONTRACT A

advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Contractor in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

- 123.4.7. 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:
 - 123.4.7.1. any proposed new contractor, its advisers and lenders, should the Authority decide to retender the Contract; or
 - 123.4.7.2. any person in connection with Clause 79 (Benchmarking and Market Testing);
- 123.4.8. any registration or recording of the Consents and property registration required;
- 123.4.9. any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract; or
- 123.4.10. any disclosure for the purpose of:
 - 123.4.10.1. the examination and certification of the Authority's or the Contractor's accounts;
 - 123.4.10.2. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 123.4.10.3. complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - 123.4.10.4. (without prejudice to the generality of Clause 123.4.4 above) compliance with the FOIA and/or the Environmental

CONTRACT A

Information Regulations,

provided that, for the avoidance of doubt, neither Clause 123.4.10.4 nor Clause 123.4.4 above shall permit disclosure of Confidential Information otherwise prohibited by Clause 123.3 above where that information is exempt from disclosure under section 41 of the FOIA.

- 123.5. Where disclosure is permitted under Clause 123.2 above, other than Clauses 123.2, 123.2.4, 123.2.5, 123.2.8 and 123.2.10, the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.
- 123.6. For the purposes of the National Audit Act 1983 the Comptroller and Auditor General 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 Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Agreement.
- 123.7. The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.
- 123.8. Where the Contractor, in carrying out its obligations under the Contract, is provided with information relating to Service Users, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that user and has obtained the prior written consent of the Authority.
- 123.9. On or before the Expiry Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to Service Users including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority.
- 123.10. The parties acknowledge that the National Audit Office has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 123.11. The provisions of this Clause 123 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.
- 123.12. Freedom of Information
- 123.12.1. The Contractor acknowledges that the Authority is subject to

CONTRACT A

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 123.12.2 to 123.12.8 (inclusive) below.

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

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

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

123.12.3. Following notification under Clause 123.12.2, and up until such time as the Contractor has provided the Authority with all the Information specified in Clause 123.12.2.1, 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:

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

123.12.3.2. 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.

CONTRACT A

- 123.12.4. The Contractor acknowledges that (notwithstanding the provisions of Clause 123 (as to Confidentiality) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:
- 123.12.4.1. in certain circumstances without consulting with the Contractor; or
 - 123.12.4.2. following consultation with the Contractor and having taken their views into account,
- provided always that where 123.12.4.1 above applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.
- 123.12.5. 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.
- 123.12.6. The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within 2 Business Days of receiving it.
- 123.12.7. The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 123.12.4.
- 123.12.8. In the event of a request from the Authority pursuant to Clause 123.12.2 above, the Contractor shall as soon as practicable, and in any event within 5 Business Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1)12 of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Business Days period for compliance shall

CONTRACT A

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 and Environmental Information Regulations policy from time to time.

124. CONTRACTOR'S RECORDS

124.1. The Contractor shall at all times comply with the requirements of Schedule 25 (Reporting Requirements) and in particular:

124.1.1. maintain a full record of particulars of the costs of performing the Services, including those relating to the design, construction, maintenance, operation and finance;

124.1.2. when requested by the Authority, provide a summary of any of the costs referred to in Clause 124.1.1 above, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract;

124.1.3. 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 Clause 124;

124.1.4. at the request of the Authority:

124.1.4.1. provide to the Authority copies of its annual report and accounts within 30 Days of publication.

124.2. Compliance with the above shall require the Contractor to keep (and where appropriate shall procure that the Sub Contractor/s shall keep) books of account in accordance with best accountancy practice with respect to the Contract showing in detail:

124.2.1. administrative overheads;

124.2.2. payments made to Sub Contractors and by Sub Contractors to the sub contractors;

124.2.3. capital and revenue expenditure;

124.2.4. 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 Clauses 36 (Compensation Events), 107 (Authority

CONTRACT A

and Contractor Change), 105 (Change in Law) and 79 (Benchmarking and Market Testing),

and the Contractor shall have (and procure that the Sub Contractor/s shall have) the books of account evidencing the items listed in Clauses 124.2.1 to 124.2.4 available for inspection by the Authority (and any expert) upon reasonable notice, and shall present a report of these to the Authority as and when requested.

124.3. The Contractor shall maintain or procure that the following are maintained:

124.3.1. a full record of all incidents relating to health, safety and security which occur during the Contract Period; and

124.3.2. full records of all maintenance procedures carried out during the term of the Contract;

and the Contractor shall have the items referred to in Clauses 124.3.1.1 and 124.3.1.2 available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested.

124.4. Subject to Clause 123 (Freedom of Information and Confidentiality), the Contractor shall permit records referred to in this Clause 124 to be examined and copied by the Authority's Representative and other representatives of the Authority, and by the Audit Commission, District Auditor, and their representatives.

124.5. The records referred to in this Clause 124 shall be retained for a period of at least 6 years after the Contractor's obligations under the Contract have come to an end.

124.6. Upon termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the Project the Contractor shall (and shall ensure that the Sub Contractor/s will) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Project.

124.7. All information referred to in this Clause 124 is subject to the obligations set out in Clause 123 (Freedom of Information and Confidentiality).

124.8. The Contractor shall make or cause to be made such oral or written reports on the performance of its obligations under this Contract as the Authority may from time to time reasonably request which shall include such reports to the Authority's Representative as are identified in Schedule 25 (Reporting Requirements).

125. INTELLECTUAL PROPERTY RIGHTS AND IT SYSTEMS LICENCES

Software Licensing

125.1. In relation to any computer software that is used in order to deliver the

CONTRACT A

Services the Contractor acknowledges that the use of same by the Authority may be prohibited or restricted (for example by the terms of the software licence between the Contractor and a third party). In such circumstances, the Contractor shall use its reasonable endeavours at its own expense to enable the Authority and any relevant third party Contractor to use the software for the purposes of providing the Services including, where permissible, novating, assigning, sub-licensing or otherwise transferring to the Authority the right to use the software for the said purpose.

125.2. Nothing in this Clause 125:

125.2.1. imposes any obligation on the Authority to do anything which might prejudice or restrict its right to use the software in question for any other purpose; nor

125.2.2. constitutes a warranty or representation that the Contractor has the right to permit the Authority to use the software and/or the right to novate, assign or sub-license the right to use the software to the Authority.

125.3. The Contractor undertakes to defend the Authority from and against any claim or action that the software used in order to deliver the Services (the "Software") or its use infringes the Intellectual Property Rights of a third party (the "IPR Claim") and shall fully indemnify and hold harmless the Authority (and any person claiming through it) from and against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Authority as a result of or in connection with the IPR Claim.

125.4. The Authority agrees that:

125.4.1. the Authority shall as soon as reasonably practicable notify the Contractor in writing of any IPR Claim of which it has notice;

125.4.2. the Authority shall not make any admission as to liability or agree to any settlement of or compromise any IPR Claim without the prior written consent of the Contractor which consent shall not be unreasonably withheld or delayed; and

125.4.3. the Contractor shall, on request and at its own expense, be entitled to have the conduct of or settle all negotiations and litigation arising from any IPR Claim and the Authority shall, at the Contractor's request and expense, give the Contractor all reasonable assistance in connection with those negotiations and litigation.

125.5. If any IPR Claim is made, or in the Contractor's reasonable opinion is likely to be made, against the Authority, the Contractor may promptly and at its own expense either:

125.5.1. procure for the Authority the right to continue using and possessing the Software; or

125.5.2. without diminishing or curtailing any of the functions or

CONTRACT A

facilities or the performance of the Software, modify or replace the infringing part of the Software so as to avoid the infringement or alleged infringement.

Design and Other Data

125.6. The Contractor shall make available to the Authority without charge (to the extent that it is entitled so to do):

125.6.1. all data, documents, reports, drawings, specifications, software designs and/or other materials of any nature (including all Design Data) acquired or brought into existence and in the possession of the Contractor specifically for the purposes of the Project and which might reasonably be required by the Authority for the purposes of exercising its rights or carrying on its duties under the Project Documents or Ancillary Documents or carrying out any statutory duty; and

125.6.2. (to the extent it has power to do so having used all reasonable efforts) all such data, materials and documents acquired or brought into existence by third parties specifically for the purposes of the Project as may reasonably be required for the purposes referred to in Clause 125.6.1.

Authority's Materials

125.7. All Intellectual Property Rights in data, reports, drawings, specifications, software designs and/or other material produced or developed by the Authority will vest in and be the property of the Authority.

Licence

125.8. The Contractor:

125.8.1. hereby grants to the Authority in consideration of the Authority entering into this Contract and the other Project Documents or Ancillary Documents and other good and valuable consideration (receipt of which the Contractor hereby acknowledges) a perpetual, transferable, irrevocable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to use all Intellectual Property Rights which are or which become vested in the Contractor for any purpose (whether during or after the Contract Period) relating to the design, construction, completion, commissioning or testing of the Works or any Small Works, the management and provision of the Services or the conduct of all the Services or the carrying out by the Authority of any statutory duties in respect of the Facilities; and

125.8.2. where any Intellectual Property Rights are vested in any third party, shall use its reasonable endeavours to procure

CONTRACT A

the grant of a like licence to the Authority for any purpose referred to in Clause 125.8.1.

125.9. With respect to Intellectual Property Rights arising during the Contract Period, the licence granted pursuant to Clause 125.9.1 above shall take effect immediately upon the coming into existence of such Intellectual Property Rights.

125.10. The Authority:

125.10.1. hereby grants to the Contractor in consideration of the Contractor entering into this Contract and the other Project Documents or Ancillary Documents a non-exclusive licence (with the right to grant sub-licences to the extent necessary to perform the Services) to use any Intellectual Property Rights or computerised data which is vested in the Authority and which is being used exclusively in the provision of the Services; and

125.10.2. where any Intellectual Property Rights or computerised data is vested in any third party, shall use all reasonable endeavours to procure the grant of a like licence to the Contractor, provided that the Contractor shall be liable for any third party costs arising from such licence.

125.11. Indemnity

For the avoidance of doubt the provisions of Clause 118 (Indemnities) may apply in accordance with its terms to claims made or brought by any person for or on account of infringement of any Intellectual Property Rights used in connection with the Works, any Small Works or other Services

125.12. Further Assurances

The Contractor undertakes to execute all documents and do all acts that may be reasonably necessary to bring into effect or confirm the terms of any assignment or licence contained or made pursuant to this Clause 125.

126. DATA PROTECTION

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

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

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

126.3.1. to employees and Sub Contractor to whom such

CONTRACT A

disclosure is reasonably necessary in order for the Contractor to carry out the Service; or

126.3.2. to the extent required under a court order,

provided that disclosure under Clause 126.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 126 and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data it or a Sub Contractor is required to make under Clause 126.3.2 immediately, it is aware of such a requirement.

126.4. The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability of staff having access to the Personal Data.

126.5. The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Sub Contractor referred to in Clause 126.4. Within 30 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 DPA.

126.6. The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (Including reasonable legal costs) incurred by it in respect of any breach of this Clause 126 by the Contractor and/or any act or omission of any Sub Contractor which causes a breach of this Clause 126.

127. PUBLIC RELATIONS AND PUBLICITY

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

127.2. No facilities to photograph or film in or upon any Site or Facility or other property used in relation to the Project shall be given or permitted by the Contractor unless the Authority has given its prior written approval.

128. NOTICES

128.1. Any demand, notice or other communication given in connection with or required by this Contract shall be made in writing (entirely in the English language) and shall be delivered to, or sent by pre-paid first class post to, the recipient at its registered office or its address stated

CONTRACT A

in this Contract (or such other address as may be notified in writing from time to time) or sent by facsimile transmission or by email (as provided below) to the recipient, in the case of:

- 128.1.1. the Authority, to the Authority's Representative at the latest notified address with a copy to Nottinghamshire County Council, Chief Executive, County Hall, West Bridgford, Nottingham NG2 7QP, copied by email for the attention of the Chief Executive to chief.executive@nottscc.gov.uk ; and
 - 128.1.2. in the case of the Contractor, to the Contractor's Representative at the latest notified address with a copy to Group Legal Director, Veolia House, 154a Pentonville Road, London N1 9PE, facsimile number 020 7812 5161;
 - 128.1.3. or such other numbers (as may be notified in writing from time to time) and unless otherwise expressly stated in this Contract marked for the attention of the Project Director in the case of the Authority, and the Operations Manager in the case of the Contractor.
- 128.2. Where any information or documentation is to be provided or submitted to the Authority's Representative or the Contractor's Representative it shall be provided or submitted by sending the same by first class post, facsimile, email or by hand, leaving the same at:
- 128.2.1. if to the Contractor's Representative at the latest notified address; and
 - 128.2.2. if to the Authority's Representative at the latest notified address.
- 128.3. Either party to this Contract (and either the Authority Representative or the Contractor Representative) may change its nominated address, facsimile number or email address by prior notice to the other party.
- 128.4. Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing.
- 128.5. Notices delivered by hand shall be effective upon delivery.
- 128.6. Notices by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- 128.6.1. Within two (2) hours after sending, if sent on a Business Day between the hours of 9.00 am and 4.00 pm; or
 - 128.6.2. By 11.00 am on the next following Business Day, if sent after 4.00 pm, on a Business Day but before 9.00 am on that next following Business Day.
- 128.7. Notices sent by email shall be deemed to have been received, at noon on the Business Day after such communication was sent and, in proving service, it shall be sufficient to produce a computer print out

CONTRACT A

indicating that the message was sent to the recipient's electronic mail address.

- 128.8. In the case of notices served pursuant to Clause 36.3.1 (Compensation Event), Clause 105.1 (Change in Law) or Schedule 16 (Review Procedure) (to the extent set out in those provisions) the Contractor's notice must be in writing in the agreed form as set out in Schedule 48 (Pro Forma Notice to the Authority) failing which the Authority's consent, approval or response shall not be deemed given.

129. REPRESENTATIVES**129.1. Authority Representative**

- 129.1.1. The Authority's Representative shall be [the Authority's Director of Environment (at Financial Close, Peter Webster) or such other officer appointed to that post from time to time] or such other person appointed pursuant to this Clause 129. The Authority's Representative shall exercise the functions and powers of the Authority in relation to the project operations which are identified in this Contract as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Contract as the Authority may notify to the Contractor from time to time.
- 129.1.2. The Authority's Representative shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this Clause 129, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Authority's Representative and all references to the "Authority's Representative" in this Contract (apart from this Clause 129) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.
- 129.1.3. The Authority may by notice to the Contractor change the Authority's Representative. The Authority shall (as far as practicable) consult with the Contractor prior to the appointment of any replacement for the Authority's Representative, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Contract).
- 129.1.4. During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable to exercise his functions under this Contract) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.

CONTRACT A

129.1.5. No act or omission of the Authority, the Authority's Representative (or any of its delegates) or any officer, employee or other person engaged by the Authority shall, except as otherwise expressly provided in this Contract:

129.1.5.1. in any way relieve or absolve the Contractor from, modify, or act as a waiver or estoppel of, any liability, responsibility, obligation or duty under this Contract; or

129.1.5.2. in the absence of an express order or authorisation, constitute or authorise a Change.

129.1.6. Except as previously notified in writing before such act by the Authority to the Contractor, the Contractor and Contractor's Representative shall be entitled to treat any act of the Authority's Representative which is authorised by this Contract as being expressly authorised by the Authority and the Contractor and the Contractor's Representative shall not be required to determine whether an express Authority consent has in fact been given.

129.2. Representative of the Contractor

129.2.1. The Contractor's Representative shall be Simon Bussell or such other person appointed pursuant to this Clause 129. The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority and the Authority's Representative shall not be required to determine whether any express authorisation has in fact been given.

129.2.2. Immediately upon the Contractor's Representative ceasing to act in the case of death, serious illness or gross misconduct, and not less than ten (10) Business Days prior to termination of the appointment in all other cases, the Contractor shall by written notice to the Authority appoint a substitute, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

129.2.3. A competent representative of the Contractor (being either the Contractor's Representative or some other person duly appointed by him) shall be contactable by telephone between the hours of 7.30 am and 6.00 pm Monday to Friday inclusive and shall supervise the provision of the

CONTRACT A

Services under this Contract with the Authority. Outside these hours such agent or representative shall be contactable by telephone.

- 129.2.4. The Contractor shall give or provide all necessary management and superintendence during the performance of the Services. Such management and superintendence shall be given by sufficient persons having proper and adequate knowledge, skill, training and standing as may be requisite for the satisfactory supervision, management and performance of the Services.

130. **EURO CONTINUITY OF CONTRACT**

- 130.1. For the avoidance of doubt all amounts referred to in this Contract are expressed in Sterling and shall be payable in Sterling in accordance with the provisions of Clause 69 (Invoicing and Payment).
- 130.2. In the event that at any time during the Contract Period the United Kingdom adopts the Euro (or any other currency) as its lawful currency in substitution for Sterling ("Euro Effective Date") such adoption will not have the effect of altering any term of, or discharging or excusing performance under this Contract or any transaction, or give a party the right unilaterally to alter or terminate this Contract or any transaction.
- 130.3. From the Euro Effective Date:
- 130.3.1. to the extent relevant all amounts in this Contract calculated in Sterling shall be converted from Sterling to Euros (or any other currency) in accordance with the fixed conversion rate provided for by law; and
- 130.3.2. no payments falling due shall be made in Sterling or national currency units.

131. **PRIVITY**

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

132. **NO AGENCY**

- 132.1. Neither the Contractor nor its employees agents or Sub-Contractors shall in any circumstances hold itself or themselves out as being the servant or agent of the Authority, otherwise than in circumstances expressly permitted by this Contract.
- 132.2. Neither the Contractor nor its employees agents or Sub-Contractors shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Authority or in any other way to bind the Authority to the performance, variation, release or discharge of any obligation.
- 132.3. Neither the Contractor nor its employees agents or Sub-Contractors shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any bye-law or any regulation of any kind.

CONTRACT A

- 132.4. Nothing in this Contract shall be construed as creating a legal partnership or as a Contract of Employment between the Authority and the Contractor.

133. ASSIGNMENT AND SUB-CONTRACTING

- 133.1. **The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:**
- 133.1.1. **a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;**
 - 133.1.2. **any local authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Contract; or**
 - 133.1.3. **any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.**
- 133.2. The Contractor shall not give, bargain, sell, assign, underlet, charge, or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Authority (which the Authority may in its absolute discretion refuse).
- 133.3. Nothing in this Contract shall prohibit the Contractor from providing or procuring the provision of the Works of the Services from a Sub-Contractor of sound financial standing, technical ability and good repute and whose identity has been notified to the Authority by the Contractor and approved by the Authority in writing prior to the appointment of such Sub-Contractor (such approval not to be unreasonably withheld or delayed) and (in the case of a new MRF Construction Sub-Contractor) or Sheffield Contractor provided that a Collateral Warranty substantially in the form set out in Schedule 18 (Construction Sub-Contractor Collateral Warranty) is duly executed by such new Sub-Contractor and delivered to the Authority prior to the appointment of such Sub-Contractor provided also that the Contractor shall remain primarily liable for the Contractor's obligations under this Contract. The Authority shall have the right to require the Contractor to submit such information as the Authority shall reasonably require regarding the financial standing, technical ability and good repute of the relevant Sub-Contractor. The Authority hereby approves the appointment of Norwest Holst Limited as Construction Contractor, of Clugston Construction Limited as a Construction Contractor in respect

CONTRACT A

of the New WTS Works and the Sheffield Contractor in respect of the Sheffield Contract.

- 133.4. The Contractor shall perform its obligations under and observe all the terms of any Sub-Contract to which it is a party and procure the performance of any obligations under the terms of any Sub-contract to which it is not a party.
- 133.5. Nothing in this Contract shall prohibit or prevent any sub-contractor employed by the Authority at any establishments of the Authority.
- 133.6. The Contractor shall not be relieved or excused of responsibility or liability under this Contract nor shall performance of its obligations be affected by the appointment of any Sub-Contractor or any other delegation of its duties under this Contract.

134. OFF-TAKE CONTRACTS

134.1. At any time after the date of this Contract, if and whenever the Contractor shall enter into any Off-Take Contract the Contractor shall ensure or procure as the case may be that any such contract is in writing and:

- 134.1.1. is on reasonable arms' length terms;
- 134.1.2. does not include any terms or conditions which are unusual having regard to standard market practice;
- 134.1.3. (where (the Contractor having used reasonable endeavours) agreed by the counter party) includes a right of the part of the Contractor to assign or novate (without any charge by any person for agreeing to such assignment or novation) the benefit and burden of such contract to the Authority or at the Authority's direction to any new contractor (subject to such contractor providing such reasonable security and/or guarantor as may be reasonably required by the relevant landfill operator as a condition of such assignment) upon expiry or termination of the Contract Period and without triggering any material adverse change in the terms of such contract upon assignment; and
- 134.1.4. does not include any term or condition which renders it personal to the Contractor or Sub-Contractor or otherwise means that any permitted assignee thereof could not take full benefit of the remaining balance of the contract period of such assigned contract.

134.2. Due diligence over Off-Take Contracts

- 134.2.1. To the extent reasonably practicable (having regard inter alia to the Contractor's reasonable requirements to accept the terms offered in the time available to conclude the Off-Take Contract in question), the Contractor shall:
- 134.2.1.1. afford the Authority a reasonable opportunity to conduct due diligence over any Off-Take Contract before the

CONTRACT A

Contractor enters into the same to enable the Authority to assess its terms for compliance with the provisions of Clause 134.1 above and to raise comments thereon; and

134.2.1.2. take into account any reasonable comments made by the Authority and shall use its reasonable endeavours to amend the Off-Take Contract accordingly before such Off-Take Contract is concluded.

134.2.2. The Contractor shall on request and free of charge provide copies of any Off-Take Contracts to the Authority's Representative.

135. CHANGE OF OWNERSHIP OF CONTRACTOR

135.1. The Contractor represents and warrants to the Authority that at the date of this Contract the legal and beneficial ownership of the Contractor is as set out in Schedule 4 (Legal and Beneficial Ownership of the Contractor) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor.

135.2. Subject to Clause 135.3, the Contractor shall inform the Authority as soon as reasonably practicable and, in any event, within 30 Days of any proposed Change of Ownership occurring.

135.3. Not Used.

135.4. The Contractor shall obtain the Authority's prior written consent (which may be given subject to conditions) to any transfer of shares in the Contractor to any person engaged, or with substantial interests in, gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco, or the manufacture or sale of arms and weapons.

135.5. For the purposes of Clauses 135.1 to 135.4 above:-

135.5.1. any change in beneficial or legal ownership of any shares that are listed on a stock exchange shall be disregarded;

135.5.2. any transfer of shares or of any interest in shares by a person to its Affiliate shall be disregarded.

135.6. The Authority may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, request that the Contractor inform it as soon as reasonably practicable and in any event within 30 Days or receipt of the Authority's request for details of any Change of Ownership.

135.7. The Contractor's obligations under Clause 135.1 and 135.5 above

CONTRACT A

shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor's awareness having made all reasonable enquiry.

136. CONTINUING OBLIGATIONS

Save as otherwise expressly provided in this Contract termination of the Contract shall not affect the continuing rights of the Authority and the Contractor under Clauses 1 (Definitions and Suspensory Provisions), 2 (Interpretation), 4 (Precedence of Documentation), 7 (Authority Vires: Local Government (Contracts) Act 1997), 11 (Commencement and Duration), 12 (General Representations, Warranties and Undertakings), 64 (TUPE and Pensions), 65.5 and 65.6 (Employees), 66.4 (Planned Maintenance), 69 (Invoicing and Payment), 72 (Utilities), 73 (NNDR), 74 (Value Added Tax), 75 (Landfill Tax), 76 (Third Party Income), 77 (Fees, Costs and Expenses), 81 (Compensation on Termination for Contractor Default), 83 (Compensation on Termination for Voluntary Termination), 85 (Compensation on Termination for Authority Default), 90 (Compensation on Termination for Force Majeure), 92 (Compensation on Termination for Corrupt Gifts and Fraud), 93 (Transfer of Assets on Termination), 94 (Gross Up of Termination Payments), 97 (Set Off on Termination), 98 (Method of Payment), 99.2.10 (Surveys on Expiry and Termination), 101 (Exit Provisions on Expiry or Termination), 106 (Payment of Irrevocable VAT), 114 (Audit Access and Ombudsman Co-operation), 116 (Dispute Resolution), 117 (Mitigation), 118 (Indemnities), 119 (Exclusive Remedies and Accrued Rights), 120 (Insurance), 121 (Reinstatement after Insured Event), 122 (Uninsurable Risks), 123 (Freedom of Information and Confidentiality), 124 (Contractor's Records), 125 (Intellectual Property Rights and IT Systems Licences), 126 (Data Protection), 128 (Notices), 130 (Euro Continuity of Contract), 131 (Privity), 133 (Assignment and Sub-Contracting), 139 (Waiver), 143 (Law of the Contract and Jurisdiction), Schedule 1 (Definitions), Schedule 9 (Warranted Data), Schedule 10 (TUPE and Pensions), Schedule 43 (Relevant Discharge Terms), Schedule 44 (Compensation on Termination), Schedule 45 (Commercially Sensitive Contractual Provisions), Schedule 46 (Commercially Sensitive Material) or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

137. DISCRIMINATION

The Contractor shall at all times comply with the requirements of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and the requirements of the Authority's Equal Opportunities Policy as amended from time to time and shall take all reasonable steps to ensure compliance by the Contractor's employees, agents and Sub Contractors.

138. AMENDMENTS

This Contract may not be varied except by an agreement in writing signed by the duly authorised Representatives of the parties.

139. WAIVER

139.1. Any relaxation, forbearance, indulgence or delay (together an

CONTRACT A

"indulgence") of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether or not against that party or any other person).

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

139.3. **No waiver under Clause 139.2 shall be a waiver of a post or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.**

140. ENTIRE AGREEMENT

140.1. Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

140.2. Each of the parties acknowledges that:

140.2.1. it does not enter into this Contract on the basis of and does not rely, and has never 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 and agreed to by any person (whether a party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and

140.2.2. this Clause 140 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

141. SEVERABILITY

If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

142. COUNTERPARTS

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

143. LAW OF THE CONTRACT AND JURISDICTION

The Contract shall be governed by the laws of England and Wales and

CONTRACT A

subject to Clause 116 (Dispute Resolution) the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the Contractor and the Authority have signed this Contract as a deed the day and year first above written

SIGNED as a deed by
VEOLIA ES NOTTINGHAMSHIRE
LIMITED

by two directors or a director)
and the company secretary)

John Kutner.....
Director

Robert.Hunt.....
Director/Company Secretary

THE COMMON SEAL of)
NOTTINGHAMSHIRE COUNTY)
COUNCIL was hereunto affixed by order)

David Spicer
Authorised Signatory