

**ANNEX 18
O&M AGREEMENT**

(inserted overleaf)

**C L I F F O R D
C H A N C E**

CLIFFORD CHANCE LLP

EXECUTION VERSION

AMENDMENT AGREEMENT

DATED ____ MAY 2014

FOR

MERCIA WASTE MANAGEMENT LIMITED
THE CONTRACTOR

SEVERN WASTE SERVICES LIMITED
THE OPERATOR

AND

BEACON WASTE LIMITED

RELATING TO A OPERATION AND MAINTENANCE
SERVICES AGREEMENT
DATED 22 DECEMBER 1998

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THIS AGREEMENT is dated ____ May 2014 and made between:

- (1) **MERCIA WASTE MANAGEMENT LIMITED** of The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ, England (the "**Contractor**");
- (2) **SEVERN WASTE SERVICES LIMITED** of The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ, England (the "**Operator**"); and
- (3) **BEACON WASTE LIMITED** of The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ, England ("**Beacon Waste**").

RECITALS:

- (A) The Contractor, the Operator and Beacon Waste are parties to an operation and maintenance services agreement entered into on 22 December 1998 (the "**Original OMA**") for the provision of certain services in connection with the Project (as defined in the Original OMA).
- (B) In connection with certain modifications to the Service Contract (as defined in the Original OMA) the Guarantors (as defined in the Original OMA) will no longer construct the Waste to Energy Plant (as defined in the Original OMA).
- (C) The Contractor has on or about the date of this Agreement entered into an EPC contract pursuant to which Hitachi Zosen Inova AG as EPC contractor has undertaken to construct the Waste to Energy Plant.
- (D) The Parties have agreed to enter into this Agreement in order to record the amendments to and restatement of the Original OMA.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Amended OMA**" means the Original OMA, as amended and restated by this Agreement.

"**Amended OMA Effective Date**" has the meaning given to it in Clause 2.

"**Direct Agreement in favour of the Councils**" means the direct agreement substantially in the form attached as Schedule 2 (*Direct Agreement in favour of the Councils*).

"**Direct Agreement in favour of the Funders**" means the direct agreement substantially in the form attached as Schedule 3 (*Direct Agreement in favour of the Funders*).

"Operation and Maintenance Services Parallel Loan Agreement" means the operation and maintenance services parallel loan agreement dated 22 December 1998 between the Contractor and the Operator.

"Operation and Maintenance Services Technical Support Agreement" means the operation and maintenance services technical support agreement dated 23 December 1998 between the Contractor, the Operator and Urbaser S.A. and FCC Environment Services (UK) Limited (formerly known as FOCSA Services (UK) Limited) (the **"Technical Support Providers"**).

"Parties" means the parties to this Agreement and **"Party"** means any of them as the context so requires.

"Power of Attorney" means the power of attorney substantially in the form attached as Schedule 4 (*Power of Attorney*).

1.2 **Incorporation of defined terms**

- (a) Unless a contrary indication appears, a term defined in the Original CMA has the same meaning in this Agreement.
- (b) The principles of construction set out in the Original CMA shall have effect as if set out in this Agreement.

1.3 **Clauses**

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause in or a Schedule to this Agreement.

1.4 **Third party rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

2. **CONDITIONS PRECEDENT TO THE AMENDED OMA**

The Amended OMA shall not become effective until the execution and delivery by the respective parties thereto of the Direct Agreement in favour of the Councils, the Direct Agreement in favour of the Funders and the Power of Attorney (the **"Amended OMA Effective Date"**).

3. **RESTATEMENT OF THE ORIGINAL OMA**

With effect from the Amended OMA Effective Date the Original OMA shall be amended and restated so that it shall be read and construed for all purposes as set out in Schedule 1 (*Restated Agreement*).

4. **LETTERS OF CONFIRMATION**

4.1 **Letter of confirmation relating to the Operation and Maintenance Services Technical Support Agreement**

The Operator shall procure that the Technical Support Providers shall provide, and the Contractor and the Operator shall acknowledge, a letter of confirmation relating to the Operation and Maintenance Services Technical Support Agreement in the form attached as Schedule 5 (*Confirmation in relation to the Operation and Maintenance Services Technical Support Agreement dated 23 December 1998*).

4.2 **Letter of confirmation relating to the Operation and Maintenance Services Parallel Loan Agreement**

The Contractor and the Operator shall execute a letter of confirmation in relation to the Operation and Maintenance Services Parallel Loan Agreement in the form attached as Schedule 6 (*Confirmation in relation to the Operation and Maintenance Services Parallel Loan Agreement dated 22 December 1998*).

5. **CONTINUITY AND FURTHER ASSURANCE**

5.1 **Continuing obligations**

The provisions of the Original OMA shall, save as amended by this Agreement, continue in full force and effect.

5.2 **Further assurance**

The Parties shall do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Agreement.

6. **FEES AND EXPENSES**

Each Party shall bear all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiations, preparation, and execution of this Agreement and any other documents referred to in this Agreement.

7. **MISCELLANEOUS**

7.1 **Incorporation of terms**

The provisions of clause 45 (*Adjudication Procedure*), clause 46 (*Arbitration Procedure*), clause 48 (*Notices*), clause 55 (*Waiver*), clause 56 (*Survival*), clause 57 (*Severance*) and clause 59 (*English Language*) of the Amended OMA shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "this Agreement" are references to this Agreement.

7.2 **Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

8. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
RESTATED AGREEMENT

**C L I F F O R D
C H A N C E**

CLIFFORD CHANCE LLP

EXECUTION VERSION

Originally dated 22 December 1998
and as Amended and Restated on ____ May 2014

MERCIA WASTE MANAGEMENT LIMITED
("CONTRACTOR")

SEVERN WASTE SERVICES LIMITED
("OPERATOR")

AND

BEACON WASTE LIMITED
("BEACON WASTE")

OPERATION AND MAINTENANCE SERVICES
AGREEMENT

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THIS AGREEMENT is made as a deed and originally dated 22 December 1998 as amended and restated on ___ May 2014

BETWEEN:

- (1) **MERCIA WASTE MANAGEMENT LIMITED**, a company incorporated under the laws of England (the "**Contractor**");
- (2) **SEVERN WASTE SERVICES LIMITED**, a company incorporated under the laws of England (the "**Operator**"); and
- (3) **BEACON WASTE LIMITED**, a company incorporated under the laws of England (the "**Beacon Waste**").

WHEREAS:

- (A) Subject to the provisions of this Agreement, the Contractor and (in respect of each Installation for so long as it is holder of a Waste Management Licence in respect of such Installation) Beacon Waste wish:
 - (a) to engage the Operator to carry out the operation and maintenance of the Project or of such Installation (as relevant);
 - (b) to procure that Beacon Waste makes available the Landfill Site to the Operator to enable the Operator to carry out the Landfill Operations.
- (B) It is intended that the Operator will, pursuant to this Agreement and in accordance with the terms hereof, be responsible, *inter alia*, for:
 - (a) from time to time during the Contract Period, the operation, maintenance and management of:
 - (i) the Bulk Storage Facilities;
 - (ii) the Compost Plant;
 - (iii) the Household Waste Sites;
 - (iv) the Existing Transfer Stations;
 - (v) the Presorted MRF;
 - (vi) [not used];
 - (vii) [not used];
 - (viii) the Kerbside Collection of Recyclable Materials in accordance with arrangement(s) with the WCAs;
 - (ix) the Landfill Site;

- (x) any other aspects of the Contract Services to be performed pursuant to the Service Contract including pursuant to any variation thereto agreed in accordance with the terms of the Service Contract; and
- (xi) providing personnel and assisting in the commissioning of the Waste to Energy Plant including the provision of the Commissioning and Mobilisation Period Services, and
- (b) following the Commercial Operation Date:
 - (i) the operation, maintenance and management of the Waste to Energy Plant, including all associated plant and equipment such as plant and equipment required for the transfer and supply of power and, where applicable, steam to offtaker(s); and
 - (ii) each of the items referred to in Recital (B)(a) above.

NOW IT IS AGREED as follows:

PART I DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions by Incorporation

Unless otherwise defined, terms and expression in this Agreement shall bear the same meaning as set out in the Service Contract.

1.2 Definitions

In this Agreement:

"Additional Commissioning" is defined in Clause 18.2 (*Provision of Commissioning and Mobilisation Period Services*).

"Adjudication" means an adjudication under Clause 45 (*Adjudication Procedure*).

"Adjudication Notice" is defined in Clause 45.1 (*Adjudication Procedure*).

"Adjudication Procedure" means the procedure for adjudication set out in Clause 45 (*Adjudication Procedure*) and in the TeCSA Adjudication Rules *Provided* that in the event of inconsistencies, Clause 45 (*Adjudication Procedure*) shall prevail.

"Adjudicator" is defined in Clause 45.2 (*Adjudication Procedure*).

"Advance" is defined in the Operation and Maintenance Services Parallel Loan Agreement.

"Affiliate" means, with respect to a company, any other company which controls, is controlled by or is under the common control with that company.

"Agreed Operating Budget" [REDACTED]

"Agreed Operating Profit" is defined in Clause 25 (*Agreed Operating Profit*).

"Agreement" means this Agreement, including the Recitals and Schedules.

"Allowable Reimbursable Operating Cost" is defined in Clause 24.1 (*Limitation on Expenditure*).

"Arbitrator" means an arbitrator appointed pursuant to Clause 46 (*Arbitration Procedure*).

"Bring Schemes" means a set of containers used for the deposit and recycling of paper, glass, metals and plastics and located at strategic locations, such as supermarkets and Household Waste Sites.

"Budget Category" means a line item in an Agreed Operating Budget.

"Bulk Storage Facilities" means the storage facilities for recyclable materials originating from Bring Schemes and/or Kerbside Collections provided within Herefordshire and Worcestershire.

"Claiming Party" is defined in Clause 36 (*Definition of Force Majeure Event*).

"Commercial Operation Date" means the date on which the Contractor notifies the Operator in writing that the Waste to Energy Plant has entered, or will enter, into commercial operation.

"Commissioning and Mobilisation Period" means the period from the Effective Date to the Commercial Operation Date.

"Commissioning and Mobilisation Period Services" means the Services set out in Section B (*Commissioning and Mobilisation Period Services*) of Schedule 1 (*Operator Services*).

"Commissioning Protocol" has the meaning given to the term in the EPC Contract.

"Consequential Loss" means any indirect or consequential loss (including loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, loss of use or liability under other agreements) resulting from the performance or non-performance of any obligation hereunder, any act of negligence, breach of contract or otherwise by any party and whether or not such party knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach.

"Consumables" means consumables of all kinds required for the Waste to Energy Plant or any part of it including oils, grease, chemicals, lubricants, filters, resins, speciality gases, fuels (except Contract Waste and Non-Contract Waste) but excluding electricity and water.

"Contract Services" means the Services and the Additional Services as defined in the Service Contract.

"Contract Year" means:

- (a) the First Contract Year; and
- (b) each succeeding period of 12 months commencing on 1 April and ending on 31 March *Provided* that if the date of expiry or termination of this Agreement is not 31 March, the final Contract Year shall end on such date.

"Contractor Consents" means all Necessary Consents required for the provision of the Services and/or the operation and maintenance of the Installations but excluding the Operator Consents.

"Contractor's Insurances" is defined in Clause 33.1 (*Insurance*).

"Contractor's Monthly Invoice" is defined in Paragraph 2 (*Contractor's Monthly Invoice*) of Schedule 2 (*Payments and Invoices*).

"Councils" means WCC and HDC.

"Daily Fixed Fee" is defined in Clause 26.4 (*Payments*).

"Default Rate" means [REDACTED] or in the event that no such rate is quoted in respect of the relevant period such equivalent rate as the parties may agree or in default of agreement as determined by an Adjudicator in accordance with Clause 45 (*Adjudication Procedure*).

"Defect" has the meaning given to such term in the EPC Contract and notwithstanding the foregoing includes any defect or deficiency in the design or construction of the Waste to Energy Plant in respect of which the Contractor is or will be entitled to receive Performance Liquidated Damages under the EPC Contract and any other material defect or deficiency in such design or construction.

"Defect Liability Period" has the meaning given to such term in the EPC Contract.

"Direct Agreement in favour of the Councils" means the direct agreement substantially in the form attached as Schedule 4 (*Direct Agreement in favour of the Councils*).

"Direct Agreement in favour of the Funders" means the direct agreement substantially in the form attached as Schedule 5 (*Direct Agreement in favour of the Funders*).

"Direct Losses" means all damage, losses (including Third Party Revenue), liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;

"Dispute" means any dispute or difference of any kind whatsoever between any or all of the parties to this Agreement arising out of or in connection with this Agreement or the subject matter thereof, including any question regarding (a) its existence, validity or termination or (b) payments or liabilities in respect thereof.

"Dispute Resolution Procedure" means together Part X (*Disputes*) of this Agreement and the TeCSA Adjudication Rules *Provided* that in the event of inconsistencies Part X (*Disputes*) shall prevail over the TeCSA Adjudication Rules.

"Due Date for Payment" means the date on which payment becomes due under Paragraph 1(f) (*Operator's Monthly Invoices*), Paragraph 2 (*Contractor's Monthly Invoices*) or Paragraph 3 (*Final Invoices*) (as relevant) of Schedule 2.

"Early Payment" is defined in Clause 26.9 (*Payments*)

"Effective Date" means the date of a notice from the Contractor to the other parties stating that this Agreement is effective.

"EPC Contract" means the contract entered into on or about the date of this Agreement between the Contractor and the EPC Contractor.

"EPC Contract Guarantor" means Hitachi Zosen Corporation.

"EPC Contractor" means Hitachi Zosen Inova AG.

"EPC Contractor Related Party" means the EPC Contractor's agents and sub-contractors and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the project and any person on or at the Site at the express or implied invitation of the EPC Contractor (other than the Contractor);

"EPC Early Payment" is defined in Clause 10.6 (*Payments in respect of Defects*).

"EPC Entitlement" is defined in Clause 10.2 (*Payments in respect of Defects*).

"Existing Transfer Stations" means the two existing centres at Redditch and Leominster where domestic and commercial waste is received which is subsequently compacted for transport.

"Extended Defects Liability Period" has the meaning given to such term in the EPC Contract.

"Final Invoice" is defined in Paragraph 3 (*Final Invoice*) of Schedule 2 (*Payments and Invoices*).

"First Contract Year" means from the Effective Date to the following 31 March.

"Fixed Fee" [REDACTED]

"Force Majeure Event" is defined in Clause 36 (*Definition of Force Majeure Event*).

"Force Majeure Period" is defined in Clause 26.4 (*Payments*).

"Funder's Technical Adviser" has the meaning given to such term in the EPC Contract.

"HDC" means The County of Herefordshire District Council.

"HGCRA" means the Housing Grants, Construction and Regeneration Act 1996.

"ICE Rules" is defined in Clause 45.16 (*Adjudication Procedure*).

"Indemnified Party" is defined in Clause 32.1 (*Indemnification*).

"Indemnifying Party" is defined in Clause 32.1 (*Indemnification*).

"Independent Tester" means the independent agency appointed pursuant to the EPC Contract to oversee the performance tests.

"Independent Expert" means the suitably qualified independent expert jointly appointed by the Councils and the Contractor to inspect the Waste to Energy Plant to assess whether the Waste to Energy Plant has been and is being maintained by the Operator in accordance with its obligations under clause 29 (*Detailed Maintenance Plan*) of the Service Contract.

"Indirect Losses" means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature save that loss of revenue (including profits) which would otherwise have been payable pursuant to the express terms of this Agreement and loss of Third Party Revenue, shall be Direct Losses;

"Initial Spares" means those Spares to be delivered to the Contractor prior to the Commercial Operation Date.

"Installations" means all plant, machinery, buildings, roads and other structures which together form the:

- (a) Bulk Storage Facilities;
- (b) the Presorted MRF;
- (c) the Compost Plant;
- (d) the Household Waste Sites;
- (e) the Transfer Stations;
- (f) [not used];
- (g) the Waste to Energy Plant;
- (h) the Landfill Site; and

(i) Kerbside Collection.

"**Insurances**" means the Contractor's Insurance and the Operator's Insurance.

"**Insurers**" is defined in Clause 34.1 (*Disclosure*).

"**Invoices**" means a Monthly Invoice or a Final Invoice and "**Invoices**" means all of them.

"**Joint Performance Liquidated Damages Account**" has the meaning given to such term in the Funding Agreement.

"**Kerbside Collection**" means the collection of Recyclable Materials by the Source Separation Service.

"**Landfill Operations**" means the operation and maintenance of a landfill at the Landfill Site and all other services and operations in relation thereto.

"**Latent Defect**" has the meaning given to such term in the EPC Contract.

"**Latent Defects Period**" has the meaning given to such term in the EPC Contract.

"**Lease**" has the meaning given to the term "Leased Property" in the amended and restated property transfer agreement dated on or about the date hereof between the Councils, Beacon Waste and the Contractor.

"**Legal Proceedings**" is defined in Clause 46.13 (*Arbitration Procedure*).

"**Monthly Invoice**" means an Operator's Monthly Invoice or a Contractor's Monthly Invoice.

"**New Facilities**" means the Presorted MRF, the New Transfer Stations, the Waste to Energy Plant and the New Household Waste Sites.

"**New Household Waste Site**" means, at any time following commencement of its construction or refurbishment, each of the Household Waste Sites at Kington, Hereford, Ross-on-Wye, Tenbury, Upton, and Bromsgrove and any other relevant facilities brought into the scope of the Project from time to time.

"**New Operator**" is defined in Clause 41.1 (*Obligations upon Termination*).

"**New Transfer Stations**" means the centres where Contract Waste and Commercial Waste is received which is subsequently compacted for transport, to be developed and built at Hereford City (Rotherwas) and Bromsgrove.

"**Non-Claiming Party**" is defined in Clause 37.1 (*Notification of Force Majeure*).

"**Operator Entitlement**" is defined in Clause 26.5 (*Payments*).

"**Operating Profit**"

"Operation and Maintenance Services Parallel Loan Agreement" means the loan agreement dated 22 December 1998 between the Contractor and the Operator substantially in the form annexed in Schedule 3.

"Operation and Maintenance Services Technical Support Agreement" means the technical support agreement dated 23 December 1998 between the Technical Support Providers, the Contractor and the Operator.

"Operator Consents" means all Necessary Consents required for the provision of the Services and/or the operation and maintenance of the Installations to the standards of a Reasonable and Prudent Operator and which can be obtained in the Operator's name.

"Operator's Insurances" is defined in Clause 33.1 (*Operator's Insurances*).

"Operator's Monthly Invoice" is defined in Paragraph 1 (*Operator's Monthly Invoice*) of Schedule 2 (*Payments and Invoices*).

"Performance Liquidated Damages" means the payments to be made by the EPC Contractor to the Contractor under clause 35 of the EPC Contract.

"President" is defined in Clause 46.1 (*Arbitration Procedure*).

"Project Documents" is defined in the Funding Agreement.

"Project Manager" has the meaning given to such term in the EPC Contract.

"Proposed Operating Budget" is defined in Clause 23.2 (*Operating Budgets*).

"Reasonable and Prudent Operator" means a person seeking in good faith to perform its contractual obligations and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with the Legal Requirements engaged in the same type of undertaking in the same or similar circumstances or conditions and **"standards of a Reasonable and Prudent Operator"** has a corresponding meaning.

"Reduction" is defined in Clause 26.4 (*Payments*).

"Reimbursable Operating Costs" means those items comprised in the Agreed Operating Budget from time to time as and when the same are incurred.

"Related Dispute" is defined in Clause 46.6 (*Arbitration Procedure*).

"Relevant Documents" is defined in Clause 6.12 (*General Obligations of the Operator*).

"Representative" is defined in Clause 4.1 (*Representative*).

"Representing Party" is defined in Clause 29.1 (*Representations and Warranties*).

"Service Contract" means the waste management service contract dated 22 December 1998 between WCC, HDC and the Contractor, as amended and supplemented by a variation agreement on or about the date hereof between WCC,

HDC and the Contractor (a copy of which the Operator acknowledges receiving from the Contractor).

"Service Contract Entitlement" is defined in Clause 26.5 (*Payments*).

"Services" means the services to be provided by the Operator pursuant to this Agreement including those services set out in Schedule 1 (*Operator Services*).

"Sites" means the land (at various locations) on which the plant, machinery, roads and other structures forming the Installations are situated and **"Site"** means the land at any individual location where one or more of the Installations is situated.

"Spares" mean the parts or components of any plant, equipment, machinery or structure comprised within the Waste to Energy Plant required to be delivered to stock at the Waste to Energy Plant from time to time.

"Take Over Date" has the meaning given to such term in the EPC Contract.

"Technical Support Providers" means FCC Environment Services (UK) Limited and Urbaser S.A.

"TeCSA" means the Technology and Construction Solicitors' Association.

"TeCSA Adjudication Rules" means version 3.2 of the adjudication rules of the TeCSA or the most recent edition of the TeCSA Adjudication Rules at the time of an Adjudication Notice.

"Third Party Revenue" means the revenues, if any, deriving from the sale of Recycled Materials, Non-Contract Waste, power and steam.

"Transfer Date" means the date on which the Contractor notifies the Operator that all of the assets (including all Waste Management Licences) of Beacon Waste have been transferred to the Operator and/or the Contractor.

"Transfer Stations" means the Existing Transfer Stations and the New Transfer Stations.

"Tribunal" means an arbitration tribunal appointed pursuant to Clause 46 (*Arbitration Procedure*).

"Variable Fee"



"Waste Management Licence" means, in relation to an Installation, a waste management licence under the Environmental Protection Act 1990.

"WCA" means any relevant waste collection authority (as such term is defined in the Environmental Protection Act 1990) in the administrative area of HDC and/or WCC, from time to time.

"WCC" means Worcestershire County Council.

"Worker" means an individual who has entered into or works under:

- (a) a contract of employment; or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

"Working Hours" means 9.00 am to 5.30 pm on a business day.

1.3 Interpretation

In this Agreement:

- (a) except to the extent that the context requires otherwise, references to the singular shall include references to the plural and vice versa;
- (b) words denoting natural persons shall include corporations, partnerships, firms, companies, joint ventures, trusts, associations and organisations or other entities (whether or not having a separate legal personality) and vice versa;
- (c) references to the words "**include**" and "**including**" are to be construed without limitation;
- (d) except to the extent that the context requires otherwise, references to a "**Recital**", "**Clause**" or "**Schedule**" shall be references to a recital, clause or schedule in, or to, this Agreement;
- (e) except to the extent that the context requires otherwise, references to a "**Part**" shall be references to a part of this Agreement;
- (f) except to the extent that the context requires otherwise, any reference to an agreement or document is a reference to it as further amended, supplemented or novated from time to time and includes a reference to any document which amends, is supplemental to, novates, or is entered into, made or given pursuant to or in accordance with any terms of it;
- (g) unless the context requires otherwise, any reference to a statutory provision (including any secondary legislation) shall include such provision as from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation is applicable (whether before or after the date of this Agreement);
- (h) references to a "**party**" or "**parties**" are to a party or parties to this Agreement;

- (i) a person includes a reference to that person's legal personal representatives, successors and lawful assigns;
- (j) the headings are inserted for convenience only and are to be ignored for the purposes of construction;
- (k) all accounting terms used but not expressly defined herein shall have the meaning respectively given to them under generally accepted accounting principles;
- (l) the terms "**hereof**", "**herein**", "**hereby**", "**hereto**" and similar words refer to this Agreement;
- (m) references to pounds sterling shall include the references to the lawful currency of the United Kingdom, from time to time;
- (n) this Agreement includes the Schedules;
- (o) a "**day**" shall mean a period of 24 hours running from midnight to midnight;
- (p) a "**year**" or a "**month**" is a reference to a calendar year or calendar month as the case may be;
- (q) a "**business day**" means a day on which banks in London are generally open for business and excludes Saturday and Sunday;
- (r) except to the extent that the context requires otherwise, references to a "**Paragraph**" or "**Section**" are to a paragraph or section of a Schedule respectively; and
- (s) the masculine includes the feminine and vice versa.

PART II

ENGAGEMENT OF OPERATOR, REPRESENTATIVE AND TERM

2. ENGAGEMENT

- 2.1 The Contractor hereby appoints the Operator to provide the Services and to operate, maintain and manage the Installations, and the Operator hereby accepts such appointment, on and subject to the terms of this Agreement.
- 2.2 Beacon Waste hereby appoints the Operator to provide, in respect of each Installation (including, for the avoidance of doubt, the Landfill Site), for so long as Beacon Waste is the holder of the Waste Management Licence for such Installation, (insofar as they relate to such Installation) the Services, and to operate, maintain and manage for such period each such Installation, and the Operator hereby accepts such appointment on and subject to the terms of this Agreement. Subject to Clause 2.3, the Operator agrees that its obligations under this Agreement shall, in respect of each such Installation and to the extent such obligations relate to such Installation for so long as Beacon Waste is the holder of the Waste Management Licence for such Installation, be performed by it in favour of the Contractor and in favour of Beacon Waste, in the latter case so as to avoid placing Beacon Waste in

breach of the terms and conditions of the Waste Management Licence for such Installation. The parties agree that, except as expressly provided otherwise herein, Beacon Waste shall have the same rights as the Contractor in respect of any non-performance by the Operator of obligations that are required hereunder to be performed by the Operator in favour of both it and the Contractor.

2.3 The parties agree that:

- (a) the Operator shall not be required to perform any obligation in favour of Beacon Waste under this Agreement; and
- (b) Beacon Waste shall not enforce any rights that it may have against the Operator in respect of any non-performance by the Operator of any obligations that it is required to perform in Beacon Waste's favour under this Agreement,

where to do so would have a material adverse effect on the Project or on the Contractor's position under the Project Documents.

2.4 For the purposes of providing the Operator with access to the Landfill Site to perform its obligations hereunder in respect of the Landfill Operations, Beacon Waste hereby grants to the Contractor and the Operator an irrevocable licence (such licence expiring on the Transfer Date or earlier termination of this Agreement):

- (a) to occupy the Landfill Site;
- (b) to deposit Contract Waste and Non-Contract Waste at the Landfill Site in accordance with the provisions of the Service Contract and this Agreement; and
- (c) to do all such other acts ancillary to the undertaking of the Landfill Operations as may be necessary or desirable in order to enable the Operator to perform its obligations hereunder and so as to avoid placing the Contractor in breach of its obligations under the Service Contract in relation to the Landfill Site.

2.5 On and from the Transfer Date, Beacon Waste shall cease to be a party to this Agreement.

3. **RELATIONSHIP OF THE PARTIES**

No party shall by virtue of this Agreement have the power or authority to bind the other party as to any matter or thing to be done in relation to the Installations or to the provision of the Services save as may be expressly authorised in this Agreement or agreed in writing between the parties from time to time. Neither the Operator nor Beacon Waste is authorised to act as the Contractor's agent in performing any of its obligations hereunder except as authorised in writing by the Contractor in advance.

4. **REPRESENTATIVE**

- 4.1 Subject to Clause 4.3, each party shall appoint a representative (the "**Representative**") who shall be authorised to act on behalf of that party, with whom the other parties may consult at all reasonable times, and whose instructions, requests and decisions

shall be binding upon the appointing party as to all matters pertaining to this Agreement.

- 4.2 Each party shall give notice to the other parties of the appointment and identity of its Representative as soon as reasonably possible after the execution of this Agreement.
- 4.3 Beacon Waste hereby appoints the Operator as its agent and representative hereunder with full authority to act on its behalf hereunder including in respect of any Dispute.
- 4.4 The Contractor may, from time to time, appoint some other person as its Representative in place of the person previously so appointed and shall give notice of the name of such other person to the other parties without delay. Such appointment shall take effect upon receipt of such notice by the other parties.

5. TERM

This Agreement will commence on the Effective Date and continue in force until the earlier of:

- (a) notice from the Contractor of the expiry of the Contract Period or termination of the Service Contract; or
- (b) subject to the Direct Agreement in favour of the Funders and the Direct Agreement in favour of the Councils, the date on which this Agreement may be terminated in accordance with Part VIII (*Termination*).

PART III OBLIGATIONS OF THE PARTIES

6. GENERAL OBLIGATIONS OF THE OPERATOR

- 6.1 The Operator shall provide all the Services set out in Clause 6.2 to 6.6 and such other Services as the Contractor may from time to time reasonably request the Operator to perform and as are reasonably necessary or appropriate in connection with the operation, maintenance and management of the Installations in accordance with:
 - (a) the terms and subject to the conditions and limitations set forth in this Agreement; and
 - (b) reasonable instructions given by the Contractor.
- 6.2 The Operator shall perform, on behalf of the Contractor, such obligations of the Contractor under, and in accordance with, the Project Documents as the Contractor may from time to time reasonably request or as are reasonably necessary or appropriate in connection with the maintenance, management and operation of the Installations, in accordance with and/or consistent with the Operator's obligations hereunder and to the standards of a Reasonable and Prudent Operator. The Operator shall do all things necessary and within its power to comply with its obligations hereunder in accordance with the Project Documents so as to avoid placing the Contractor in breach of its obligations thereunder. For the avoidance of doubt, the Contractor may instruct the Operator to perform any additional obligations of the Contractor which arise from a Council Change and/or a Contractor Change and/or a

Change in Legal Requirements and/or a Discriminatory Change in Legal Requirements under the Service Contract.

- 6.3 The Operator shall, where and to the extent so instructed by the Contractor, manage and co-ordinate the services (including the Contract Services) provided pursuant to agreements (including the Project Documents) entered into by the Contractor in relation to the operation, maintenance and management of the Installations.
- 6.4 Without prejudice to its obligations under this Clause 6 and subject to the Contractor's instructions, the Operator shall maintain, manage and operate the Installations in such a manner as to optimise the long term profitability of the Project (including achieving at least the Agreed Operating Profit).
- 6.5 The Operator shall perform, on behalf of the Contractor, such obligations of the Contractor under the Financing Agreements as the Contractor may from time to time reasonably request and as are reasonably necessary or appropriate in connection with fulfilling the Contractor's obligations under the Financing Agreements.
- 6.6 Without limitation to this Clause 6, the Operator shall undertake and provide the Services set out in Schedule 1 (*Operator Services*).
- 6.7 The Operator shall notify the Contractor immediately upon becoming aware of any conflict in any requirements set out in this Clause 6 and/or Schedule 1 (*Operator Services*) and shall recommend to the Contractor which requirement should prevail (giving reasons for such recommendation). The Contractor shall direct which requirement or requirements should prevail and the Operator shall thereafter comply with the Contractor's direction.
- 6.8 The Operator shall provide the Services referred to in this Clause 6 and Schedule 1 (*Operator Services*) in a safe and efficient manner and in accordance with:
 - (a) the standards of a Reasonable and Prudent Operator;
 - (b) this Agreement and the relevant terms of all other Project Documents including each Lease and each Managed Property Licence;
 - (c) all Legal Requirements, Environmental Legal Requirements, Necessary Consents (including Planning Permissions) and all relevant regulatory requirements;
 - (d) the operation and maintenance manuals provided by any Building Contractor and any original equipment manufacturers;
 - (e) any standing instructions and procedures established and agreed between the Contractor and the Operator;
 - (f) any reasonable requirements of the Contractor;
 - (g) all applicable Site rules and regulations;

- (h) the requirements of all insurance and reinsurance policies required in respect of the Project including those required to be maintained pursuant to Clause 33 (*Insurance*);
 - (i) the Service Delivery Plan;
 - (j) the then current Agreed Operating Budget; and
 - (k) a quality plan (to be developed by the Operator within a reasonable period of time following the Effective Date) which accords with BS EN 9001.
- 6.9 So long as the Operator is performing its obligations under this Agreement in accordance with the terms hereof, and subject to the Contractor's rights hereunder, the Contractor shall not interfere with such performance *Provided* that the Contractor reserves the right to take such action as may be required to preserve its rights or prevent a default under the Project Documents or the Financing Agreements.
- 6.10 The Operator shall, upon reasonable prior notice, provide free and unlimited access to the Sites to the Contractor, the Representative, the Funder's Technical Adviser, the Independent Expert and any representative of the Funders.
- 6.11 The Operator shall at all times obtain in a timely manner and maintain all Operator Consents and (as reasonably requested) assist the Contractor in obtaining all Contractor Consents.
- 6.12 The Operator acknowledges it is fully aware of the relevant terms of the Project Documents and the Financing Agreements (the "**Relevant Documents**") and undertakes it shall co-ordinate the provision of the Services with the performance of the Contractor's obligations under the Relevant Documents so as to ensure that the Contractor is not in breach of its obligations under the Relevant Documents.
- 6.13 The Operator warrants it has provided to the Contractor a Power of Attorney dated on or about the date hereof which will become effective in the event that (a) the Operator's appointment hereunder is terminated and (b) at the time of such termination the Operator holds one or more Waste Management Licences for the Installations.
- 6.14 If and to the extent that the CDM Regulations apply during the course of the Operator carrying out its obligations under this Agreement:
- (a) the Operator is hereby appointed, and shall comply with its obligations as, "principal contractor" under the CDM Regulations in relation to the Services, the Installations and the Sites; and
 - (b) to the extent relevant in respect of this Agreement, the Operator may also be appointed "CDM co-ordinator" under the CDM Regulations in relation to the Services, the Installations and the Sites, and hereby consents to and agrees to accept such appointment (and to execute such documents in connection with such appointment as the Contractor may reasonably request) on written notice from the Contractor.

The Operator hereby warrants that it is competent to perform the obligations that are, or may be, imposed on it pursuant to this Agreement in respect of the CDM Regulations and that it shall at its own cost comply at all times with the CDM Regulations in relation to the Services, the Installations and the Sites and otherwise in the performance of its obligations under this Agreement.

- 6.15 The Operator undertakes to provide, as and when necessary, reasonable support to the suppliers of items of key plant (including, without limitation, to the furnace, steam turbine and boiler suppliers) in the form of, *inter alia*, necessary access to the Sites, routine plant and labour *Provided* that such support shall be within the existing capabilities of the Operator.

7. **HAND BACK OF THE WASTE TO ENERGY PLANT**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. **INDEPENDENT TESTER**

[REDACTED]

[REDACTED]

[REDACTED]

9. **DEFECTS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. PAYMENTS IN RESPECT OF DEFECTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. EPC CONTRACTOR INTERFACE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. **ENFORCEMENT REGIME**

[REDACTED]

13. **OBLIGATIONS OF THE CONTRACTOR**

[REDACTED]

[REDACTED]

14. **PERSONNEL**

14.1 The Representative of the Operator, who shall:

- (a) be recruited from the personnel of either of the Technical Support Providers or either of the Guarantors;
- (b) have the skills and expertise necessary to carry out the operation and maintenance of the Project and of each Installation under this Agreement; and
- (c) be based in the United Kingdom,

whose appointment the Contractor shall previously have agreed to in writing, shall act as project director and direct and control the overall performance by the Operator of the Services. Such person, or any replacement approved from time to time by the Contractor pursuant to Clause 14.2, shall have full authority to act on behalf of the Operator for all purposes in connection with this Agreement and (unless the Contractor otherwise agrees) shall represent the Operator at each and every meeting in relation to the Project.

14.2 The Operator shall procure that all personnel employed by it in relation to the provision of the Services are fully trained and have all necessary expertise to perform all tasks within the responsibilities of such persons. The Contractor's prior written approval (not to be unreasonably withheld or delayed) shall be required for:

- (a) the appointment, replacement or removal of the Representative of the Operator and personnel identified in the Service Delivery Plan attached as Annex 3 (*Service Delivery Plan*) to the Service Contract; and
- (b) the appointment, replacement or removal of personnel who are to provide Supplementary Services pursuant to (and as defined in) the Operation and Maintenance Services Technical Support Agreement.

14.3 The Operator shall at all times maintain strict discipline and good order amongst its personnel and those of its subcontractors. The Operator shall at all times be responsible and liable for the welfare and all acts or omissions of its personnel.

14.4 The Contractor may require the Operator to remove any personnel and promptly replace such personnel with suitably qualified, experienced and competent personnel (at the expense of the Operator) but only on reasonable grounds relating to performance, conduct, competence, training or experience or deployment in the United Kingdom.

15. INFORMATION

15.1 The Operator shall notify the Contractor immediately upon becoming aware of the occurrence of:

- (a) any default or non-compliance by any party in respect of any of the Project Documents or any of the Necessary Consents;
- (b) any event or circumstance constituting Force Majeure under any of the Project Documents; or
- (c) any event or circumstance which may result in the occurrence of any of the matters referred to above.

15.2 The Operator shall at all times liaise with and provide such information as is reasonably requested by the Contractor in respect of any matters relating to provision of the Services and compliance with the Project Documents and the Financing Agreements.

16. SUBCONTRACTING

16.1 The Operator may subcontract part of the Services:

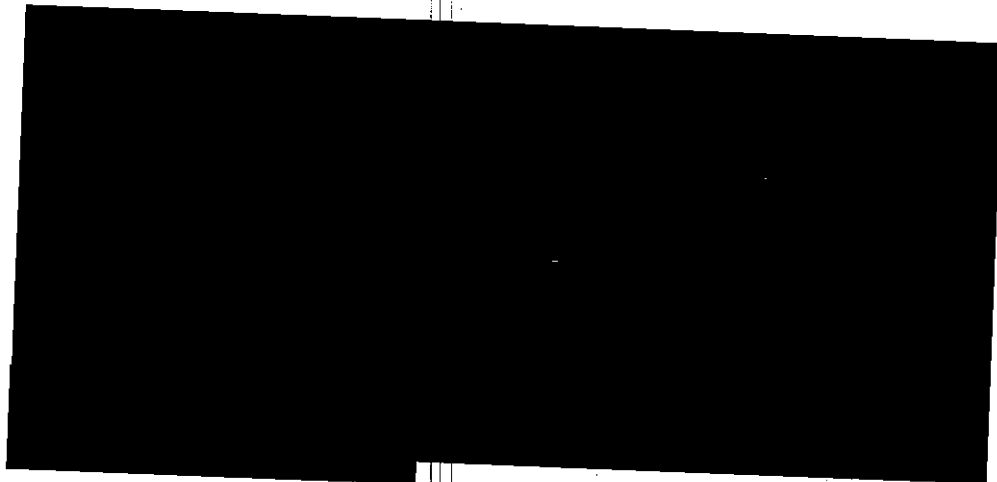
- (a) on terms complying with the standards of a Reasonable and Prudent Operator;
- (b) on terms in accordance with normal commercial practice; and
- (c) at arm's length,

Provided that:

- (i) reasonable details of all subcontracts shall be notified in writing by the Operator to the Contractor prior to being entered into by the Operator and shall be subject to the approval of the Contractor (not to be unreasonably withheld, it being agreed that the withholding by the Superintendent Officer of its consent to such a subcontract under clause 13.4 of the Service Contract shall be a reasonable ground for the Contractor to withhold its consent hereunder);
- (ii) no subcontract shall relieve the Operator from its obligations hereunder and the Operator shall be responsible for any act, omission or default on the part of its subcontractors; and
- (iii) the Contractor may require the Operator to remove and promptly replace any subcontractor (at the expense of the Operator) with suitably qualified, experienced and competent personnel but only on reasonable grounds relating to performance, conduct, competence, training or experience.

16.2 The Operator shall ensure that any subcontract entered into by the Operator in connection with the procurement of Services is freely assignable to the Contractor, any New Operator and any Funder (or any representative of a Funder).

17. **FINES AND PENALTIES**



**PART IV
COMMISSIONING AND MOBILISATION PERIOD**

18. **PROVISION OF COMMISSIONING AND MOBILISATION PERIOD SERVICES**

18.1 Without limitation to its obligations under Part III (*Obligations of the Parties*), the Operator shall provide the Commissioning and Mobilisation Period Services during the Commissioning and Mobilisation Period.

18.2 The parties acknowledge that Installations other than the Waste to Energy Plant may require commissioning and testing prior to commercial operation (the "**Additional Commissioning**").

18.3 The Operator agrees that it shall carry out such Services in respect of the Additional Commissioning as the Contractor may in its sole discretion direct in writing to the Operator.

18.4 The Contractor shall provide reasonable prior notice to the Operator of the date of commencement of commissioning of the Waste to Energy Plant or of any Additional Commissioning.

19. [NOT USED]

20. **COMPLIANCE WITH SITE SAFETY RULES**

The Operator, its personnel and any person engaged or employed by the Operator and its subcontractors, shall, prior to the Commercial Operation Date (in the case of the Waste to Energy Plant) or prior to the commercial operation of other New Facilities (in the case of such New Facilities), comply with all of each Building Contractor's site safety rules, laws and Necessary Consents (including Planning Permissions) and shall not unreasonably interfere with, delay or disturb and shall, where reasonable, assist the Building Contractor in performing its obligations under the relevant Construction Contract.

21. **CONSUMABLES AND SPARES**

21.1 As soon as reasonably practicable after the Effective Date, the Operator shall:

- (a) procure, on the Contractor's behalf, all those Consumables and Initial Spares required to be provided by the Contractor under the Commissioning Protocol;
- (b) liaise with the EPC Contractor in respect of those Consumables and Initial Spares which are to be provided by the EPC Contractor pursuant to the EPC Contract for the Waste to Energy Plant and for the purpose of the storage of all Consumables and Initial Spares; and
- (c) maintain in good condition all Consumables and Initial Spares required for the Waste to Energy Plant in accordance with the relevant Agreed Operating Budget and the standards of a Reasonable and Prudent Operator;
- (d) specify, procure, store, protect, maintain and procure replenishment of consumables and spare parts (including initial spare parts) for the Installations (excluding the Waste to Energy Plant) in accordance with Paragraphs 18 and 19 of Section A of Schedule 1.

21.2 Title to all consumables and spare parts for the Installations (including the Consumables and Spares) shall be vested in the Contractor at all times.

22.1 The Operator shall, if so and to the extent reasonably requested by the Contractor, attend and witness, and provide personnel to be trained by the EPC Contractor under the EPC Contract to assist in, any performance or commissioning tests of the Waste to Energy Plant, and attend and witness and provide personnel for and assist in any Additional Commissioning for Installations other than the Waste to Energy Plant.

PART V

OPERATING BUDGETS AND EXPENSES

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

24. **LIMITATION OF EXPENDITURE**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. **AGREED OPERATING PROFIT**

[REDACTED]

26. **PAYMENTS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. PERFORMANCE INCENTIVES

[REDACTED]

[REDACTED]

[REDACTED]

PART VI
REPRESENTATIONS, WARRANTIES AND COVENANTS

28. NEGATIVE COVENANTS

Unless the Operator shall have obtained the prior written consent of the Contractor, the Operator shall not (or, to the extent the same is within its control, shall not permit any person to):

- (a) create, incur, assume or permit to exist any lien upon the Installations other than a lien permitted under the Financing Agreements *Provided* that the reasonable expenses necessary to remove any lien not existing because of any breach by the Operator of this Agreement shall be included in an Agreed Operating Budget or shall, if not included in an Agreed Operating Budget, be approved by the Contractor in accordance with the terms of this Agreement;
- (b) sell, lease, assign, transfer or otherwise dispose of any of the Contractor's property;
- (c) make payments or otherwise transfer sums to any person (including the making of any loans or advances to any person) using any funds of the Contractor, except as permitted in an Agreed Operating Budget or otherwise permitted in this Agreement; or
- (d) cause the Contractor to be, or to become, responsible or liable for obligations of any other person.

29. REPRESENTATIONS AND WARRANTIES

29.1 Each party (the "Representing Party") represents and warrants for the benefit of the other parties as follows (such warranties to be repeated continuously and to survive the termination or expiry of this Agreement):

- (a) **Organisation** – The Representing Party is a company validly existing and is authorised to conduct its business under the laws of England. The

Representing Party has the power and authority to own or lease its assets, to enter into this Agreement, and to perform its obligations hereunder.

- (b) **Authorisation and Enforceability** – The execution, delivery and performance of this Agreement have been duly authorised by all necessary action on the part of the Representing Party. This Agreement has been duly executed and delivered by the Representing Party and constitutes the legal, valid and binding obligations of the Representing Party, enforceable in accordance with its terms.
- (c) **No Violation of Laws or Agreements** – The execution and delivery of this Agreement does not, and the compliance with the terms, conditions and provisions of this Agreement by the Representing Party shall not:
 - (i) contravene any provision of the Representing Party's memorandum and articles of association;
 - (ii) conflict with or result in a breach of or constitute a default (or an event which would, with the passage of time or the giving of notice or both, constitute a default) under any of the terms, conditions or provisions of any agreement or instrument to which the Representing Party is a party or by which it or any of its assets are bound or affected, or any judgement or order of any competent authority; or
 - (iii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon its assets or give to others any interests or rights therein; except to the extent that such contravention, conflict, breach, default, lien, charge or encumbrance, individually or in the aggregate, could not reasonably be expected:
 - (A) to have a material adverse effect on the business or financial condition of the Representing Party or the ability of the Representing Party to perform its obligations hereunder; or
 - (B) to affect the legality, validity or enforceability of this Agreement.
- (d) **Consents** – No clearance is required in connection with the execution and delivery of this Agreement or to allow the Representing Party to perform any of its obligations hereunder other than any such as may already have been or shall in due course be obtained.
- (e) **No Pending Litigation or Proceedings** – There are, to the best knowledge of the Representing Party, no actions, suits, investigations, or proceedings pending or threatened against or affecting the Representing Party or any of its assets, by or before any competent authority, and there is no basis for any such action, suit, investigation or proceeding, and there are presently no outstanding judgements or orders of any competent authority against or affecting the Representing Party or any of its businesses or assets, except for such judgements and orders which, individually or in the aggregate, could not reasonably be expected:

- (i) to have a material adverse effect on the business or financial condition of the Representing Party or the ability of the Representing Party to perform its obligations hereunder; or
- (ii) to affect the legality, validity or enforceability of this Agreement.

29.2 The Operator hereby represents and warrants for the benefit of the other parties (such warranty to be repeated continuously and to survive the termination or expiry of this Agreement) that it has the necessary training, experience and capability to manage the Installations and perform all of its obligations under this Agreement.

30. LIMITATIONS

Except as expressly set forth in this agreement, no party makes any representations, covenants, warranties or guarantees, express or implied, including any implied warranty of suitability or fitness for a particular purpose in respect of any materials, supplies or Services provided or procured for the Installations. Each party's exclusive remedies and only obligations, arising out of or in connection with any warranty or breach thereof shall be those expressly set out in this Agreement.

31. WARRANTY BY SUPPLIERS

The Operator shall use all reasonable efforts to secure from vendors, suppliers and subcontractors, for the Contractor's benefit, such warranties and guarantees as may reasonably be available regarding supplies, equipment and Services purchased or provided for the Installations. The Operator shall use its reasonable endeavours to ensure that such warranties and guarantees are assignable to the Funders.

PART VII RISK ALLOCATION

32. INDEMNIFICATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. **INSURANCE**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. **DISCLOSURE**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. **LIABILITY**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. **DEFINITION OF FORCE MAJEURE EVENT**

In this Agreement, "**Force Majeure Event**" shall mean any event or circumstance or combination of events or circumstances defined as a Force Majeure Event or a Relief Event in the Service Contract that materially and adversely affects a party (the "**Claiming Party**") in the performance of its obligations in accordance with the terms of this Agreement but only if and to the extent that such events and circumstances are not within the reasonable control, directly or indirectly, of such Claiming Party and the Claiming Party has used all reasonable efforts to prevent or avoid the Force Majeure Event and mitigate its effects.

37. **NOTIFICATION OF FORCE MAJEURE**

37.1 The Claiming Party shall notify the other party (the "**Non-Claiming Party**") in writing of the occurrence of any Force Majeure Event as soon as reasonably practicable, and in any event within 7 days after the Claiming Party knew, or ought reasonably to have known, of its occurrence and that the Force Majeure Event would be likely to have an impact on its performance of its obligations under this Agreement.

37.2 Any notice pursuant to Clause 37.1 shall set out full particulars of:

- (a) the nature of each Force Majeure Event which is the subject of any claim for relief;
- (b) the effect which such Force Majeure Event is having or had on the Claiming Party's performance of its obligations under this Agreement;
- (c) the measures which the Claiming Party is taking, or proposes to take, to mitigate the impact of each Force Majeure Event; and
- (d) any other information relevant to the Claiming Party's claim.

37.3 For so long as the Claiming Party continues to claim to be affected by a Force Majeure Event, it shall provide the Non-Claiming Party with regular (and not less than monthly) written reports containing:

- (a) the information called for by Clause 37.2; and
- (b) such other information and evidence as the Non-Claiming Party may reasonably request concerning the Claiming Party's claim.

37.4 The Claiming Party shall promptly notify the Non-Claiming Party in writing when any Force Majeure Event, which is the subject of any claim, ceases or when there is

any material change in its impact on the Claiming Party's performance of its obligations under this Agreement.

38. CONSEQUENCES OF FORCE MAJEURE

Except as expressly provided in this Agreement, the Claiming Party shall not be in breach of its obligations pursuant to this Agreement or otherwise liable to the Non- Claiming Party for any delay in performance or any non-performance of any such obligations if and to the extent that such delay or non-performance is due to a Force Majeure Event *Provided that*:

- (a) the Claiming Party could not have avoided the effect of the Force Majeure Event by taking all reasonable precautions which, having regard to all matters known to it before the occurrence of the Force Majeure Event and all other relevant factors, it ought to have taken;
- (b) the Claiming Party has used its best endeavours to mitigate the effect of the Force Majeure Event; and
- (c) in the case of Force Majeure Event claimed by the Operator or Beacon Waste, such event can be, and is, claimed as an event of Force Majeure or Relief Event by the Contractor under the Service Contract. The parties agree that the Operator's and Beacon Waste's relief under this Agreement for a Force Majeure Event shall be limited to that obtained by the Contractor under the Service Contract for an event of Force Majeure or Relief Event.

39. EXTENSION OF TIME

Upon the occurrence of a Force Majeure Event and subject to such Force Majeure Event being able to be invoked pursuant to Clause 38 (*Consequences of Force Majeure*), any deadlines for performance of obligations under this Agreement shall be extended to the extent reasonably necessary to compensate for the delay *Provided that* relief shall not be granted to the extent that such delay would nevertheless have been experienced by the Claiming Party had the Force Majeure Event not occurred.

**PART VIII
TERMINATION**

40. TERMINATION

- 40.1 The employment of the Operator will terminate automatically in the event that the Service Contract is terminated.
- 40.2 The Contractor shall be entitled by written notice to terminate this Agreement if any one or more of the following events occur:
 - (a) the Operator is in breach of any material terms and conditions of this Agreement and (if the breach was capable of remedy) has failed to remedy the breach within 60 days of receipt of a notice from the Contractor giving full details of the breach and requiring the Operator to remedy it;

- (b) the Funders, pursuant to their rights under the Funding Agreement, direct the Contractor to replace the Operator;
- (c) any change in the ownership or control of the Operator or amalgamation, merger, consolidation by the Operator with any other person without the prior written consent of the Contractor where such change in ownership or such amalgamation may adversely affect the interests of the Contractor;
- (d) the Operator:
 - (i) appoints a provisional liquidator or liquidator or enters into liquidation whether compulsory or voluntary (except in the case of a voluntary winding-up solely for the purposes of reconstruction or amalgamation);
 - (ii) suffers the appointment of a receiver or receiver manager over any of its property or assets or makes or agrees to any compromise, arrangement or moratorium with its creditors;
 - (iii) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (iv) becomes the subject of a petition seeking an administration order under the provisions of the Insolvency Act 1986; or
- (e) wilful misconduct on the part of the Operator.

40.3 Without prejudice to any other rights or remedies of the parties hereto, the Contractor may at any time voluntarily terminate this Agreement by providing at least 2 months' written notice to the Operator.

40.4 The Operator, subject to the Direct Agreement in favour of the Funders and the Direct Agreement in favour of the Councils, shall be entitled by notice to terminate this Agreement if any one or more of the following events occur:

- (a) the Contractor is in breach of any material terms and conditions of this Agreement and (if the breach was capable of remedy) has failed to remedy the breach within 60 days of receipt of a notice from the Operator giving full details of the breach and requiring the Contractor to remedy it;
- (b) the Contractor;
 - (i) appoints a provisional liquidator or liquidator or enters into liquidation whether compulsory or voluntary (except in the case of a voluntary winding-up solely for the purposes of reconstruction or amalgamation);
 - (ii) suffers the appointment of a receiver or receiver manager over any of its property or assets or makes or agrees to any compromise, arrangement or moratorium with its creditors;
 - (iii) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(iv) becomes the subject of a petition seeking an administration order under the provisions of the Insolvency Act 1986; or

(c) wilful misconduct on the part of the Contractor.

40.5 Beacon Waste hereby irrevocably waives any right of termination it may have pursuant to this Agreement or at law to terminate this Agreement.

41. OBLIGATIONS UPON TERMINATION

41.1 Upon termination or expiry of this Agreement, the Operator shall co-operate with the Contractor in relation to the transfer of the operation and maintenance of the Installations to the Contractor or a new operator of the Installations as appointed by the Contractor (a "New Operator") and shall quit the Sites as soon as is reasonably practicable. The Operator shall leave all special tools, improvements, inventory of supplies, safety equipment, operating and maintenance products and manuals which are the property of the Contractor at the Installations. Subject to all rights of the Contractor under the Legal Requirements and subject to the provisions of Clause 41.2, the Operator may remove from the Installations any items of property belonging to it. Following termination, the Operator shall suspend performance of the Services under this Agreement and secure the Installations against any damage.

41.2 Upon termination or expiry of this Agreement:

(a) the Operator shall deliver to the Contractor all books, records, accounts, manuals, standing instructions and procedures and administrative procedures developed by the Operator pursuant to this Agreement and (to the extent required in view of Clause 50 (*Intellectual Property*)) provide the Contractor with the non-exclusive right to continue to use all Intellectual Property Rights owned by the Operator contained therein and which are necessary to the continued operation of the Installations; and

(b) the Contractor may:

(i) take possession of all of the equipment, fuel and supplies of the Contractor located at the Installations for the purposes of performing the obligations of the Operator under this Agreement; and

(ii) employ any other person, firm or corporation to perform such obligations.

41.3 Upon termination or expiry of this Agreement, the Operator shall at the Contractor's request and, where this Agreement is terminated due to the Contractor's default, expense (payment to be made by the Contractor within 30 days after receipt of invoices from the Operator), perform the following obligations (in addition to its obligations set out in Clauses 41.1 and 41.2):

(a) assist the Contractor in preparing an inventory of all equipment, spare parts and supplies in use or in storage at the Installations; and

(b) leave the Sites in a tidy state.

- 41.4 Without prejudice to any further rights of the Contractor arising under this Agreement and to the Contractor's right to set off any amounts owing by the Operator to the Contractor, if this Agreement is terminated pursuant to Clauses 40.2(a) to (e) (*Termination*), the Contractor shall not be obliged to pay to the Operator any sum owing to the Operator under this Agreement as at the date of termination until all sums owing by the Operator to the Contractor, including all additional costs reasonably and properly incurred by the Contractor as a result of such termination, have been settled whether by way of payment, set-off, counterclaim or otherwise.
- 41.5 Without prejudice to any further rights of the Operator arising under this Agreement and to the Contractor's right to set off any amounts owing by the Operator to the Contractor, if this Agreement is terminated pursuant to Clauses 40.4(a) to (c) (*Termination*), the Contractor shall pay to the Operator:
- (a) any sum owing to the Operator under this Agreement as at the date of termination; and
 - (b) additional costs reasonably and properly incurred by the Operator in the process of termination and demobilisation.

PART IX SUSPENSION OF THE SERVICES

42. SUSPENSION BY THE CONTRACTOR

The Contractor may at any time by notice to the Operator require the Operator to forthwith suspend the Services or any part thereof for such time or times and in such manner as the Contractor may consider necessary, and shall during such suspension properly protect and secure the Installations against any deterioration, loss and damage.

43. RECOMMENCEMENT AFTER SUSPENSION

The Operator shall recommence provision of the Services upon receipt of notice referring to this Clause 43 from the Contractor *Provided* that, during any period of suspension, the Contractor shall:

- (a) keep the Operator advised as to the likelihood of it requiring the Operator to recommence provision of the Services; and
- (b) give the Operator reasonable notice of recommencement of the Services (taking into account the extent of training, re-training and mobilisation likely to be required by the Operator prior to recommencement of provision of the Services).

44. COSTS

- 44.1 The Operator shall be entitled to reimbursement of its reasonable costs incurred in suspending the Services, protecting and securing the Installations and re-starting the Services (including costs, salaries and wages associated with demobilising and remobilising the Operator's personnel) save to the extent such suspension is caused by the act or omission of the Operator.

- 44.2 To the extent that the Contractor requires the Operator to continue providing any part of the Services during any period of general suspension of the Services, the Operator shall be entitled to receive the appropriate proportion (taking into account the costs incurred by the Operator in providing such part of the Services) of the Fixed Fee or Variable Fee respectively in respect of such part of the Services net of any amounts received pursuant to Clause 44.1.

PART X DISPUTES

45. ADJUDICATION PROCEDURE

- 45.1 Any party to a Dispute wishing to initiate the Adjudication Procedure may at any time, issue a written notice (an "**Adjudication Notice**") to all of the other parties and to the Adjudicator (if any) appointed pursuant to Clause 45.2 or Clause 45.3 giving particulars of the Dispute and informing them of its intention to refer the Dispute to adjudication in accordance with the Adjudication Procedure.
- 45.2 The parties to the Dispute (the "**disputing parties**") shall endeavour to agree the identity of and appoint an adjudicator (the "**Adjudicator**") in respect of any Dispute during a period of five business days following service of the Adjudication Notice.
- 45.3 If the disputing parties have not agreed on and appointed the Adjudicator within the period of five business days referred to in Clause 45.2, any disputing party may apply for a nomination and appointment to the Chairman of TeCSA or his duly appointed deputy in accordance with the process set out in the TeCSA Adjudication Rules.
- 45.4 The parties shall be jointly responsible for engaging the Adjudicator.
- 45.5 The Adjudicator shall as part of his determination specify the disputing party or disputing parties to be responsible for the fees and expenses of the Adjudicator. If any disputing party fails to discharge its responsibilities regarding the engagement and/or the payment of the fees and expenses of the Adjudicator, then in any such case the other disputing party or disputing parties may enter into the relevant engagement and/or pay the relevant fees and expenses and recover the same as a debt from the disputing party or disputing parties in default.
- 45.6 The Adjudicator shall, subject to compliance with the Adjudication Procedure, establish the procedure and timetable for the Adjudication, and shall conduct the Adjudication inquisitorially, taking the initiative in ascertaining the facts and the law.
- 45.7 Without prejudice to the generality of such power, the Adjudicator may, if he thinks fit:
- (a) require the delivery of written statements of case;
 - (b) require any disputing party to produce a bundle of key documents, whether helpful or otherwise to that disputing party's case, and to draw such inference as may seem proper from any imbalance in such bundle that may become apparent;

- (c) require the delivery to him and/or the other disputing parties of copies of any documents other than documents that would be privileged from production to a court;
- (d) limit the length of any written or oral submission;
- (e) require the attendance before him for questioning of any disputing party or employee or agent of any disputing party;
- (f) make site visits;
- (g) make use of his own specialist knowledge;
- (h) obtain advice from specialist consultants, *Provided* that at least one of the disputing parties so requests or consents;
- (i) meet and otherwise communicate with any disputing party without the presence of other disputing parties;
- (j) make directions for the conduct of the Adjudication orally or in writing;
- (k) review and revise any of his own previous directions or decisions; and
- (l) reach his decision with or without holding an oral hearing, and with or without having endeavoured to facilitate an agreement between the disputing parties.

45.8 The Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each disputing party a reasonable opportunity, in light of the timetable, of putting its case and dealing with that of its opponents. The Adjudicator shall, in reaching his decision, reflect the legal entitlements of the disputing parties to the extent practicable in the light of the time periods and other provisions stipulated by the Adjudication Procedure and the submissions and other materials available to such Adjudicator.

45.9 Any meetings with the Adjudicator shall be held in Worcester unless, for a particular meeting, the Adjudicator considers that another venue would be more appropriate.

45.10 The Adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the disputing parties after the Dispute has been referred to him, save that the Adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the Dispute was referred.

45.11 The Adjudicator's decision(s) shall include reasons (which may be provided after his decision) unless the disputing parties agree otherwise and shall, subject to Clause 45.12, be binding until the Dispute is finally determined by further legal proceedings, by arbitration or by agreement. The parties hereby agree that, prior to any such final determination, decisions of an Adjudicator may be enforced by summary judgment in the courts (subject as aforesaid to Clause 45.12). The parties agree that they shall not be entitled to resist such summary proceedings by way of abatement, set-off or counterclaim, or to seek a stay of such summary proceedings to arbitration.

45.12 Where in any Dispute:

- (a) relating to the right of any party to terminate this Agreement the party seeking to exercise such right shall (in the case of the Operator) comply with the terms of the Direct Agreement in favour of the Funders and the Direct Agreement in favour of the Councils and (in all cases) shall not be entitled to serve notice purporting to terminate this Agreement unless and until either:
 - (i) the other party or parties consent to such termination;
 - (ii) the Adjudicator reaches a decision upholding the said right which is accepted by the other party or parties pursuant to Clause 45.16(a); or
 - (iii) in the absence of an Adjudicator's decision or in the event of a challenge to the same under Clause 45.16, the said right of termination is upheld by the Arbitrator or, upon any appeal from or review of the Arbitrator's award, by the courts,

Provided that

- (iv) the parties shall continue to perform their respective obligations during the Adjudication Procedure; and
 - (v) the continued performance of each of the parties of their obligations as aforesaid shall not constitute, or be relied upon by any other party or parties as, a waiver of any alleged right of termination or other rights, or operate as acquiescence or estoppel in relation to or otherwise diminish or prejudice such rights.
- (b) relating to payment the Adjudicator decides that a particular sum is payable but it is finally determined in any further legal proceedings relating to the same Dispute that a different sum is payable, interest of the difference shall be payable by the ultimately unsuccessful party for the whole of the period from the initial invoicing of the disputed sum until the date of final payment, notwithstanding the intervening decision of the Adjudicator referred to above.

45.13

- (a) If any Dispute to be referred to the Adjudication Procedure raises issues which are substantially the same as or connected with issues raised in a related dispute or arises out of substantially the same facts as are the subject of a related dispute between any of the disputing parties, and:
 - (i) any other party or parties to this Agreement, and/or
 - (ii) any third person or persons connected with the Agreement, including WCC, HDC, a Building Contractor or a Sub-Contractor (excluding the Operator in such capacity),

then, subject to Clause 45.13(c), the disputing parties agree that if a disputing party so requires within 3 business days of the Adjudication Notice, the related dispute shall be referred to the same Adjudicator and be governed by the terms of this Adjudication Procedure. The other parties or third persons will make submissions to the Adjudicator in the manner and time set out by the Adjudicator as he thinks fair, just and reasonable in all the circumstances

Provided that it is agreed that this related dispute procedure shall only apply to a Dispute relating to termination of this Agreement if all parties consent in writing to its application.

- (b) For the purposes of this Clause 45 (*Adjudication Procedure*), other than Clauses 45.1 to 45.4 and Clause 45.13, the term "**disputing party**" or "**disputing parties**" shall include such parties and/or third persons as are involved in the related dispute that has been referred to the Adjudicator pursuant to paragraph (a) of Clause 45.13.
 - (c) If a related dispute referred to in Clause 45.13(a) has already been referred to an adjudicator appointed or to be appointed in respect of the related dispute the disputing parties agree that if any disputing party so required within 5 business days of the Adjudication Notice, the Dispute shall be referred to the adjudicator appointed to, and be governed by the terms of the adjudication procedure of, the related dispute.
 - (d) Where as a result of the application of Clause 45.13(a) or otherwise any Adjudication carried out pursuant to this Adjudication Procedure becomes subject to the provisions of the HGCRA the disputing parties shall use their best endeavours to take and cause any Adjudication to comply with the provisions of the HGCRA and the parties shall be deemed to have agreed such amendments to the Adjudication Procedure as shall be necessary to achieve such compliance.
- 45.14 The Adjudicator shall not be 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 shall be similarly protected from liability.
- 45.15 The parties acknowledge that, if and to the extent that any decision (or part thereof) of the Adjudicator is inconsistent with any subsequent arbitration award, they may suffer loss as a result of the interim implementation of the Adjudicator's decision (or that part thereof). The parties agree that save as prescribed by Clause 45.12 any entitlement to damages in respect of such loss shall be subject to the discretion of the Arbitrator.
- 45.16
- (a) Subject to Clause 45.16(b), if any disputing party disagrees with the decision of an Adjudicator or the Dispute is not resolved within 28 days of referral to the Adjudicator (or any extended period under Clause 45.10), the disagreeing party shall, within 14 days of such decision, or any disputing party shall within 14 days of the expiry of the said period of 28 days (or any extended period under Clause 45.10) notify the other disputing parties in writing and require the matter to be referred to arbitration in accordance with the Institute of Civil Engineers Arbitration Procedure (1997) or any amendment or modification thereof being in force at the time of the appointment (the "**ICE Rules**") which rules are deemed to be incorporated by reference into this Agreement.

- (b) In the case of any Dispute in relation to the right of any party to terminate this Agreement, the party or parties against whom the Adjudicator has made his decision or, where the Dispute is not resolved within 28 days of referral to the Adjudicator (or any extended period under Clause 45.10), the party or parties against whom the right of termination is asserted, shall be deemed to have referred the matter to arbitration 14 days after the expiry of the 28 day period (or any extended period under Clause 45.10) referred to in Clause 45.16(a) unless, prior to the expiry of the said period of 14 days, that party serves or those parties serve notice on the other party or parties accepting the decision or, as the case may be, the right of the other party or parties to terminate this Agreement.

46. ARBITRATION PROCEDURE

- 46.1 The Tribunal shall consist of a sole arbitrator (the "**Arbitrator**"). If the disputing parties fail to agree on the identity of an Arbitrator within one calendar month of any disputing party serving on the other disputing party or parties a written notice to concur in the appointment of an Arbitrator, then the President for the time being of the Chartered Institution of Wastes Management (the "**President**") shall be requested to appoint an Arbitrator.
- 46.2 If an Arbitrator declines the appointment, or after appointment is removed by order of a competent court, or is incapable of acting, or dies, and the disputing parties do not within one calendar month of the vacancy fill the vacancy, then the President shall appoint an Arbitrator to fill the vacancy.
- 46.3 In any case where the President is unable or unwilling to exercise the functions conferred by this Clause 46, the said functions may be exercised by a nominee of the Chartered Institution of Wastes Management. The President shall be deemed so unable or unwilling where an appointment has not been made within 20 days of a request submitted in accordance with Clause 46.1.
- 46.4 Irrespective of the identity and the qualifications of the Arbitrator, any such reference to arbitration must be conducted in accordance with the ICE Rules.
- 46.5 The seat of the arbitration shall be England and its language shall be English.
- 46.6 If any dispute to be referred to Arbitration raises issues which are substantially the same as or connected with issues in a related dispute or arises out of substantially the same facts as are the subject of a related dispute between any of the disputing parties; and
- (a) any other party or parties to this Agreement; and/or
 - (b) any third person or persons connected with the Agreement, including WCC, HDC, a Building Contractor or a Sub-Contractor (excluding the Operator in such capacity) (hereinafter referred to as a "**Related Dispute**"),

then, subject to Clause 46.8, the disputing parties agree that if any disputing party so requires within 14 days of service of the written notice referred to in Clause 46.1 above, the Related Dispute shall be referred to the same Arbitrator and be governed

by the terms of this Arbitration Procedure. The Arbitrator shall, upon the request of a disputing party, join any other party or parties and/or any third person or persons to the reference to arbitration proceedings hereunder in respect of the Dispute and may make a single final award determining the Dispute and the Related Dispute. Each party consents to be joined to any reference to arbitration proceedings hereunder in relation to any Dispute at the request of a disputing party.

For the purposes of Clauses 46.9, 46.10 and 46.14, the term "**disputing party**" or "**disputing parties**" shall include any party or parties or third person or persons who are joined into this Arbitration Procedure pursuant to this Clause.

- 46.7 In the event that an Arbitrator is replaced pursuant to Clause 46.2 above, the replacement Arbitrator shall also become the Arbitrator in respect of any other Related Dispute.
- 46.8 If the Related Dispute has already been referred for determination to an arbitrator appointed or to be appointed in respect of the Related Dispute the disputing parties agree that if any disputing party so requires within 14 days of service of the written notice referred to in Clause 46.1, the Dispute shall be referred, to the arbitrator appointed to, and be governed by the terms of the arbitration procedure of, the Related Dispute. The arbitrator shall, upon the request of a disputing party, join the disputing parties to any reference to arbitration proceedings in respect of the Related Dispute and make a single final award determining the Dispute and the Related Dispute.
- 46.9 Where, pursuant to the above provisions, the same arbitrator has been appointed in relation to a Dispute and a Related Dispute, the arbitrator may, with the agreement of all the disputing parties or upon the application of any party involved in the Dispute and the Related Dispute, order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as the Arbitrator thinks fit. The Arbitrator shall have power to make such directions any interim or partial award as it considers just and desirable.
- 46.10 Arbitration awards shall be binding on the disputing parties as from the date they are made. The disputing parties undertake to carry out any award of the Tribunal without delay.
- 46.11 The Adjudicator shall not be called as a witness before the Arbitrator.
- 46.12 Unless the Agreement shall already have been terminated or abandoned, the Operator and Beacon Waste shall in every case proceed in the performance of their obligations with all due diligence and in accordance with this Agreement, and shall give effect forthwith to every decision of the Contractor (where expressly bound to do so by the terms of the Agreement) or the Adjudicator unless and until the same shall be revised by further legal proceedings as provided above.
- 46.13 Any Adjudicator or Arbitrator before which adjudication or arbitration proceedings (each individually and collectively referred to hereinafter in this Clause 46 only as "**Legal Proceedings**") are conducted shall have full power to open up, review and revise any certificates, instructions, decisions, directions or valuation of the Operator, the Contractor, either of their Representatives, Beacon Waste or the Adjudicator which is not in accordance with this Agreement, or any other things

whatsoever issued or made pursuant to this Agreement (except to the extent that this Agreement provides that such certificates, instructions, decisions, directions, valuations or any other things whatsoever are final and binding or otherwise conclusive and not subject to such opening up, review or revision) and save that no Adjudicator has such power in relation to the decision of another Adjudicator or the decisions or awards of any Arbitrator.

- 46.14 Legal Proceedings and all things said or done or matters or documents arising or produced in the course thereof or in connection therewith (including any decisions or awards) are and shall be kept confidential by the parties except insofar as necessary to implement or enforce any decisions of the Adjudicator or Arbitrator or as required by law (or as otherwise permitted by Clause 51 (*Confidentiality*)). No report or other communication relating to any of the aforesaid may be made available beyond the Adjudicator, the Arbitrator, the disputing parties, their legal representatives or any person necessary to the conduct of the Legal Proceedings, without the concurrence of all the disputing parties such consent not to be unreasonably withheld or delayed or save as required by law.
- 46.15 The parties shall continue to perform their obligations under the Agreement with all due diligence, notwithstanding the commencement of any Legal Proceedings.

PART XI MISCELLANEOUS

47. CONTRACTOR'S RIGHT TO ACCESS AND AUDIT

The Contractor and/or an Independent Expert and/or the Lead Authority and/or the Superintendent Officer and/or any Authorised Officer and/or any Permitted Third Party and/or any representative of the Funders shall have the right at any time, having given reasonable prior notice:

- (a) to access and inspect the Installations; and
- (b) to audit the books and records and other data of the Operator or of Beacon Waste which relate to the Installations,

in each case to the extent contemplated under and in accordance with the provisions of the Service Contract and the Operator shall do all things and provide such facilities and assistance as necessary and within its power so as to avoid placing the Contractor in breach of its obligations under the Service Contract (including Clause 38 and Clause 41 thereof) *Provided* that in exercising such rights, the Contractor shall, and shall procure that the other persons entitled to such access as set out above shall, avoid any undue disruption to the Operator and its employees and sub-contractors in the performance of their obligations in relation to the Project.

48. NOTICES

- 48.1 Any notice or other communication given or made under this Agreement shall, except where expressly stated otherwise, be in writing.
- 48.2 Any such notice or other communication shall be addressed as provided in Clause 48.4 and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery, upon delivery at the address of the relevant party;
- (b) if sent by first class prepaid letter, 2 business days after the date of posting; or
- (c) if sent by facsimile, when despatched subject to a hard copy being sent in accordance with Clause 48.2(b).

48.3 If, in accordance with Clause 48.2, any such notice or other communication would otherwise be deemed to be given or made outside Working Hours, such notice or other communication shall be deemed to be given or made at the start of the next period of Working Hours.

48.4 The address and facsimile number of each party for the purposes of this Agreement, subject to Clause 48.5, are:

	Address	Facsimile No.
Contractor	Mercia Waste Management Limited The Marina Kings Road Evesham, Worcestershire WR11 3XZ	01386 446757
Operator	Severn Waste Services Limited The Marina Kings Road Evesham, Worcestershire WR11 3XZ	01386 446757
Beacon Waste	Beacon Waste Limited The Marina Kings Road Evesham, Worcestershire WR11 3XZ	01386 446757

48.5 A party may notify the other party to this Agreement of a change to its name, relevant addressee, address or facsimile number for the purposes of Clause 48.4 *Provided* that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than 5 business days after the date on which notice is given, the date falling 5 business days after notice of any such change has been given.

49. FURTHER ASSURANCE

Each party shall afford the other parties such co-operation and shall execute such documents at the request and cost of the other parties, as shall reasonably be required

to give the party making the request the full benefit of the rights, powers and obligations under the terms of this Agreement.

50. INTELLECTUAL PROPERTY

- 50.1 Any documentation created, produced or commissioned by the Operator or Beacon Waste relating to the Installations and all related Intellectual Property Rights will be the property of the Contractor. The Contractor will grant to the Operator and Beacon Waste a revocable, non-exclusive, royalty free, non-transferable licence to use such intellectual property in connection with the Installations only.
- 50.2 The Operator and Beacon Waste will grant to the Contractor an irrevocable, non-exclusive, royalty-free, transferable licence to use any Intellectual Property Rights owned by the Operator and Beacon Waste required in connection with the Installations.
- 50.3 Prior to concluding any contract with any third parties relating to the supply of materials specifically created by third parties for the purposes of the Project, the Operator shall use its reasonable endeavours to procure that such third party shall grant irrevocable non exclusive royalty-free licences to each of the Operator and the Contractor to use all Intellectual Property Rights pertaining to such contract with the right for the Contractor to assign such licence to, or grant a sub-licence to, any person appointed to operate, maintain and manage the Installations from time to time. If that third party refuses to grant such licenses, the Operator shall refer the matter to the Contractor and shall act in accordance with the Contractor's instructions as to the terms on which such contract may be concluded. The Operator shall during the term of this Agreement be responsible for obtaining and maintaining such third party Intellectual Property Rights.
- 50.4 Each party shall indemnify the other parties against all liabilities and losses suffered as a result of the infringement of any Intellectual Property Right arising pursuant to Clause 50.2 arising out of the use of such Intellectual Property Rights in relation to the Installations or the provision of the Services under this Agreement.

51. CONFIDENTIALITY

Subject to Clause 47 (*Contractor's Right to Access and Audit*), clause 61 (*Confidentiality*) of the Service Contract shall apply *mutatis mutandis* to this Agreement.

52. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of England.

53. AMENDMENT

No modification or amendment of this Agreement shall be valid unless in writing and executed by both parties to this Agreement.

54. **ASSIGNMENT**

54.1 The Operator may not assign any benefit under this Agreement or sub-contract or delegate the performance of any of the obligations under this Agreement without the prior written consent of the Contractor.

54.2 The Contractor may assign the benefit of this Agreement to any person whether by way of security or otherwise. The Operator shall, if required by the Contractor, enter into a novation of this Agreement in such form and with such person as the Contractor shall require.

54.3 The Operator and Beacon Waste shall:

- (a) if required by the Funders, enter into a Direct Agreement in favour of the Funders in the form attached as Schedule 5 (*Direct Agreement in favour of the Funders*) pursuant to which *inter alia*, in the event of a default under this Agreement granting the Operator the right to terminate this Agreement, the Funders may step in to this Agreement and try to rectify the Contractor's default; and
- (b) if required by the Councils, enter into a Direct Agreement in favour of the Councils in the form attached as Schedule 4 (*Direct Agreement in favour of the Councils*) pursuant to which *inter alia*, in the event of a default under this Agreement granting the Operator the right to terminate this Agreement, the Councils may step in to this Agreement and try to rectify the Contractor's default.

55. **WAIVER**

The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

56. **SURVIVAL**

Parts VIII (*Termination*), X (*Disputes*) and XI (*Miscellaneous*) of this Agreement shall remain in full force and effect following termination or expiry of this Agreement.

57. **SEVERANCE**

If any provisions of this Agreement or part of it is rendered invalid, illegal or unenforceable in any respect under any law:

- (a) the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby; and
- (b) the parties shall promptly negotiate in good faith new provisions to eliminate the invalidity, illegality or unenforceability and to restore this Agreement as nearly as possible to its original intent and effect.

58. **ENTIRE AGREEMENT**

This Agreement contains the whole agreement between the parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by contract. Each party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it.

59. **ENGLISH LANGUAGE**

All documents, notices or other communications supplied in accordance with obligations under this Agreement shall be in English only.

60. **[NOT USED]**

61. **COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

62. **PROVISION OF INFORMATION**

Throughout the period of this Agreement, the parties shall negotiate, discuss and liaise in good faith with each other, and exchange and provide each other with such information as they can reasonably provide and which would or might assist the other in performing its obligations under this Agreement. In particular, the Contractor shall keep the Operator and Beacon Waste informed of matters relating to the Project and the business of the Contractor and shall provide the Operator and Beacon Waste with relevant documentation to the extent that such information and documentation is reasonably available to the Contractor and provision thereof may occur without material additional work or cost to the Contractor.

63. **SET-OFF**

Subject to Clauses 26.5 to 26.9 and Clause 45.11, each party may set-off any amount owing to it by the other under this Agreement **provided always that** neither party shall be entitled to set-off any amount which is the subject of an effective Pay Less Notice issued by the other party.

64. **BENEFIT OF AGREEMENT**

This Agreement shall be binding upon and enure for the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a deed the day and year first set forth above.

SCHEDULE 1 OPERATOR SERVICES

SECTION A SERVICES

The Operator shall:

1. comply with:
 - (a) the Service Delivery Plan and the Service Contract;
 - (b) the operation and maintenance manuals provided by any Building Contractor and any original equipment manufacturers;
 - (c) any standing instructions and procedures established and agreed between the Contractor and the Operator;
 - (d) all Legal Requirements;
 - (e) any reasonable requirements of the Contractor; and
 - (f) all applicable Site rules and regulations;
2. employ and supervise suitably qualified and experienced personnel and maintain an effective workforce in the United Kingdom as required to operate the installations;
3. carry out all necessary administration and accounting (including invoicing) in relation to the Project revenues, including that required under any Financing Agreements, all Installations (to the extent operational) and make available to the Contractor know-how and resources of its Affiliates, where required to enable itself to perform such obligation;
4. where required, engage senior management staff, engineering and accounting personnel of the Operator or one of its Affiliates, which are not normally engaged in the performance of the Operator's obligation hereunder, to perform specific tasks/activities relating to the Installations, subject to the Contractor's approval;
5. procure and maintain all Operator Consents and shall assist the Contractor or (if applicable) Beacon Waste (as reasonably required) in obtaining Contractor Consents and Necessary Consents required to be held in Beacon Waste's name respectively;
6. maintain books and records relating to the operation, maintenance and management of the Installations which are adequate for their intended purpose for a period of 5 years (or such other period as may be agreed by the parties, or is required by a Project Document or any law *Provided* the Operator shall make such records available for inspection by the Contractor during Working Hours;
7. provide the Contractor with written operating reports at such intervals as are necessary to avoid placing the Contractor in breach of its obligations under clause 17.8 of the Funding Agreement and clause 39 of the Service Contract (and such other reports and at such intervals as may be required under the Financing Agreements).

8. liaise with all relevant regulatory and/or licensing bodies and with the Council where necessary;
9. promote and maintain good local community relations;
10. provide the Contractor, or any person authorised by the Contractor, with access to the Installations;
11. provide and manage security at the Installations;
12. provide adequate training to its staff;
13. liaise with Third Party Contractors, customers and residents;
14. comply with provisions related to emergencies in the Service Delivery Plan *Provided* that the Contractor shall, for the avoidance of doubt, be obliged to reimburse the Operator for all reasonable costs, expenses and obligations incurred in taking any such action save where such action was necessitated by the act or omission of the Operator;
15. carry out maintenance, waste calorific value tests, performance tests, or inspections as required;
16. where required, establish and agree with the Contractor standing instructions and procedures (including operating instructions, maintenance instructions, health and safety procedures and instructions, security procedures and instructions, emergency plans, incident reporting procedures, administrative procedures and performance monitoring procedures) for the safe and efficient operation of the Installations;
17. without limitation to the Commissioning Protocol, specify and procure an Initial Spares and Consumables stock in accordance with Clause 21 (*Consumables and Spares*) and store, protect, maintain and, where required, procure replenishment of Spares and Consumables stock in accordance with the relevant Agreed Operating Budget and the standards of a Reasonable and Prudent Operator;
18. specify and procure an initial spare parts and consumables stock for the New Facilities (excluding the Waste to Energy Plant) and store, protect, maintain and, where required, procure replenishment of such spare parts and consumables stock in accordance with the relevant Agreed Operating Budget and the standards of a Reasonable and Prudent Operator; and
19. store, protect, maintain and, where required, procure replenishment of a spare parts and consumables stock for the Installations (excluding the Waste to Energy Plant) in accordance with the relevant Agreed Operating Budget and the standards of a Reasonable and Prudent Operator;
20. review and update operation and maintenance manuals provided by any Building Contractor and any original equipment manufacturers in relation to the Installations;
21. liaise with and assist the Project Manager and each Building Contractor in relation to pre-commissioning works, commissioning and start up of the New Facilities;

22. manage and administer on behalf of the Contractor any and all contracts entered into by the Contractor in relation to the operation and maintenance of the Installations and as otherwise relating to the Project including;
 - (a) any contracts entered into by the Contractor pursuant to any Generation Activities undertaken by the Contractor;
 - (b) [not used]; and
 - (c) the Project Documents;
23. make recommendations to the Contractor for beneficial modifications to the Installations;
24. implement engineering modifications required by the Contractor;
25. ensure that weighing equipment is properly calibrated as required by the Contractor and to carry out weighing of Contract Waste and Non-Contract Waste, as required by the Contractor;
26. carry out testing of plant and equipment and the composition of Compost, each as required by the Contractor;
27. pay any taxes, which shall arise in relation to the Project, the Installations, the Contractor and/or the Sites, on behalf of the Contractor;
28. manage and procure the generation of Third Party Revenues at levels which maximise the Project Internal Rate of Return to the Contractor resulting from the performance of its other obligations in respect of the Project;
29. procure (and where necessary pay for) the transport (other than where a WCA is responsible therefor), delivery, treatment and disposal (including, where necessary, by disposal to a third party landfill site) of Contract Waste and Non-Contract Waste in accordance with the Service Contract;
30. procure the delivery of waste for incineration by the Waste to Energy Plant;
31. procure delivery of start-up and back-up fuel for the Waste to Energy Plant;
32. carry out metering in respect of start-up fuel, back-up fuel, electricity and steam for the Waste to Energy Plant, as required by the Contractor;
33. manage and co-ordinate any despatch of power and supply of steam from the Waste to Energy Plant;
34. carry out invoicing with respect to the sale of electricity and/or steam and/or heat as required by the Contractor;
35. dispose of bottom ashes resulting from the incineration of waste in the Waste to Energy Plant and all other by-products, including fly ash, effluent and air pollution control (APC) residue;

36. negotiate, liaise and enter into agreements with potential offtakers of power and /or steam and/or heat resulting from the Contractor's Generation Activities including any regional electricity company, the Non-Fossil Purchasing Agency Limited, the Office of Gas and Electricity Markets and/or the National Grid Company;
37. negotiate, liaise and enter into agreements with the local Regional Electricity Company (or such other person having responsibility from time to time for the connection to and transmission from the local distribution network of power generated by the Waste to Energy Plant) for the connection of the Waste to Energy Plant to the distribution network of such Regional Electricity Company or other person as aforesaid;
38. prepare and serve any and all notices required to be served and act upon any notices received by the Contractor under the Project Documents and/or the Financing Agreements;
39. carry out any additional services required by the Contractor and, without prejudice to any of the Operator's obligations hereunder, analyse and develop any further opportunities for recycling Non-Contract Waste and Contract Waste and otherwise propose new or additional systems or procedures for the implementation of the Works and/or the Services in a more efficient and/or cost effective manner;
40. operate and maintain the Base Financial Model;
41. calculate payments to and from the Councils;
42. monitor any changes in Legal Requirements that may affect the operation and functioning of the Installations promptly and recommend to the Contractor appropriate measures for the purposes of addressing the impact such changes may have on the Installations;
43. minimise any fiscal deductions by the Councils under the Service Contract; and
44. implement and maintain a maintenance management system which includes:
 - (a) spares inventory control, procurement and management;
 - (b) recommending the purchase of all spares for the Contractor; and
 - (c) purchasing necessary spares on behalf, and with the approval, of the Contractor; and
 - (d) development of operations and maintenance manuals and instructions for the Installations (including development from time to time of any operations and maintenance manual and instructions produced by the Building Contractor for the Waste to Energy Plant) in accordance with the standards of a Reasonable and Prudent Operator and the Detailed Maintenance Plan and provide copies thereof and copies of all updated versions thereof to the Contractor.

During the Commissioning and Mobilisation Period, the Operator shall:

- [illegible]

**SCHEDULE 2
PAYMENTS AND INVOICES**

1. Operator's Monthly Invoices

On or before the 7th day of each month during the term of this Agreement, the Operator shall render to the Contractor an invoice (the "Operator's Monthly Invoice") showing:

■	[REDACTED]
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]

2. Contractor's Monthly Invoices

If the Operator owes any amount to the Contractor, the Contractor shall, on or before the 7th day of the next month, render to the Operator an invoice (the "Contractor's Monthly Invoice") showing for the preceding month any sums payable by the Operator to the Contractor in accordance with this Agreement (including interest payable as above) and the date on which payment becomes due (being the date of the Contractor's Monthly Invoice).

3. Final Invoices

Commencing with the First Contract Year, the Contractor shall submit to the Operator within 30 days of the end of the Contract Year an invoice (the "Final Invoice") setting out the Contractor's computation of either:

■	[REDACTED]
■	[REDACTED]
	[REDACTED]

4. **Payment of Invoices**

Not later than five days after the Due Date for Payment the recipient of an Invoice (the "**Paying Party**") shall give a written notice to the issuer thereof (the "**Receiving Party**") specifying the amount of the payment it proposes to make in respect of the relevant Invoice and the basis on which such amount was calculated. Subject to Paragraph 6 (*Disputes relating to invoices*), the Paying Party shall pay the amount shown in such invoice within 30 days of the end of the month (in the case of a Monthly Invoice) or the Contract Year (in the case of a Final Invoice) to which the invoice relates or within 10 days of receipt of the invoice, whichever is the later (each a "**Final Date for Payment**"). Payment shall be made by direct bank transfer to such account at such bank as the Receiving Party may from time to time notify to the Paying Party on reasonable notice.

5. **Currency of Payment**

All sums payable in respect of Invoices submitted in accordance with this Schedule 2 (*Payments and Invoices*) shall be shown and shall be payable in pounds sterling.

6. **Disputes relating to invoices**

6.1 In the event that the Paying Party disputes the correctness of any amount invoiced in accordance with the provisions of this Schedule 2 then:

(a) no later than 7 days before the Final Date for Payment, the Paying Party shall give a written notice to the Receiving Party specifying:

(i) the sum that the Paying Party considers to be due on the date the notice is served; and

(ii) the basis on which that sum is calculated (a "**Pay Less Notice**"); and

(b) the Paying Party shall pay the undisputed portion of the Invoice in full.

6.2 Promptly after receipt of a Pay Less Notice, and without prejudice to Clause 45 (*Adjudication Procedure*), the parties shall consult together with a view to resolving the Dispute, failing which the Dispute shall be referred to an Adjudicator for determination in accordance with Clause 45 (*Adjudication Procedure*).

6.3 Where the Paying Party does not give a written notice pursuant to Paragraph 6.1, the Paying Party shall pay the Receiving Party the amount stated in the Invoice in accordance with Paragraph 4 (*Payments of Invoices*).

6.4 Where a Pay Less Notice is given in accordance with Paragraph 6.1 (which, for the avoidance of doubt, may be the same notice as that referred to in Paragraph 4 (*Payment of Invoices*)) provided it meets the requirements set out in Paragraph 6.1), but following the procedures in this Paragraph 6 it is decided that the whole or part of the disputed amount should be paid, payment of such whole or part shall be made not later than:

(a) seven days from the date of the decision; or

- (b) the date which, apart from the notice, would have been the Final Date for Payment,

whichever is later.

- 6.5 Any overdue payment, or any disputed payment which, following the procedures in this Paragraph 6, is found not to be properly payable but has been paid, or which has not been paid when it was found due, shall, unless otherwise provided, be paid to the party entitled thereto or, as the case may be, reimbursed to the payer thereof by way of direct bank transfer promptly within 10 days of such determination and shall bear interest at the Default Rate, calculated and compounded on a quarterly basis, from (and including) the date payment thereof was due or made until (but excluding) the date on which such reimbursement is received.

7. Suspension of Services

Where an amount due from the Contractor to the Operator hereunder is not paid by the Contractor in full by the Final Date for Payment and no Pay Less Notice in respect of such amount has been given in accordance with and complying with the requirements of Paragraph 6.1(a) (*Disputes relating to invoices*) and such failure to pay continues for seven days after the Operator has given to the Contractor written notice of its intention to suspend performance of the Services under this Agreement and of the ground or grounds on which it intends to do so then, without prejudice to any other rights and remedies the Operator may have under this Agreement or otherwise and provided such default is continuing, the Operator may suspend performance of the Services under this Agreement until payment of the amount due is made in full.

SCHEDULE 3
OPERATION AND MAINTENANCE SERVICES PARALLEL LOAN AGREEMENT

MERCIA WASTE MANAGEMENT LIMITED

and

SEVERN WASTE SERVICES LIMITED

**OPERATION AND MAINTENANCE SERVICES
PARALLEL LOAN AGREEMENT**

THIS AGREEMENT is made the [•] day of [•] 199[•]

BETWEEN:

- (1) **MERCIA WASTE MANAGEMENT LIMITED**, a company incorporated under the laws of England (the "**Contractor**"); and
- (2) **SEVERN WASTE SERVICES LIMITED** a company incorporated under the laws of England (the "**Operator**").

RECITALS:

- (C) The Contractor has entered into the Service Contract with the Councils.
- (D) The Contractor has appointed the Operator to carry out certain obligations under the Service Contract relating to the operation and maintenance of the Installations, and any other obligations expressed to be assumed by the Operator under the operation and maintenance agreement of even date herewith between the Contractor, the Operator and Beacon Waste Limited (the "**Operation and Maintenance Agreement**").
- (E) The Operator has agreed, in certain circumstances, to make Advances to the Contractor on the terms and subject to the conditions set out in this Agreement.

IT IS AGREED:

1. Definitions and Interpretation

1.1 Definitions

Unless otherwise defined in this Agreement, terms defined in the Operation and Maintenance Agreement shall have the same meaning when used in this Agreement.

1.2 Interpretation

This Agreement shall consist of the Recitals and the Clauses.

- (a) In the event of inconsistencies between the terms of this Agreement and the terms of the Operation and Maintenance Agreement, the terms of this Agreement shall prevail.
- (b) Any reference to a Clause or a Schedule shall mean a clause or a schedule of this Agreement, unless otherwise stated.
- (c) The Clause and Schedule titles or headings appearing in this Agreement are for reference only and shall not affect its construction or interpretation.
- (d) Words importing persons shall include firms, companies and corporations and vice versa.

2. **Commencement and Duration**

- 2.1 This Agreement shall become effective on the date hereof and shall continue until all amounts repayable hereunder have been discharged in full.

3. **Contractor's Loan**

- 3.1 If in respect of any amount which, but for Clause 26.5 of the Operation and Maintenance Agreement, would be due from the Contractor under the Operation and Maintenance Agreement:

- (a) for whatever reason the terms of Clause 26.5 of the Operation and Maintenance Agreement are or are claimed to be ineffective, illegal, unenforceable, invalid, void or voidable in whole or part or are changed or amended pursuant to any order or decision of any adjudicator, court, tribunal or arbitration or by any provision of any statute; and/or
- (b) the Operator demands payment of such amount and sufficient funds are not available to the Contractor in respect of such amount,

then at the same time as payment of such amount is made in accordance with the Operation and Maintenance Agreement the Operator shall advance to the Contractor a sum equal to the amount of such payment (an "Advance").

- 3.2 Any Advance made pursuant to Clause 3.1:

- (a) shall be unsecured;
- (b) shall not bear interest; and
- (c) shall be repayable by the Contractor immediately if (but only if) and to the extent the Contractor has sufficient funds available to it in relation to such amount.

- 3.3 The parties acknowledge that the Contractor and the Operator will net off any amounts payable by them under Clause 3.1.

4. **Undertakings of the Operator**

- 4.1 In respect of any Advances outstanding (but which are not due for repayment pursuant to Clause 3.2(c)) the Operator shall not

- (a) assign or purport to assign to any person the whole or any part of any such Advances;
- (b) purport to set off at any time any amount of such Advances against any amount payable by it to the Contractor;
- (c) attempt to obtain repayment or prepayment of such Advance otherwise than in accordance with the terms of this Agreement;

- (d) ask, demand, accelerate, sue, claim or prove for, take or receive from the Contractor any manner whatsoever the whole or any part or such Advance other than in accordance with the terms of this Agreement; and
- (e) in respect of such Advance, petition for, or vote in favour of, any resolution or take any other action whatsoever for, or which may lead to the administration, winding-up or dissolution of the Contractor or the termination of the Operation and Maintenance Agreement.

4.2 The Operator acknowledges that a failure to make any advance in accordance with this Agreement may cause the Contractor to incur loss or damage. For the avoidance of doubt such loss or damage shall be recoverable from the Operator (subject to usual principles of mitigation).

5. **Payments**

5.1 On each date on which this Agreement requires an amount to be paid by any party, it shall make the same available to the other party by payment in sterling and in immediately available, freely transferable, cleared funds to such account of such other party as such other party shall from time to time have specified for this purpose.

5.2 All payments required to be made by either party hereunder shall be calculated without reference to any set-off or counterclaim and shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

5.3 In the event of failure of the Contractor to make payment pursuant to Clause 3.2(c) within five business days the Contractor shall pay interest upon the amount due at the Default Rate.

6. **Benefit of Agreement**

This Agreement shall be binding upon and inure to the benefit of each party hereto and its successors and assigns **provided always that** the Operator shall not assign or transfer all or any of its rights, benefits and obligations hereunder without the prior written consent of the Contractor.

7. **Law**

7.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed as a deed the day and year first above written:

EXECUTED as a DEED)
for and on behalf of)
SEVERN WASTE SERVICES)
LIMITED)

By:
For FCC ENVIRONMENT SERVICES (U.K.) LIMITED as Director

By:
For URBASER LIMITED as Director

EXECUTED as a DEED)
for and on behalf of)
MERCIA WASTE MANAGEMENT)
LIMITED)

By:
For FCC ENVIRONMENT SERVICES (U.K.) LIMITED as Director

By:
For URBASER LIMITED as Director

SCHEDULE 4
DIRECT AGREEMENT IN FAVOUR OF THE COUNCILS

DATED

2014

- (1) SEVERN WASTE SERVICES LIMITED**
- (2) WORCESTERSHIRE COUNTY COUNCIL**
- (3) THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL**
- (4) MERCIA WASTE MANAGEMENT LIMITED**
- (5) BEACON WASTE LIMITED**

AUTHORITY DIRECT AGREEMENT

relating to

**an operation and maintenance services agreement
pursuant to the Waste Management Service Contract**

THIS DEED OF WARRANTY is made on

2014

BETWEEN:

- (1) **SEVERN WASTE SERVICES LIMITED** (Company No. 03618688) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom WR11 3XZ (the "Operating Sub-Contractor");
- (2) **WORCESTERSHIRE COUNTY COUNCIL** of County Hall, Spetchley Road, Worcester WR5 2NP ("WCC", which expression includes its permitted successors in title and assigns);
- (3) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Brockington, 35 Hafod Road, Hereford HR1 1SH ("HDC", which expression includes its permitted successors in title and assigns);
- (4) **MERCIA WASTE MANAGEMENT LIMITED** (Company No. 03525188) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire WR11 3XZ (the "Contractor"); and
- (5) **BEACON WASTE LIMITED** (Company No. 02650198) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire WR11 3XZ ("Beacon Waste"),

(each a "Party" and together the "Parties").

BACKGROUND.

- (A) By a contract dated 22 December 1998 as amended by a variation agreement dated on or around the date of this Deed (the "Waste Management Service Contract") WCC and HDC (together the "Authority") have appointed the Contractor to provide an integrated waste management service and related activities throughout the administrative area of each of WCC and HDC.
- (B) The Operating Sub-Contractor has been jointly appointed by the Contractor and (in respect of each Installation for so long as it is holder of a Waste Management Licence in respect of such Installation) Beacon Waste under a contract dated 22 December 1998 as amended by an amendment agreement dated on or around the date of this Deed (the "Operating Sub-Contract") to carry out the Services and to operate, maintain and manage the Installations.
- (C) The Operating Sub-Contractor is obliged under the Operating Sub-Contract to execute a direct agreement in this form in favour of the Authority.

1. OPERATIVE PROVISIONS

In consideration of the payment of [REDACTED] by the Authority to the Operating Sub-Contractor, receipt of which the Operating Sub-Contractor acknowledges, the Parties agree as follows:

2. DEFINITIONS AND INTERPRETATIONS

- 2.1 In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:

"Lender" means any organisation providing funding to the Contractor in connection with the carrying out of the Works (as defined in the Waste Management Service Contract).

- 2.2 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Operating Sub-Contract.

3. WARRANTY

- 3.1 The Operating Sub-Contractor warrants to the Authority that it has carried out and will continue to carry out all its obligations and duties under the Operating Sub-Contract in accordance with and to the standard required by the Operating Sub-Contract, provided always that the Operating Sub-Contractor has no liability

hereunder which is greater or of a longer duration than that it owes to the Contractor and (in respect of each Installation for so long as it is holder of a Waste Management Licence in respect of such Installation) Beacon Waste under the Operating Sub-Contract.

- 3.2 The Operating Sub-Contractor shall be entitled in any action or proceedings by the Authority to rely on any limitation in the Operating Sub-Contract and to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Contractor and (in respect of each Installation for so long as it is holder of a Waste Management Licence in respect of such Installation) Beacon Waste under the Operating Sub-Contract.
- 3.3 The Operating Sub-Contractor shall not be liable to the Authority under this Deed unless and until the Authority has given written notice to the Operating Sub-Contractor pursuant to **clause 7.1.1** or **clause 7.3**. Upon the expiration of six (6) years from the date of completion of the Services in accordance with the Operating Sub-Contract, the liability of the Operating Sub-Contractor under this Deed shall cease and determine, save in relation to any claims made by the Authority against the Operating Sub-Contractor and notified by the Authority to the Operating Sub-Contractor in writing prior thereto.

4. COPYRIGHT

- 4.1 For the purposes of this clause 4, "Documents" shall mean all or any drawings, specifications, schedules and other information and documentation which are used from time to time by the Operating Sub-Contractor in connection with the Services or are otherwise relevant to the maintenance, management, provision, replacement, carrying out and operation of the relevant Installation and/or the Services.
- 4.2 The Operating Sub-Contractor insofar as it is able hereby grants (or, if such grant cannot legally take place until a later date, agrees to (insofar as it is able) grant) to the Authority with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty-free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with the Installations and such other purposes as are reasonably foreseeable. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 4.3 The Authority will not hold the Operating Sub-Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it unless the Operating Sub-Contractor authorises such use and confirms that the Documents are suitable for it.
- 4.4 The Operating Sub-Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Authority or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authority's expense.
- 4.5 The Operating Sub-Contractor warrants to the Authority that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Installations will not infringe the rights of any third party.

5. ASSIGNMENT

The benefit of and the rights of the Authority under this Deed may be assigned without the consent of the Operating Sub-Contractor on two occasions only and the Authority will notify the Operating Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Operating Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed

(whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

6. AUTHORITY'S REMEDIES

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Operating Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

7. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY

7.1 The Operating Sub-Contractor will not exercise or seek to exercise any right which may be or becomes available to it to terminate or treat as terminated or repudiated the Operating Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than thirty (30) days prior written notice specifying the Operating Sub-Contractor's ground for terminating or treating as terminated or repudiated the Operating Sub-Contract or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Operating Sub-Contract. If the Operating Sub-Contractor becomes aware of any changes to such amount until either the Authority serves notice under **clause 7.1.1** or the time period for service of such notice expires, it shall update the Authority in respect of any such changes. Within such period of notice:

7.1.1 the Authority may give written notice to the Operating Sub-Contractor that the Authority will thenceforth become the "Contractor" under the Operating Sub-Contract to the exclusion of the Contractor and thereupon the Operating Sub-Contractor will admit that the Authority is the "Contractor" under the Operating Sub-Contract and the Operating Sub-Contract will be and remain in full force and effect notwithstanding any of the said grounds;

7.1.2 if the Authority has given such notice as aforesaid or under **clause 7.3**, the Authority shall accept liability for the Contractor's obligations under the Operating Sub-Contract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor including for the avoidance of doubt any non-payment of sums due to the Operating Sub-Contractor which properly has been included in the Operating Sub-Contractor's specified grounds pursuant to **clause 7.1** and which is capable of remedy; and

7.1.3 if the Authority has given such notice as aforesaid or under **clause 7.3**, the Authority will from the service of such notice become responsible for all sums properly payable to the Operating Sub-Contractor under the Operating Sub-Contract accruing due after the service of the Operating Sub-Contractor's notice but the Authority will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Operating Sub-Contract.

7.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Operating Sub-Contractor, the Operating Sub-Contractor will not be under any duty or obligation to obey any direction or instruction from the Authority unless and until the Authority has given written notice under **clauses 7.1.1** and **7.3**.

7.3 The Operating Sub-Contractor further covenants with the Authority that if the Waste Management Service Contract is terminated (other than as a result of an Event of Council Default (as defined in the Waste Management Service Contract)) the Operating Sub-Contractor, if requested by the Authority by notice in writing and subject to **clause 7.1.2** and **clause 7.1.3**, will accept the instructions of the

Authority to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Operating Sub-Contract and will if so requested in writing enter into a novation agreement whereby the Authority is substituted for the Contractor under the Operating Sub-Contract.

7.4 Where the Operating Sub-Contractor has given rights in relation to the Operating Sub-Contract similar to those contained in this **clause 7** to the Lender then if both the Authority and the Lender serve notice under **clause 7.1.1** or **clause 7.3** or its equivalent the notice served by the Authority will not prevail over any notice served by the Lender but will prevail over any notice served by any other person.

7.5 The Contractor and (in respect of each Installation for so long as it is holder of a Waste Management Licence in respect of such Installation) Beacon Waste acknowledge that the Operating Sub-Contractor will be entitled to rely on a notice given to the Operating Sub-Contractor by the Authority under **clause 7.3** as conclusive evidence that the Waste Management Service Contract has been terminated by the Authority.

7.6 The Authority may by notice in writing to the Operating Sub-Contractor appoint another person to exercise its rights under this **clause 7** subject to the Authority remaining liable to the Operating Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

8. THE CONTRACTOR'S AND BEACON WASTE'S INCLUSION AS PARTIES

The Contractor and Beacon Waste have agreed to be Parties to this Deed for the purpose of **clause 7** and for acknowledging that the Operating Sub-Contractor shall not be in breach of the Operating Sub-Contract by complying with the obligations imposed on it by this Deed.

9. COUNTERPARTS

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full and original instrument for all purposes.

10. JURISDICTION

The law applicable to this Deed and any non-contractual obligations arising out of or in connection with it shall be English Law and the English Courts shall have non-exclusive jurisdiction with regard to all matters arising in connection with or under this Deed (including (without limitation) in relation to any non-contractual obligations).

11. THIRD PARTY RIGHTS

It is agreed for the purposes of the Contracts (Right of Third Parties) Act 1999 that this Deed is not intended to and does not give any person who is not a party to this Deed any rights to enforce any provisions contained in this Deed.

12. NOTICES

Any notice to be given by any Party hereunder will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the Party to be served. Any notice sent by hand will be deemed to be served on the date of delivery provided that if any notice sent by hand is sent after 4.45 pm on any day it will be deemed to be served on the next business day. Any notice sent by post will be deemed to have been duly served at the expiration of forty-eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a business day and otherwise on the next business day.

IN WITNESS whereof this document is executed by the Parties as a Deed and delivered on the date stated at the beginning of this Deed

EXECUTED as a DEED
for and on behalf of
SEVERN WASTE
SERVICES LIMITED

Signature of director

Print Name:

Signature of director

Print Name:

THE COMMON SEAL OF
WORCESTERSHIRE COUNTY
COUNCIL
was hereunto affixed in the
presence of Authorised Officer

Authorised Officer

**THE COMMON SEAL OF
THE COUNTY OF
HEREFORDSHIRE DISTRICT
COUNCIL**

was hereunto affixed
in the presence of
Authorised Officer

)
)
)
)
)
)
)
Authorised Officer

**EXECUTED as a DEED
for and on behalf of
MERCIA WASTE
MANAGEMENT LIMITED**

Signature of director

Print Name:

Signature of director

Print Name:

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)
)
)

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.....

EXECUTED as a DEED
for and on behalf of
BEACON WASTE LIMITED

)
)
)

Signature of director

.....

Print Name:

.....

Signature of director

.....

Print Name:

.....

SCHEDULE 5
DIRECT AGREEMENT IN FAVOUR OF THE FUNDERS



Execution Version

Operation & Maintenance Services Direct Agreement

Severn Waste Services Limited

as Contractor

Beacon Waste Limited

as BWL

Mercia Waste Management Limited

as ProjectCo

Worcestershire County Council

and

The County of Herefordshire District Council

as Lenders

and

The Law Debenture Trust Corporation p.l.c.

as Security Agent

relating to the County of Herefordshire District Council and
Worcestershire County Council Energy from Waste Project

2014

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THIS DEED is made on

BETWEEN:

- (1) **SEVERN WASTE SERVICES LIMITED** (a company incorporated in England and Wales) (No. 03618688) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom WR11 3XZ (the "**Contractor**");
- (2) **BEACON WASTE LIMITED** (a company incorporated in England and Wales) (No. 02650198) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom WR11 3XZ ("**BWL**");
- (3) **MERCIA WASTE MANAGEMENT LIMITED** (a company incorporated in England and Wales) (No. 03525188) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom WR11 3XZ ("**ProjectCo**");
- (4) **WORCESTERSHIRE COUNTY COUNCIL AND THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** (the "**Lenders**"); and
- (5) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.** as security agent for the Secured Creditors (the "**Security Agent**").

RECITALS

- (A) The Authority and ProjectCo have entered into a variation agreement to the Waste Management Service Contract to set out the terms on which ProjectCo will provide waste management services relating to an energy from waste facility.
- (B) In order to enable ProjectCo to perform its obligations under the Waste Management Service Contract, ProjectCo, the Contractor and BWL have entered into the Contract.
- (C) Under the Senior Term Loan Facilities Agreement the Lenders have agreed to make available certain credit facilities to ProjectCo for the purposes of the Project. Pursuant to the Senior Term Loan Facilities Agreement the Lenders have appointed the Security Agent to act on their behalf under the terms of the Finance Documents.
- (D) It is a requirement of the Senior Term Loan Facilities Agreement that this Deed is entered into by the parties hereto.
- (E) It is the intention of the parties that this document be executed as a deed notwithstanding the fact that a party may only execute this Deed under hand.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this Deed:

"**Authority**" means Worcestershire County Council and The County of Herefordshire District Council;

"**Contract**" means the Operation and Maintenance Services Agreement dated 22 December 1998 between the Contractor, BWL and ProjectCo relating to the provision of the Services as amended and restated by an amendment and restatement agreement dated on or about the date hereof;

"Contract Documents" means the Contract, the Operation and Maintenance Services Parallel Loan Agreement and the Operation and Maintenance Services Technical Support Agreement;

"Decision Period" means the period commencing on the occurrence of a Relevant Event or the date on which the Lenders receive a copy of an Intended Termination Notice in accordance with Clause 4, and ending on the earliest of:

- (a) the date falling 90 days thereafter (or, if in relation to an Intended Termination Notice, the right of the Contractor to terminate the Contract has been or is referred to the dispute resolution procedure specified in clause 46 of the Contract, the date falling 30 days after a determination is made in respect of the dispute);
- (b) the Step-In Date;
- (c) the revocation of the relevant Intended Termination Notice; and
- (d) the Senior Discharge Date.

"Event of Default" has the meaning given to it in the Senior Term Loan Facilities Agreement;

"Enforcement Action" means any action whatsoever to:

- (a) demand payment, declare prematurely due and payable, claim, recover, retain or receive any amount from ProjectCo under the Contract Documents (including, without limitation, by exercising rights of any set-off);
- (b) exercise or enforce any security rights or rights against sureties or any other rights pursuant to the provisions of any document or agreement in relation to (or given in support of) such amounts or any part thereof;
- (c) petition for (or take any other steps or action which may lead to) an order being made for the winding up of ProjectCo or any other insolvency proceedings in respect of ProjectCo;
- (d) commence legal proceedings against ProjectCo or compete with any Finance Party on a liquidation of ProjectCo or claim to be subrogated to any rights of any Finance Party; or
- (e) terminate the Contract, deliver any Termination Notice, treat the Contract as having been repudiated by ProjectCo or suspend the performance of the Contractor's obligations under the Contract.

"Finance Documents" has the meaning given to it in the Senior Term Loan Facilities Agreement;

"Insolvency Event" means a court making a winding up order for the dissolution or liquidation of ProjectCo or a liquidator, receiver, manager, administrator or other similar officer being appointed to ProjectCo;

"Intended Termination Notice" has the meaning given to it in clause 4.1 (No Termination or Suspension Without Notice);

"Liabilities" means all present and future sums, liabilities and other obligations payable or owing by ProjectCo (whether actual or contingent, jointly or severally or otherwise howsoever);

"Operation and Maintenance Services Parallel Loan Agreement" means the loan agreement dated 22 December 1998 between the Contractor and ProjectCo;

"Operation and Maintenance Services Technical Support Agreement" means the technical support agreement dated 23 December 1998 between the Contractor, ProjectCo, FCC Environment Services (UK) Limited and Urbaser S.A;

"Proceeds Account" means the account opened in the name of ProjectCo called the "Proceeds Account" with [REDACTED]

"Receiver" means any person appointed as a receiver or manager of ProjectCo pursuant to any Security Document;

"Relevant Event" means any and all of the following:

- (a) the Lenders receiving an Intended Termination Notice in relation to the Contract in accordance with Clause 4; and
- (b) the Security Agent receiving valid and binding instructions to enforce any of the Security Documents following the occurrence of an Event of Default;

"Representative" means:

- (a) any Lender and/or any of their respective Affiliates;
- (b) an administrative receiver, receiver or receiver and manager of ProjectCo appointed under the Debenture;
- (c) an administrator of ProjectCo;
- (d) a person directly or indirectly owned or controlled by any Lender; or
- (e) any other person approved by the Contractor (such approval not to be unreasonably withheld or delayed),

named as Representative in a Step-In Notice. For the avoidance of doubt, neither the Security Agent nor any of its Affiliates shall be a Representative;

"Security Interest" means any mortgage, charge (fixed or floating), pledge, lien, right of set-off, security trust, assignment by way of security, reservation of title, any other security interest or any other agreement or arrangement (including a sale and repurchase arrangement) having the commercial effect of conferring security;

"Senior Discharge Date" means the date upon which all Senior Liabilities have been fully and irrevocably paid or discharged in full and no further Senior Liabilities are capable of becoming outstanding;

"Senior Liabilities" means all Liabilities to the Finance Parties arising under or in connection with the Finance Documents;

"Senior Term Loan Facilities Agreement" means the senior term loan facilities agreement entered into on or about the date of this Deed between ProjectCo (as borrower), the Lenders (as lead arrangers and original lenders) and the Security Agent;

"Services" has the meaning given to it in the Contract;

"Step-In Date" means the date specified in a Step-In Notice as the date on which a Representative is to step in to the rights and obligations of ProjectCo under the Contract Documents in accordance with clause 6 (Step-In);

"Step-In Notice" has the meaning given to it in clause 6.1 (Step-In Notice);

"Step-In Period" means the period from a Step-In Date until the earliest of:

- (a) the date on which the relevant breach or event of default relating to the Relevant Event is remedied to the reasonable satisfaction of the Lenders;
- (b) the Step-Out Date;
- (c) the date of termination of the Contract as permitted under clause 6.3 (Termination or Suspension During Step-In Period);
- (d) the Senior Discharge Date; and
- (e) the expiry of the Contract Documents;

"Step-Out Date" means the date specified in a notice given under clause 7.1 (Notice of Step-Out Date);

"Technical Adviser" means Fichtner Consulting Engineers Ltd or such other person as the Lenders may appoint from time to time to perform this role in accordance with the terms of the Senior Term Loan Facilities Agreement;

"Termination Event" means any of the events or circumstances set out in clause 40.4 of the Contract entitling the Contractor to terminate the Contract;

"Termination Notice" means a notice terminating the Contract given by the Contractor to ProjectCo in accordance with clause 40.4 of the Contract; and

"Waste Management Service Contract" means the waste management service contract entered into by the Authority and ProjectCo on 22 December 1998 as amended and restated by a deed of variation to be entered into by the same parties on or around the date of this Deed.

1.2 Construction

- (a) Unless the context otherwise requires or unless otherwise defined in this Deed, words and expressions defined in the Senior Term Loan Facilities Agreement have the same meanings when used in this Deed.
- (b) In this Deed, unless a contrary intention appears:
 - (i) a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors and permitted assignees or transferees;
 - (ii) any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
 - (iii) references to clauses and schedules are references to, respectively, clauses of and schedules to this Deed and references to this Deed include its schedules;
 - (iv) a reference to (or to any specified provision of) any agreement or document is to be construed as a reference to that agreement or document (or that provision) as it may be amended, supplemented, novated or replaced from time to time, but excluding for this purpose any amendment,

supplementation, novation or replacement which is contrary to any provision of any Finance Document;

- (v) a reference to a statute, statutory instrument or accounting standard or any provision thereof is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision thereof, as it may be amended or re-enacted from time to time;
 - (vi) a time of day is a reference to London time;
 - (vii) the Index to and the headings in this Deed are inserted for convenience only and are to be ignored in construing this Deed; and
 - (viii) words importing the plural shall include the singular and vice versa.
- (c) In the event of a conflict between the provisions of this Deed and the provisions of the Contract Documents, the provisions of this Deed shall prevail.

2. NOTIFICATION OF AND CONSENT TO SECURITY

2.1 Notice of Security Interest

- (a) ProjectCo hereby gives notice to the Contractor and BWL that it has granted to the Security Agent a Security Interest over all of its respective present and future right, title, benefit and interest in and to the Contract Documents.
- (b) BWL hereby gives notice to the Contractor and ProjectCo that it has granted to the Security Agent a Security Interest over all of its respective present and future right, title, benefit and interest in and to the Contract Documents to which it is a party.

2.2 Acknowledgement of Security Interests

- (a) Each of the Contractor and BWL:
 - (i) acknowledges that by virtue of clause 2.1(a) (Notice of Security Interest) it has received notice of the Security Interests granted by ProjectCo over its right, title, benefit and interest under the Contract Documents in favour of the Security Agent under the Security Documents; and
 - (ii) consents to the Security Interests granted by ProjectCo specified in clause 2.1(a) (Notice of Security Interest).
- (b) Each of the Contractor and ProjectCo:
 - (i) acknowledges that by virtue of clause 2.1(b) (Notice of Security Interest) it has received notice of the Security Interests granted by BWL over its right, title, benefit and interest under the Contract Documents to which it is a party in favour of the Security Agent under the Security Documents; and
 - (ii) consents to the Security Interests granted by BWL specified in clause 2.1(b) (Notice of Security Interest).

2.3 No Other Security Interests

- (a) Each of the Contractor and BWL (in respect of the Contract Documents to which it is a party) confirms to ProjectCo that it has not received notice of any Security Interests granted over ProjectCo's rights, titles, benefits and interests under the

Contract Documents other than the Security Interest specified in clause 2.1(a) (Notice of Security Interest).

- (b) Each of the Contractor and ProjectCo (in respect of the Contract Documents) confirms to BWL that it has not received notice of any Security Interests granted over BWL's rights, titles, benefits and interests under the Contract Documents other than the Security Interest specified in clause 2.1(b) (Notice of Security Interest).

2.4 Continuing Liabilities

- (a) It is agreed that the Security Agent shall have no obligations or liabilities to the Contractor, BWL or ProjectCo as a result of the Security Interests specified in clause 2.1 (Notice of Security Interest).
- (b) Each of the Contractor, ProjectCo and BWL acknowledges by its execution of this Deed that it remains fully liable for the fulfilment of all its obligations, liabilities and duties under the Contract Documents to which it is a party unless released in accordance with this Deed.

3. UNDERTAKINGS

3.1 Copies of Notices to be Delivered to the Lenders and the Security Agent

The Contractor shall deliver to the Lenders and the Security Agent, at the same time as it delivers or provides to ProjectCo, a copy of:

- (a) notice of actual or potential termination, warning notices, notices proposing, agreeing to or refusing any amendment, waiver or variation of the Contract Documents, claims for additional payment, etc delivered by it to ProjectCo pursuant to the Contract;
- (b) any notice of default served by the Contractor under the Contract, including a non-payment default under clause 40.4 of the Contract; and
- (c) any other notification, information or other communication in relation to the Contract Documents that the Lenders may reasonably require.

3.2 Rights of termination by ProjectCo

The Contractor and ProjectCo agree with the Lenders and the Security Agent that any notice issued by ProjectCo to terminate, cancel or rescind the Contract or the employment of the Contractor thereunder shall be of no effect unless the notice is accompanied by written confirmation from the Lenders that each Lender approves the giving of such notice.

3.3 Contractor Undertakings

The Contractor undertakes to the Lenders and the Security Agent that:

- (a) on receipt of a Step-In Notice from the Lenders, it shall accept as validly given by ProjectCo any notices or demands given by the Representative under the Contract Documents if the same would have been validly given had it been given by ProjectCo;
- (b) it shall not, other than in accordance with the provisions of this Deed or with the prior written consent of the Lenders (such consent not to be unreasonably withheld or delayed), agree to amend, modify, waive, cancel, suspend or surrender any provision of the Contract Documents;

- (c) it shall not, other than in accordance with the provisions of this Deed or with the prior written consent of the Lenders (such consent not to be unreasonably withheld or delayed), assign, subcontract (other than as permitted under the terms of the Contract), charge, sell or otherwise dispose of any right, title, benefit or interest in or to the Contract Documents (or any part thereof);
- (d) it shall promptly notify the Lenders and the Security Agent if it becomes aware of any event or circumstance occurring under the Contract which constitutes a Termination Event or which would, with the lapse of time, the giving of notice or the fulfilment of any other condition, constitute a Termination Event;
- (e) it shall not, without the prior consent of the Lenders, enter into any document in respect of the Project with any person which gives such other person step-in rights or similar rights against the Contractor; and
- (f) it shall not terminate, purport to terminate or take any other action to terminate any of the Contract Documents otherwise than in accordance with the express rights of termination in the Contract Documents.

Without prejudice to any obligation of the Lenders or Representative pursuant to this Deed, none of the Lenders, Security Agent or Representative shall have any obligation to the Contractor under or in respect of the Contract Documents.

3.4 Lenders to Inform

The Lenders agree to notify the Contractor as soon as reasonably practicable after a notice has been served to ProjectCo that an Event of Default under the Senior Term Loan Facilities Agreement is continuing.

4. TERMINATION AND SUSPENSION BY THE CONTRACTOR

4.1 No Termination or Suspension Without Notice

Prior to the Senior Discharge Date, the Contractor shall not terminate the Contract, deliver any Termination Notice, treat the Contract as having been repudiated by ProjectCo or suspend the performance of its obligations under the Contract without giving ProjectCo, the Lenders and the Security Agent prior notice (an "**Intended Termination Notice**") of its intention to do so.

4.2 Form of Intended Termination Notice

Any Intended Termination Notice delivered by the Contractor pursuant to clause 4.1 (No Termination or Suspension Without Notice) in relation to the Contract shall specify:

- (a) the proposed date of termination, repudiation or (as the case may be) suspension;
- (b) reasonable details of the relevant Termination Event or ground for suspension; and
- (c) the information specified in clause 5.1 (Statement of Amounts Due and Unperformed Obligations).

4.3 Effect on Termination Notice

Any Termination Notice given by the Contractor after an Intended Termination Notice has been given pursuant to clause 4.1 (No Termination or Suspension Without Notice) shall be deemed to be suspended and shall only be effective to terminate the Contract:

- (a) if no Step-In Notice has then been given, on the expiry of the Decision Period; or

- (b) if a Step-In Notice has been issued, on the expiry of the Step-In Period, and provided that the relevant Termination Event is then continuing and has not been remedied or waived.

4.4 Suspension of Performance

During a Decision Period:

- (a) the Contractor shall not take any Enforcement Action, other than
- (i) the giving of a Termination Notice, to which the provisions Clause 4.3 (Effect on Termination Notice) apply, and;
 - (ii) the suspension of performance of the Services (other than to maintain and care for any existing Services) where:
 - (A) permitted to do so for non-payment pursuant to section 112 of the Housing, Grants, Construction and Regeneration Act 1996; or
 - (B) from the date following 30 days after the commencement of the Decision Period,
- in each case until the earlier of:
- (aa) receipt of a Step-In Notice by the Contractor pursuant to clause 6.1 (Step-In Notice);
 - (bb) the date on which the event or circumstance giving rise to the Intended Termination Notice or Termination Notice is remedied; or
 - (cc) the expiry of the Decision Period.
- (b) The Lenders may, where applicable, procure remedial action, consistent with the terms of the Contract Documents, as may be necessary to remedy the effects of the event or circumstance which has given rise to an Intended Termination Notice or Termination Notice and the Contractor agrees that any such action shall, to the extent of such remedy, constitute a valid discharge of ProjectCo's obligations under the Contract Documents.

4.5 Withdrawal of Intended Termination Notice or Termination Notice

The Contractor may withdraw an Intended Termination Notice or a Termination Notice at any time.

5. NOTIFICATION OF OUTSTANDING OBLIGATIONS

5.1 Statement of Amounts Due and Unperformed Obligations

The Contractor shall, together with any Intended Termination Notice (or within five Business Days of receipt of a Step-In Notice where no Intended Termination Notice has been delivered) notify the Lenders and the Security Agent of:

- (a) all amounts due and payable by ProjectCo to the Contractor under the Contract Documents as at the date of the Intended Termination Notice (or, as the case may be, the date of receipt of the Step-In Notice) but remaining unpaid at such date;

- (b) all amounts accrued but not yet due under the Contract Documents as at the date of the Intended Termination Notice (or, as the case may be, the date of receipt of the Step-In Notice) that will become due on or prior to the expiry of the Decision Period; and
- (c) details of any unperformed obligations of ProjectCo of which the Contractor is aware (having made reasonable enquiry) under the Contract as at the date of the Intended Termination Notice (or, as the case may be, the date of receipt of the Step-In Notice),

(the "Statement").

5.2 Updates

- (a) The Lenders may from time to time after receipt of the information provided by the Contractor under clause 5.1 (Statement of Amounts Due and Unperformed Obligations) request the Contractor to specify, as at the date of such request and to the best of the Contractor's knowledge, any other liabilities or unperformed obligations of ProjectCo which are or will become due and payable under the Contract Documents in the period specified in such request, such period not to exceed twelve months.
- (b) The Contractor shall promptly give the Lenders and the Security Agent a notice updating any Statement if the Contractor becomes aware that:
 - (i) the information contained in such Statement is untrue, incomplete and/or inaccurate; or
 - (ii) any information relevant to such Statement has yet to be disclosed to the Lenders and the Security Agent.

5.3 Sums or Obligations Not Notified

Subject to clause 6.2 (Rights and Obligations on Step-In), any sums or obligations not duly notified in accordance with clause 5.1 (Statement of Amounts Due and Unperformed Obligations) or clause 5.2 (Updates) shall not as between the Representative and the Contractor, unless the Representative otherwise agrees, be assumed by the Representative during any Step-In Period.

5.4 Verification

The Lenders may instruct the Technical Adviser and/or an independent chartered accountant to verify at ProjectCo's costs the Statements submitted by the Contractor.

6. STEP-IN

6.1 Step-In Notice

- (a) Without prejudice to the rights of the Security Agent under the Security Documents, the Lenders may, at any time during the Decision Period, give not less than five Business Days' notice (a "Step-In Notice") to the Contractor (with a copy to the Security Agent) that a Representative is to step in to the Contract Documents in accordance with clause 6.2(a) (Rights and Obligations on Step-In).
- (b) The Step-In Notice shall be in the form set out at schedule 1 to this Deed (or such other form as the Lenders or the Representative may approve) and shall specify (i) the appointed Representative; and (ii) the proposed Step-In Date (which must fall at or prior to the expiry of the Decision Period).

- (c) The Lenders may revoke a Step-In Notice at any time prior to the Step-In Date by notice to the Contractor.

6.2 Rights and Obligations on Step-In

- (a) With effect from the Step-In Date and during the Step-In Period:
 - (i) the Representative shall, for the duration of the Step-In Period be deemed to be a party to the Contract Documents specified in the Step-In Notice as an additional obligor with ProjectCo and shall be jointly and severally liable with ProjectCo under the Contract Documents to the Contractor for (aa) the liabilities set out in each Statement and (bb) all obligations and liabilities arising under the Contract Documents on and after the Step-In Date and shall be entitled to the same rights as ProjectCo under the Contract Documents;
 - (ii) ProjectCo shall remain liable for all of its obligations under the Contract Documents regardless of the appointment of the Representative;
 - (iii) the Contractor shall continue to comply with all of its obligations under the Contract Documents in accordance therewith during the Step-In Period; and
 - (iv) the Contractor owes its respective obligations to ProjectCo and the Representative jointly but performance by the Contractor in favour of either the Representative or ProjectCo (unless otherwise notified by the Representative) alone shall be good discharge of its obligations under the Contract Documents.
- (b) Without prejudice to clause 6.3 (Termination or Suspension during Step-In Period) the Contractor shall not take steps to terminate or suspend performance of the Contract Documents or treat the Contract Documents as being repudiated during the Step-In Period on grounds:
 - (i) that the Lenders have taken any action referred to in clause 6.1 (Step-In Notice) or that the Security Agent has enforced any Security Document;
 - (ii) arising prior to the Step-In Date and whether or not continuing at the Step-In Date; or
 - (iii) arising out of an Insolvency Event.

6.3 Termination or Suspension During Step-In Period

The Contractor shall be entitled to terminate or suspend performance of the Contract Documents during the Step-In Period by written notice to the Lenders, the Security Agent and ProjectCo only if:

- (a) any amount referred to in clause 5.1(a) (Statement of Amounts Due and Unperformed Obligations) has not been paid on or before the date falling 30 days after the Step-In Date;
- (b) any amount referred to in clause 5.1(b) (Statement of Amounts Due and Unperformed Obligations) has not been paid on or before the date falling 30 days after the date on which sum amount became due; or
- (c) the grounds for termination arise after the Step-In Date in accordance with the terms of the Contract and the event or circumstance giving rise to such grounds has not been remedied within 30 days of receipt by the Representative of a notice in writing from the Contractor in respect thereof.

The provisions of clause 4.1 (No Termination or Suspension Without Notice) shall not apply to any Enforcement Action taken pursuant to this clause 6.3.

6.4 Contractor to Deal With the Representative

The Contractor shall deal with the Representative and not ProjectCo during the Step-In Period.

7. STEP-OUT

7.1 Notice of Step-Out Date

- (a) The Lenders or the Representative may at any time during the Step-In Period give to the Contractor (with a copy to the Security Agent) not less than five Business Days' notice that the Representative is to step out of the Contract Documents in accordance with clause 7.2 (Release From and Cessation of Liabilities), and such notice shall be in the form set out at schedule 2 to this Deed (or such other form as the Lenders or the Representative may approve).
- (b) The Lenders or the Representative shall be required to provide a notice to the Contractor in accordance with clause 7.1(a) above where:
 - (i) the Lenders or the Representative ceases to take any action to remedy any breach or event of default relating to the Relevant Event; or
 - (ii) the relevant breach or event of default relating to the Relevant Event has been remedied to the reasonable satisfaction of the Lenders.

7.2 Release From and Cessation of Liabilities

On the expiry of the Step-In Period:

- (a) the Representative shall be released from all of its obligations and liabilities to the Contractor under the Contract Documents and under this Deed save for any outstanding claims made by the Contractor prior to the expiry of the Step-In Period and the rights of the Representative against the Contractor shall be cancelled;
- (b) the Contractor shall no longer deal with the Representative and shall deal with ProjectCo in relation to the Contract Documents; and
- (c) ProjectCo shall continue to be bound by the terms of the Contract Documents and this Deed, notwithstanding the occurrence of the Step-Out Date.

8. COLLATERAL WARRANTY

The Contractor warrants and undertakes to the Lenders and the Security Agent that:

- (a) in performing the Services it will exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional who has held himself out as competent to perform the Services and who is experienced in providing services of a similar size, scope, nature, complexity and value to the Services; and
- (b) it shall comply promptly and efficiently with the terms of and shall fulfil its duties and obligations set out in the Contract.

provided that:

- (i) the liability of the Contractor (when calculated in aggregate) arising under the Contract and this Deed cannot in any circumstance exceed the liability of the Contractor under the Contract; and
- (ii) the Lenders and the Security Agent shall not make any claims under this clause 8 (Collateral Warranty) unless and until the Contract has been terminated in accordance with its terms.

9. **INTELLECTUAL PROPERTY**

- (a) The Contractor insofar as it is able hereby grants to the Lenders with full title guarantee a royalty-free, non-exclusive and irrevocable licence to copy, use and adapt the drawings, specifications, schedules and other information and documentation produced or to be produced by or on behalf of the Contractor in connection with the Project (the "**Documents**") and the designs contained in them (and to do all other acts restricted by copyright or other rights therein) for all purposes relating to the Project and the building or other structures comprising the completed Project, including (without limitation) the execution, completion, repair, maintenance, modification, mortgaging, advertisement, reinstatement, letting or sale thereof. Nothing in this clause 9(a) shall require the Contractor to disclose, and the licence hereby granted shall not extend to, any confidential information relating to the Contractor.
- (b) The Contractor agrees to grant to the Lenders such intellectual property rights as it undertakes to grant to ProjectCo pursuant to and on the same terms as set out in the Contract.
- (c) The licence granted pursuant to clause 9(a) (above) shall also permit the copying, use and adaptation of the Documents for an extension to the Project or the completed Development but such use shall not include a licence to reproduce the designs contained in them for any such extension. Such licence shall carry the right to grant sub-licences.
- (d) The Contractor shall not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Contract.
- (e) The Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Lenders or those authorised by it access to the Documents and to provide copies (including negatives and CAD disks) thereof at the expense of ProjectCo.
- (f) The Contractor warrants to the Lenders that the Documents (save to the extent that other duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Services will not infringe the rights of any third party.

10. **PAYMENT INSTRUCTION**

10.1 **Payment**

- (a) For the purposes of the Security Interest referred to in clause 2.1 (Notice of Security Interest), ProjectCo and the Security Agent hereby authorise and instruct the Contractor to make all payments which are or may become due from the Contractor under or arising from or in respect of a Contract Document (whether before or after termination of such agreement but arising prior to the Senior Discharge Date) to:

- (i) the Proceeds Account; or
- (ii) following the commencement of a Decision Period and at any time thereafter, to a Representative, the Security Agent, to such other account in the United Kingdom as such person may from time to time direct in writing to the Contractor in accordance with the provisions of this Deed,

and the Contractor agrees to comply with the authority and instruction in this clause 10.1.

- (b) Any payment made in accordance with clause 10.1(a) shall constitute a good discharge pro tanto of the obligation to make such payment.
- (c) The authority and instruction in this clause 10.1 may not be revoked or varied by ProjectCo without the prior written consent of the Security Agent (copied to the Contractor).

10.2 Set-off and Counterclaim

The Contractor agrees to make all payments due from it under the Contract Documents free and clear of, and without any deduction for or on account of, any such set-off or any counterclaim save only where the right of set-off or counterclaim is made pursuant to the Contract Documents.

11. REPRESENTATIONS

The Contractor makes the representations and warranties as to itself set out in clauses 11.1 (Incorporation) to 11.3 (Authorisation) (Inclusive) to ProjectCo, the Lenders and the Security Agent.

11.1 Incorporation

It is duly incorporated and validly existing with limited liability under the laws of its place of incorporation and has the corporate power to own its assets and to carry on its business as contemplated by the Contract Documents (to which it is a party).

11.2 Power and Capacity

It has the power and capacity to enter into and comply with its obligations under this Deed and the Contract Documents.

11.3 Authorisation

It has taken all necessary corporate, shareholder and other action:

- (a) to authorise the entry into and compliance with its obligations under this Deed and the Contract Documents;
- (b) to ensure that its obligations under this Deed and the Contract Documents are valid, legally binding and enforceable in accordance with their terms; and
- (c) to make this Deed and the Contract Documents admissible in evidence in the courts of England.

12. MISCELLANEOUS

12.1 Further Assurance

The Contractor and ProjectCo shall, at ProjectCo's expense, take whatever action:

- (a) the Lenders; or
- (b) a Representative,

may reasonably require for perfecting any release or assumption under clause 6.1 (Step-In) or 7 (Step-Out), and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders or Representative reasonably requires.

12.2 Binding Agreement

This Deed shall remain in effect until the earlier of:

- (a) the date upon which all obligations of the Contractor under the Contract Documents have been finally discharged; and
- (b) the Senior Discharge Date (such date to be notified by the Lenders to the Contractor on or before the date falling [REDACTED] after its occurrence).

12.3 Amendments in Writing

No purported amendment or modification of this Deed shall be valid unless in writing executed by the parties.

12.4 Amendments

- (a) No purported amendment or modification of this Deed shall be valid unless in writing executed by the parties.
- (b) ProjectCo shall as soon as reasonably practicable, inform the Security Agent where there has been an amendment or variation to the Contract relating to:
 - (i) the definition of "Services", "Termination Event", "Termination Notice"; or
 - (ii) the scope of events or circumstances constituting a Termination Event.

12.5 Security Agent

The Security Agent is only a party to this Deed so that it may exercise the rights conferred to it under this Deed. The Security Agent shall not, for the avoidance of doubt, assume any obligations by virtue of it entering into this Deed.

13. NO IMPLIED WAIVER

13.1 Failure to Exercise Rights

No failure or delay by the Lenders or the Security Agent in exercising any right, power or privilege under this Deed will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13.2 Cumulative Rights

The rights and remedies provided in this Deed are cumulative and not exclusive of any rights and remedies provided by law.

13.3 Grant of Waivers

A waiver given or consent granted by the Lenders or the Security Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

14. ASSIGNMENT

14.1 Assignment

Subject to clause 14.2 (Exceptions) no party to this Deed may assign or novate all or any part of its rights, benefits or obligations under this Deed.

14.2 Exceptions

Each of the Lenders and Security Agent may assign or novate its rights and (in the case of the Lenders) its obligations under this Deed to its successors, in accordance with the terms of the Finance Documents in which event the Contractor and ProjectCo shall enter into a direct agreement with the successor Lender or Security Agent on substantially the same terms as this Deed.

15. NOTICES

15.1 Mode of Service

- (a) Except as specifically provided otherwise in this Deed, any notice, demand, consent, agreement or other communication (a "**Notice**") to be served under or in connection with this Deed will be in writing and will be made by letter or by facsimile transmission to the party to be served.
- (b) The address and facsimile number of each party to this Deed for the purposes of clause 15.1(a) (above) are:
 - (i) the address and facsimile number shown immediately after its name on the signature pages of this Deed (in the case of any person who is a party as at the date of this Deed);
 - (ii) the address and facsimile number notified by that party for this purpose to the Lenders on or before the date it becomes a party to this Deed (in the case of any person who becomes a party after the date of this Deed); or
 - (iii) any other address and facsimile number notified by that party for this purpose to the other parties to this Deed by not less than five Business Days' notice.
- (c) Any Notice to be served by any party to this Deed on the Lenders or the Security Agent will be effective only if it is expressly marked for the attention of the department or officer (if any) specified in conjunction with the relevant address and facsimile number referred to in clause 15.1(b) (above).

15.2 Deemed Service

- (a) Subject to clause 15.2(b) (below), a Notice will be deemed to be given as follows:
 - (i) if by letter, when delivered personally or on actual receipt or two (2) Business Days from the date of posting if sent by first class post; and
 - (ii) if by facsimile, when delivered.

- (b) A Notice given in accordance with clause 15.2(a) (above) but received on a non-Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day.

15.3 Notice to the Security Agent

Notwithstanding anything else contained in this Deed, it is agreed that any communication or document delivered or required to be given under this Deed to the Security Agent shall be deemed to have been received only if made or delivered in accordance with the foregoing provisions of this clause 15 (Notices) to the Security Agent and then only on actual receipt by it.

16. CONFIDENTIALITY

The parties to this Deed will keep this Deed and their subject matter (including all details relating to the structure and financing of the Project) confidential, except to the extent that they are required by law or regulation to disclose the same or, in the case of ProjectCo, the Lenders and the Security Agent, to the extent permitted by clause 21.4 (Disclosure of Information) of the Senior Term Loan Facilities Agreement. Each of the Lenders and the Security Agent agrees with each other party to this Deed to hold confidential all information which it acquires under or in connection with this Deed, except to the extent it is required by law or regulation to disclose it or it comes into the public domain (otherwise than as a result of a breach of this clause 16). A party may, however, disclose any such information to its auditors, legal advisers or other professional advisers (the "Professionals") for any purpose connected with the Finance Documents, provided that the relevant party takes reasonable steps to procure that each Professional maintains the confidentiality of that information.

17. INVALIDITY OF ANY PROVISION

If any provision of this Deed is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

18. COUNTERPARTS

This Deed may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

19. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

Without prejudice to the rights of any Representative, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed. This clause 19 does not affect any right or remedy which exists or is available otherwise than pursuant to that Act.

20. GOVERNING LAW AND SUBMISSION TO JURISDICTION

20.1 Governing Law

This Deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Deed or its formation) shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.

20.2 Courts of England and Wales

Each of the parties hereto irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection

with this Deed and that any suit, legal action or proceedings (together in this clause 20 referred to as the "**Proceedings**") with respect to this Deed or any judgment in connection therewith, may be brought in such courts, and accordingly, each of them submits to the exclusive jurisdiction of such courts for the purposes of such Proceedings.

20.3 Irrevocable Agreements

Each of the parties hereto hereby irrevocably and unconditionally:

- (a) waives any objection it may now or hereafter have to the laying of venue of any such Proceedings, in any of the aforesaid courts and any claim it may now or hereafter have that any such Proceedings have been brought in an inconvenient forum; and
- (b) agrees that failure by any process agent to give notice of any process to it shall not impair the validity of such service or of any judgment based thereon.

IN WITNESS whereof this Deed has been duly executed on the date first above written.

SCHEDULE 1

Form of Step-In Notice

Date:[●]

To: [Contractor]

Attention: [●]

Copied to: The Law Debenture Trust Corporation p.l.c.
Fifth Floor
100 Wood Street
London
EC2V 7EX

Attention: The Manager, Commercial Trusts (Ref: 200840)

Dear Sirs,

Herefordshire and Worcestershire Waste Project

1. We refer to the Operation & Maintenance Services Direct Agreement dated [●] (the "**Direct Agreement**") between amongst others, us as Lenders and you as Contractor.
2. This is a Step-In Notice under clause 6 of the Direct Agreement.
3. Terms defined in (or defined by reference in) the Direct Agreement shall have the same meaning in this notice.
4. We hereby appoint [Insert name of Representative] as Representative under the Direct Agreement to step into the Contract Documents in accordance with clause 6.2(a) of the Direct Agreement.
5. The Step-In Date shall be [●].
6. Please acknowledge receipt of this notice by signing and returning the enclosed duplicate.

Yours faithfully

The COMMON SEAL of
WORCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of

Authorised Officer

)
)
)
)
)

The COMMON SEAL of
THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence of

Authorised Officer

)
)
)
)
)

For and on behalf of [●], as Representative

.....[Director][Authorised Signatory]

[On duplicate]

Date: [●]

We [●] hereby acknowledge receipt of the Step-In Notice dated [●] 20[●] of which this is a duplicate.

For and on behalf of Severn Waste Services Limited

.....[Director][Authorised Signatory]

SCHEDULE 2

Form of Step-Out notice

Date: [●]

To: [Contractor]

Attention: [●]

Copied to: The Law Debenture Trust Corporation p.l.c.
Fifth Floor
100 Wood Street
London
EC2V 7EX

Attention: The Manager, Commercial Trusts (Ref: 200840)

Dear Sirs,

Herefordshire and Worcestershire Waste Project

1. We refer to the Operation & Maintenance Services Direct Agreement dated [●] (the "**Direct Agreement**") between amongst others, [us as] the Lenders and you as Contractor.
2. We refer also to the Step-In Notice dated [●] 20[●] given to you by us on [●].
3. Terms defined in (or defined by reference in) the Direct Agreement shall have the same meaning in this notice.
4. We hereby notify you that with effect from [●] 20[●] (the "**Step-Out Date**") the Representative will step out of the Contract Documents in accordance with clause 7.2 of the Direct Agreement.
5. Please acknowledge receipt of this notice by signing and returning the enclosed duplicate.

Yours faithfully

[The COMMON SEAL of
WORCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of

Authorised Officer

The COMMON SEAL of
THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence of

Authorised Officer

[For and on behalf of *[insert name of Representative]*]

.....[Director][Authorised Signatory]]¹

[On duplicate]

We [●] hereby acknowledge receipt of the step-out notice dated [●] 20[●] of which this is a duplicate.

For and on behalf of Severn Waste Services Limited

.....[Director][Authorised Signatory]

¹ Delete if to be served by the Lenders.

SIGNATURE PAGES TO THE DIRECT AGREEMENT

The Contractor

EXECUTED as a DEED)
for and on behalf of)
SEVERN WASTE)
SERVICES LIMITED)

By:

Print Name:

as Director


By:

Print Name:

as Director

Notice Details

Address: The Marina
Kings Road
Evesham
Worcestershire
WR11 3XZ

Facsimile: 01386 446757
Attention: 

BWL

EXECUTED as a DEED)
for and on behalf of)
BEACON WASTE LIMITED)

By:

Print Name:

as Director


By:

Print Name:

as Director

Notice Details

Address: The Marina
Kings Road
Evesham
Worcestershire
WR11 3XZ

Facsimile: 01386 446757
Attention: 

ProjectCo

EXECUTED as a DEED)
for and on behalf of)
MERCIA WASTE)
MANAGEMENT LIMITED)

By:

Print Name:

as Director

By:

Print Name:

as Director

Notice Details

Address: The Marina
Kings Road
Evesham
Worcestershire
WR11 3XZ

Facsimile: 01386 446757

Attention: 

The Lenders

The County of Herefordshire District Council

The COMMON SEAL of
THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence of

Authorised Officer

)
)
)
)
)
)

Notice Details

Address: Brockington
35 Haford Road
Hereford
HR1 1SH

Facsimile: 01432 260500
Attention: The Section 151 Office

Worcestershire County Council

The COMMON SEAL of
WORCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of

Authorised Officer

)
)
)
)
)
)

Notice Details

Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Facsimile: 01905 766073
Attention: The Section 151 Officer

The Security Agent

Executed as a Deed for and on behalf of
THE LAW DEBENTURE TRUST
CORPORATION P.L.C. under a power of
attorney
dated.....2014 in the
presence of:

Witness's Signature

Name of witness

Address of witness

Occupation of witness

Notice Details

Address: The Law Debenture Trust Corporation p.l.c.
Fifth Floor
100 Wood Street
London
EC2V 7EX

Attention of: The Manager, Commercial Trusts (Ref: 200840)

Fax number: 020 7606 0643

EXECUTION PAGE

EXECUTED as a DEED
for and on behalf of
MERCIA WASTE
MANAGEMENT LIMITED

)
)
)
)

By:

Print Name:.....

as Director

By:

Print Name:.....

as Director

EXECUTED as a DEED
for and on behalf of
SEVERN WASTE
SERVICES LIMITED

By:

Print Name:.....

as Director

By:

Print Name:.....

as Director

EXECUTED as a DEED
for and on behalf of
BEACON WASTE LIMITED

)
)
)

By:

Print Name:.....

as Director

By:

Print Name:.....

as Director

SCHEDULE 2
DIRECT AGREEMENT IN FAVOUR OF THE COUNCILS

DATED

2014

- (1) SEVERN WASTE SERVICES LIMITED**
- (2) WORCESTERSHIRE COUNTY COUNCIL**
- (3) THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL**
- (4) MERCIA WASTE MANAGEMENT LIMITED**
- (5) BEACON WASTE LIMITED**

AUTHORITY DIRECT AGREEMENT

relating to

**an operation and maintenance services agreement
pursuant to the Waste Management Service Contract**

THIS DEED OF WARRANTY is made on

2014

BETWEEN:

- (1) **SEVERN WASTE SERVICES LIMITED** (Company No. 03618688) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom WR11 3XZ (the "Operating Sub-Contractor");
 - (2) **WORCESTERSHIRE COUNTY COUNCIL** of County Hall, Spetchley Road, Worcester WR5 2NP ("WCC", which expression includes its permitted successors in title and assigns);
 - (3) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Brockington, 35 Hafod Road, Hereford HR1 1SH ("HDC", which expression includes its permitted successors in title and assigns);
 - (4) **MERCIA WASTE MANAGEMENT LIMITED** (Company No. 03525188) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire WR11 3XZ (the "Contractor"); and
 - (5) **BEACON WASTE LIMITED** (Company No. 02650198) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire WR11 3XZ ("Beacon Waste"),
- (each a "Party" and together the "Parties").

BACKGROUND

- (A) By a contract dated 22 December 1998 as amended by a variation agreement dated on or around the date of this Deed (the "Waste Management Service Contract") WCC and HDC (together the "Authority") have appointed the Contractor to provide an integrated waste management service and related activities throughout the administrative area of each of WCC and HDC.
- (B) The Operating Sub-Contractor has been jointly appointed by the Contractor and (in respect of each Installation for so long as it is holder of a Waste Management Licence in respect of such Installation) Beacon Waste under a contract dated 22 December 1998 as amended by an amendment agreement dated on or around the date of this Deed (the "Operating Sub-Contract") to carry out the Services and to operate, maintain and manage the Installations.
- (C) The Operating Sub-Contractor is obliged under the Operating Sub-Contract to execute a direct agreement in this form in favour of the Authority.

1. OPERATIVE PROVISIONS

In consideration of the payment of [REDACTED] by the Authority to the Operating Sub-Contractor, receipt of which the Operating Sub-Contractor acknowledges, the Parties agree as follows:

2. DEFINITIONS AND INTERPRETATIONS

- 2.1 In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:

"Lender" means any organisation providing funding to the Contractor in connection with the carrying out of the Works (as defined in the Waste Management Service Contract).

- 2.2 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Operating Sub-Contract.

3. WARRANTY

- 3.1 The Operating Sub-Contractor warrants to the Authority that it has carried out and will continue to carry out all its obligations and duties under the Operating Sub-Contract in accordance with and to the standard required by the Operating Sub-Contract, provided always that the Operating Sub-Contractor has no liability

hereunder which is greater or of a longer duration than that it owes to the Contractor and (in respect of each Installation for so long as it is holder of a Waste Management Licence in respect of such Installation) Beacon Waste under the Operating Sub-Contract.

3.2 The Operating Sub-Contractor shall be entitled in any action or proceedings by the Authority to rely on any limitation in the Operating Sub-Contract and to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Contractor and (in respect of each Installation for so long as it is holder of a Waste Management Licence in respect of such Installation) Beacon Waste under the Operating Sub-Contract.

3.3 The Operating Sub-Contractor shall not be liable to the Authority under this Deed unless and until the Authority has given written notice to the Operating Sub-Contractor pursuant to **clause 7.1.1** or **clause 7.3**. Upon the expiration of six (6) years from the date of completion of the Services in accordance with the Operating Sub-Contract, the liability of the Operating Sub-Contractor under this Deed shall cease and determine, save in relation to any claims made by the Authority against the Operating Sub-Contractor and notified by the Authority to the Operating Sub-Contractor in writing prior thereto.

4. **COPYRIGHT**

4.1 For the purposes of this clause 4, "Documents" shall mean all or any drawings, specifications, schedules and other information and documentation which are used from time to time by the Operating Sub-Contractor in connection with the Services or are otherwise relevant to the maintenance, management, provision, replacement, carrying out and operation of the relevant Installation and/or the Services.

4.2 The Operating Sub-Contractor insofar as it is able hereby grants (or, if such grant cannot legally take place until a later date, agrees to (insofar as it is able) grant) to the Authority with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty-free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with the Installations and such other purposes as are reasonably foreseeable. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

4.3 The Authority will not hold the Operating Sub-Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it unless the Operating Sub-Contractor authorises such use and confirms that the Documents are suitable for it.

4.4 The Operating Sub-Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Authority or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authority's expense.

4.5 The Operating Sub-Contractor warrants to the Authority that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Installations will not infringe the rights of any third party.

5. **ASSIGNMENT**

The benefit of and the rights of the Authority under this Deed may be assigned without the consent of the Operating Sub-Contractor on two occasions only and the Authority will notify the Operating Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Operating Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed

(whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Sites or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

6. AUTHORITY'S REMEDIES

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Operating Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

7. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY

- 7.1 The Operating Sub-Contractor will not exercise or seek to exercise any right which may be or becomes available to it to terminate or treat as terminated or repudiated the Operating Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than thirty (30) days prior written notice specifying the Operating Sub-Contractor's ground for terminating or treating as terminated or repudiated the Operating Sub-Contract or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Operating Sub-Contract. If the Operating Sub-Contractor becomes aware of any changes to such amount until either the Authority serves notice under **clause 7.1.1** or the time period for service of such notice expires, it shall update the Authority in respect of any such changes. Within such period of notice:

7.1.1 the Authority may give written notice to the Operating Sub-Contractor that the Authority will thenceforth become the "Contractor" under the Operating Sub-Contract to the exclusion of the Contractor and thereupon the Operating Sub-Contractor will admit that the Authority is the "Contractor" under the Operating Sub-Contract and the Operating Sub-Contract will be and remain in full force and effect notwithstanding any of the said grounds;

7.1.2 if the Authority has given such notice as aforesaid or under **clause 7.3**, the Authority shall accept liability for the Contractor's obligations under the Operating Sub-Contract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor including for the avoidance of doubt any non-payment of sums due to the Operating Sub-Contractor which properly has been included in the Operating Sub-Contractor's specified grounds pursuant to **clause 7.1** and which is capable of remedy; and

7.1.3 if the Authority has given such notice as aforesaid or under **clause 7.3**, the Authority will from the service of such notice become responsible for all sums properly payable to the Operating Sub-Contractor under the Operating Sub-Contract accruing due after the service of the Operating Sub-Contractor's notice but the Authority will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Operating Sub-Contract.

- 7.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Operating Sub-Contractor, the Operating Sub-Contractor will not be under any duty or obligation to obey any direction or instruction from the Authority unless and until the Authority has given written notice under **clauses 7.1.1** and **7.3**.

- 7.3 The Operating Sub-Contractor further covenants with the Authority that if the Waste Management Service Contract is terminated (other than as a result of an Event of Council Default (as defined in the Waste Management Service Contract)) the Operating Sub-Contractor, if requested by the Authority by notice in writing and subject to **clause 7.1.2** and **clause 7.1.3**, will accept the instructions of the

Authority to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Operating Sub-Contract and will if so requested in writing enter into a novation agreement whereby the Authority is substituted for the Contractor under the Operating Sub-Contract.

- 7.4 Where the Operating Sub-Contractor has given rights in relation to the Operating Sub-Contract similar to those contained in this **clause 7** to the Lender then if both the Authority and the Lender serve notice under **clause 7.1.1** or **clause 7.3** or its equivalent the notice served by the Authority will not prevail over any notice served by the Lender but will prevail over any notice served by any other person.
- 7.5 The Contractor and (in respect of each Installation for so long as it is holder of a Waste Management Licence in respect of such Installation) Beacon Waste acknowledge that the Operating Sub-Contractor will be entitled to rely on a notice given to the Operating Sub-Contractor by the Authority under **clause 7.3** as conclusive evidence that the Waste Management Service Contract has been terminated by the Authority.
- 7.6 The Authority may by notice in writing to the Operating Sub-Contractor appoint another person to exercise its rights under this **clause 7** subject to the Authority remaining liable to the Operating Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

8. **THE CONTRACTOR'S AND BEACON WASTE'S INCLUSION AS PARTIES**

The Contractor and Beacon Waste have agreed to be Parties to this Deed for the purpose of **clause 7** and for acknowledging that the Operating Sub-Contractor shall not be in breach of the Operating Sub-Contract by complying with the obligations imposed on it by this Deed.

9. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full and original instrument for all purposes.

10. **JURISDICTION**

The law applicable to this Deed and any non-contractual obligations arising out of or in connection with it shall be English Law and the English Courts shall have non-exclusive jurisdiction with regard to all matters arising in connection with or under this Deed (including (without limitation) in relation to any non-contractual obligations).

11. **THIRD PARTY RIGHTS**

It is agreed for the purposes of the Contracts (Right of Third Parties) Act 1999 that this Deed is not intended to and does not give any person who is not a party to this Deed any rights to enforce any provisions contained in this Deed.

12. **NOTICES**

Any notice to be given by any Party hereunder will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the Party to be served. Any notice sent by hand will be deemed to be served on the date of delivery provided that if any notice sent by hand is sent after 4.45 pm on any day it will be deemed to be served on the next business day. Any notice sent by post will be deemed to have been duly served at the expiration of forty-eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a business day and otherwise on the next business day.

IN WITNESS whereof this document is executed by the Parties as a Deed and delivered on the date stated at the beginning of this Deed

EXECUTED as a DEED
for and on behalf of
SEVERN WASTE
SERVICES LIMITED

Signature of director

Print Name:

Signature of director

Print Name:

THE COMMON SEAL OF
WORCESTERSHIRE COUNTY
COUNCIL
was hereunto affixed in the
presence of Authorised Officer

Authorised Officer

was hereunto affixed
in the presence of
Authorised Officer

EXECUTED as a DEED
for and on behalf of
MERCIA WASTE
MANAGEMENT LIMITED

[illegible][illegible]

EXECUTED as a DEED
for and on behalf of
BEACON WASTE LIMITED

)
)
)

Signature of director

.....

Print Name:

.....

Signature of director

.....

Print Name:

.....

SCHEDULE 3
DIRECT AGREEMENT IN FAVOUR OF THE FUNDERS



Execution Version

Operation & Maintenance Services Direct Agreement

Severn Waste Services Limited

as Contractor

Beacon Waste Limited

as BWL

Mercia Waste Management Limited

as ProjectCo

Worcestershire County Council

and

The County of Herefordshire District Council

as Lenders

and

The Law Debenture Trust Corporation p.l.c.

as Security Agent

relating to the County of Herefordshire District Council and
Worcestershire County Council Energy from Waste Project

2014

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THIS DEED is made on

BETWEEN:

- (1) **SEVERN WASTE SERVICES LIMITED** (a company incorporated in England and Wales) (No. 03618688) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom WR11 3XZ (the "**Contractor**");
- (2) **BEACON WASTE LIMITED** (a company incorporated in England and Wales) (No. 02650198) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom WR11 3XZ ("**BWL**");
- (3) **MERCIA WASTE MANAGEMENT LIMITED** (a company incorporated in England and Wales) (No. 03525188) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom WR11 3XZ ("**ProjectCo**");
- (4) **WORCESTERSHIRE COUNTY COUNCIL AND THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** (the "**Lenders**"); and
- (5) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.** as security agent for the Secured Creditors (the "**Security Agent**").

RECITALS

- (A) The Authority and ProjectCo have entered into a variation agreement to the Waste Management Service Contract to set out the terms on which ProjectCo will provide waste management services relating to an energy from waste facility.
- (B) In order to enable ProjectCo to perform its obligations under the Waste Management Service Contract, ProjectCo, the Contractor and BWL have entered into the Contract.
- (C) Under the Senior Term Loan Facilities Agreement the Lenders have agreed to make available certain credit facilities to ProjectCo for the purposes of the Project. Pursuant to the Senior Term Loan Facilities Agreement the Lenders have appointed the Security Agent to act on their behalf under the terms of the Finance Documents.
- (D) It is a requirement of the Senior Term Loan Facilities Agreement that this Deed is entered into by the parties hereto.
- (E) It is the intention of the parties that this document be executed as a deed notwithstanding the fact that a party may only execute this Deed under hand.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this Deed:

"Authority" means Worcestershire County Council and The County of Herefordshire District Council;

"Contract" means the Operation and Maintenance Services Agreement dated 22 December 1998 between the Contractor, BWL and ProjectCo relating to the provision of the Services as amended and restated by an amendment and restatement agreement dated on or about the date hereof;

"Contract Documents" means the Contract, the Operation and Maintenance Services Parallel Loan Agreement and the Operation and Maintenance Services Technical Support Agreement;

"Decision Period" means the period commencing on the occurrence of a Relevant Event or the date on which the Lenders receive a copy of an Intended Termination Notice in accordance with Clause 4, and ending on the earliest of:

- (a) the date falling 90 days thereafter (or, if in relation to an Intended Termination Notice, the right of the Contractor to terminate the Contract has been or is referred to the dispute resolution procedure specified in clause 46 of the Contract, the date falling 30 days after a determination is made in respect of the dispute);
- (b) the Step-In Date;
- (c) the revocation of the relevant Intended Termination Notice; and
- (d) the Senior Discharge Date.

"Event of Default" has the meaning given to it in the Senior Term Loan Facilities Agreement;

"Enforcement Action" means any action whatsoever to:

- (a) demand payment, declare prematurely due and payable, claim, recover, retain or receive any amount from ProjectCo under the Contract Documents (including, without limitation, by exercising rights of any set-off);
- (b) exercise or enforce any security rights or rights against sureties or any other rights pursuant to the provisions of any document or agreement in relation to (or given in support of) such amounts or any part thereof;
- (c) petition for (or take any other steps or action which may lead to) an order being made for the winding up of ProjectCo or any other insolvency proceedings in respect of ProjectCo;
- (d) commence legal proceedings against ProjectCo or compete with any Finance Party on a liquidation of ProjectCo or claim to be subrogated to any rights of any Finance Party; or
- (e) terminate the Contract, deliver any Termination Notice, treat the Contract as having been repudiated by ProjectCo or suspend the performance of the Contractor's obligations under the Contract.

"Finance Documents" has the meaning given to it in the Senior Term Loan Facilities Agreement;

"Insolvency Event" means a court making a winding up order for the dissolution or liquidation of ProjectCo or a liquidator, receiver, manager, administrator or other similar officer being appointed to ProjectCo;

"Intended Termination Notice" has the meaning given to it in clause 4.1 (No Termination or Suspension Without Notice);

"Liabilities" means all present and future sums, liabilities and other obligations payable or owing by ProjectCo (whether actual or contingent, jointly or severally or otherwise howsoever);

"Operation and Maintenance Services Parallel Loan Agreement" means the loan agreement dated 22 December 1998 between the Contractor and ProjectCo;

"Operation and Maintenance Services Technical Support Agreement" means the technical support agreement dated 23 December 1998 between the Contractor, ProjectCo, FCC Environment Services (UK) Limited and Urbaser S.A.;

"Proceeds Account" means the account opened in the name of ProjectCo called the "Proceeds Account" with [REDACTED]

"Receiver" means any person appointed as a receiver or manager of ProjectCo pursuant to any Security Document;

"Relevant Event" means any and all of the following:

- (a) the Lenders receiving an Intended Termination Notice in relation to the Contract in accordance with Clause 4; and
- (b) the Security Agent receiving valid and binding instructions to enforce any of the Security Documents following the occurrence of an Event of Default;

"Representative" means:

- (a) any Lender and/or any of their respective Affiliates;
- (b) an administrative receiver, receiver or receiver and manager of ProjectCo appointed under the Debenture;
- (c) an administrator of ProjectCo;
- (d) a person directly or indirectly owned or controlled by any Lender; or
- (e) any other person approved by the Contractor (such approval not to be unreasonably withheld or delayed),

named as Representative in a Step-In Notice. For the avoidance of doubt, neither the Security Agent nor any of its Affiliates shall be a Representative;

"Security Interest" means any mortgage, charge (fixed or floating), pledge, lien, right of set-off, security trust, assignment by way of security, reservation of title, any other security interest or any other agreement or arrangement (including a sale and repurchase arrangement) having the commercial effect of conferring security;

"Senior Discharge Date" means the date upon which all Senior Liabilities have been fully and irrevocably paid or discharged in full and no further Senior Liabilities are capable of becoming outstanding;

"Senior Liabilities" means all Liabilities to the Finance Parties arising under or in connection with the Finance Documents;

"Senior Term Loan Facilities Agreement" means the senior term loan facilities agreement entered into on or about the date of this Deed between ProjectCo (as borrower), the Lenders (as lead arrangers and original lenders) and the Security Agent;

"Services" has the meaning given to it in the Contract;

"Step-In Date" means the date specified in a Step-In Notice as the date on which a Representative is to step in to the rights and obligations of ProjectCo under the Contract Documents in accordance with clause 6 (Step-In);

"Step-In Notice" has the meaning given to it in clause 6.1 (Step-In Notice);

"Step-In Period" means the period from a Step-in Date until the earliest of:

- (a) the date on which the relevant breach or event of default relating to the Relevant Event is remedied to the reasonable satisfaction of the Lenders;
- (b) the Step-Out Date;
- (c) the date of termination of the Contract as permitted under clause 6.3 (Termination or Suspension During Step-In Period);
- (d) the Senior Discharge Date; and
- (e) the expiry of the Contract Documents;

"Step-Out Date" means the date specified in a notice given under clause 7.1 (Notice of Step-Out Date);

"Technical Adviser" means Fichtner Consulting Engineers Ltd or such other person as the Lenders may appoint from time to time to perform this role in accordance with the terms of the Senior Term Loan Facilities Agreement;

"Termination Event" means any of the events or circumstances set out in clause 40.4 of the Contract entitling the Contractor to terminate the Contract;

"Termination Notice" means a notice terminating the Contract given by the Contractor to ProjectCo in accordance with clause 40.4 of the Contract; and

"Waste Management Service Contract" means the waste management service contract entered into by the Authority and ProjectCo on 22 December 1998 as amended and restated by a deed of variation to be entered into by the same parties on or around the date of this Deed.

1.2 Construction

- (a) Unless the context otherwise requires or unless otherwise defined in this Deed, words and expressions defined in the Senior Term Loan Facilities Agreement have the same meanings when used in this Deed.
- (b) In this Deed, unless a contrary intention appears:
 - (i) a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors and permitted assignees or transferees;
 - (ii) any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
 - (iii) references to clauses and schedules are references to, respectively, clauses of and schedules to this Deed and references to this Deed include its schedules;
 - (iv) a reference to (or to any specified provision of) any agreement or document is to be construed as a reference to that agreement or document (or that provision) as it may be amended, supplemented, novated or replaced from time to time, but excluding for this purpose any amendment,

supplementation, novation or replacement which is contrary to any provision of any Finance Document;

- (v) a reference to a statute, statutory instrument or accounting standard or any provision thereof is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision thereof, as it may be amended or re-enacted from time to time;
 - (vi) a time of day is a reference to London time;
 - (vii) the index to and the headings in this Deed are inserted for convenience only and are to be ignored in construing this Deed; and
 - (viii) words importing the plural shall include the singular and vice versa.
- (c) In the event of a conflict between the provisions of this Deed and the provisions of the Contract Documents, the provisions of this Deed shall prevail.

2. NOTIFICATION OF AND CONSENT TO SECURITY

2.1 Notice of Security Interest

- (a) ProjectCo hereby gives notice to the Contractor and BWL that it has granted to the Security Agent a Security Interest over all of its respective present and future right, title, benefit and interest in and to the Contract Documents.
- (b) BWL hereby gives notice to the Contractor and ProjectCo that it has granted to the Security Agent a Security Interest over all of its respective present and future right, title, benefit and interest in and to the Contract Documents to which it is a party.

2.2 Acknowledgement of Security Interests

- (a) Each of the Contractor and BWL:
 - (i) acknowledges that by virtue of clause 2.1(a) (Notice of Security Interest) it has received notice of the Security Interests granted by ProjectCo over its right, title, benefit and interest under the Contract Documents in favour of the Security Agent under the Security Documents; and
 - (ii) consents to the Security Interests granted by ProjectCo specified in clause 2.1(a) (Notice of Security Interest).
- (b) Each of the Contractor and ProjectCo:
 - (i) acknowledges that by virtue of clause 2.1(b) (Notice of Security Interest) it has received notice of the Security Interests granted by BWL over its right, title, benefit and interest under the Contract Documents to which it is a party in favour of the Security Agent under the Security Documents; and
 - (ii) consents to the Security Interests granted by BWL specified in clause 2.1(b) (Notice of Security Interest).

2.3 No Other Security Interests

- (a) Each of the Contractor and BWL (in respect of the Contract Documents to which it is a party) confirms to ProjectCo that it has not received notice of any Security Interests granted over ProjectCo's rights, titles, benefits and interests under the

Contract Documents other than the Security Interest specified in clause 2.1(a) (Notice of Security Interest).

- (b) Each of the Contractor and ProjectCo (in respect of the Contract Documents) confirms to BWL that it has not received notice of any Security Interests granted over BWL's rights, titles, benefits and interests under the Contract Documents other than the Security Interest specified in clause 2.1(b) (Notice of Security Interest).

2.4 Continuing Liabilities

- (a) It is agreed that the Security Agent shall have no obligations or liabilities to the Contractor, BWL or ProjectCo as a result of the Security Interests specified in clause 2.1 (Notice of Security Interest).
- (b) Each of the Contractor, ProjectCo and BWL acknowledges by its execution of this Deed that it remains fully liable for the fulfilment of all its obligations, liabilities and duties under the Contract Documents to which it is a party unless released in accordance with this Deed.

3. UNDERTAKINGS

3.1 Copies of Notices to be Delivered to the Lenders and the Security Agent

The Contractor shall deliver to the Lenders and the Security Agent, at the same time as it delivers or provides to ProjectCo, a copy of:

- (a) notice of actual or potential termination, warning notices, notices proposing, agreeing to or refusing any amendment, waiver or variation of the Contract Documents, claims for additional payment, etc delivered by it to ProjectCo pursuant to the Contract;
- (b) any notice of default served by the Contractor under the Contract; including a non-payment default under clause 40.4 of the Contract; and
- (c) any other notification, information or other communication in relation to the Contract Documents that the Lenders may reasonably require.

3.2 Rights of termination by ProjectCo

The Contractor and ProjectCo agree with the Lenders and the Security Agent that any notice issued by ProjectCo to terminate, cancel or rescind the Contract or the employment of the Contractor thereunder shall be of no effect unless the notice is accompanied by written confirmation from the Lenders that each Lender approves the giving of such notice.

3.3 Contractor Undertakings

The Contractor undertakes to the Lenders and the Security Agent that:

- (a) on receipt of a Step-In Notice from the Lenders, it shall accept as validly given by ProjectCo any notices or demands given by the Representative under the Contract Documents if the same would have been validly given had it been given by ProjectCo;
- (b) it shall not, other than in accordance with the provisions of this Deed or with the prior written consent of the Lenders (such consent not to be unreasonably withheld or delayed), agree to amend, modify, waive, cancel, suspend or surrender any provision of the Contract Documents;

- (c) it shall not, other than in accordance with the provisions of this Deed or with the prior written consent of the Lenders (such consent not to be unreasonably withheld or delayed), assign, subcontract (other than as permitted under the terms of the Contract), charge, sell or otherwise dispose of any right, title, benefit or interest in or to the Contract Documents (or any part thereof);
- (d) it shall promptly notify the Lenders and the Security Agent if it becomes aware of any event or circumstance occurring under the Contract which constitutes a Termination Event or which would, with the lapse of time, the giving of notice or the fulfilment of any other condition, constitute a Termination Event;
- (e) it shall not, without the prior consent of the Lenders, enter into any document in respect of the Project with any person which gives such other person step-in rights or similar rights against the Contractor; and
- (f) it shall not terminate, purport to terminate or take any other action to terminate any of the Contract Documents otherwise than in accordance with the express rights of termination in the Contract Documents.

Without prejudice to any obligation of the Lenders or Representative pursuant to this Deed, none of the Lenders, Security Agent or Representative shall have any obligation to the Contractor under or in respect of the Contract Documents.

3.4 **Lenders to Inform**

The Lenders agree to notify the Contractor as soon as reasonably practicable after a notice has been served to ProjectCo that an Event of Default under the Senior Term Loan Facilities Agreement is continuing.

4. **TERMINATION AND SUSPENSION BY THE CONTRACTOR**

4.1 **No Termination or Suspension Without Notice**

Prior to the Senior Discharge Date, the Contractor shall not terminate the Contract, deliver any Termination Notice, treat the Contract as having been repudiated by ProjectCo or suspend the performance of its obligations under the Contract without giving ProjectCo, the Lenders and the Security Agent prior notice (an "**Intended Termination Notice**") of its intention to do so.

4.2 **Form of Intended Termination Notice**

Any Intended Termination Notice delivered by the Contractor pursuant to clause 4.1 (No Termination or Suspension Without Notice) in relation to the Contract shall specify:

- (a) the proposed date of termination, repudiation or (as the case may be) suspension;
- (b) reasonable details of the relevant Termination Event or ground for suspension; and
- (c) the information specified in clause 5.1 (Statement of Amounts Due and Unperformed Obligations).

4.3 **Effect on Termination Notice**

Any Termination Notice given by the Contractor after an Intended Termination Notice has been given pursuant to clause 4.1 (No Termination or Suspension Without Notice) shall be deemed to be suspended and shall only be effective to terminate the Contract:

- (a) if no Step-In Notice has then been given, on the expiry of the Decision Period; or

- (b) If a Step-In Notice has been issued, on the expiry of the Step-In Period, and provided that the relevant Termination Event is then continuing and has not been remedied or waived.

4.4 **Suspension of Performance**

During a Decision Period:

- (a) the Contractor shall not take any Enforcement Action, other than
- (i) the giving of a Termination Notice, to which the provisions Clause 4.3 (Effect on Termination Notice) apply, and;
 - (ii) the suspension of performance of the Services (other than to maintain and care for any existing Services) where:
 - (A) permitted to do so for non-payment pursuant to section 112 of the Housing, Grants, Construction and Regeneration Act 1996; or
 - (B) from the date following 30 days after the commencement of the Decision Period,
- in each case until the earlier of:
- (aa) receipt of a Step-In Notice by the Contractor pursuant to clause 6.1 (Step-In Notice);
 - (bb) the date on which the event or circumstance giving rise to the Intended Termination Notice or Termination Notice is remedied; or
 - (cc) the expiry of the Decision Period.
- (b) The Lenders may, where applicable, procure remedial action, consistent with the terms of the Contract Documents, as may be necessary to remedy the effects of the event or circumstance which has given rise to an Intended Termination Notice or Termination Notice and the Contractor agrees that any such action shall, to the extent of such remedy, constitute a valid discharge of ProjectCo's obligations under the Contract Documents.

4.5 **Withdrawal of Intended Termination Notice or Termination Notice**

The Contractor may withdraw an Intended Termination Notice or a Termination Notice at any time.

5. **NOTIFICATION OF OUTSTANDING OBLIGATIONS**

5.1 **Statement of Amounts Due and Unperformed Obligations**

The Contractor shall, together with any Intended Termination Notice (or within five Business Days of receipt of a Step-In Notice where no Intended Termination Notice has been delivered) notify the Lenders and the Security Agent of:

- (a) all amounts due and payable by ProjectCo to the Contractor under the Contract Documents as at the date of the Intended Termination Notice (or, as the case may be, the date of receipt of the Step-In Notice) but remaining unpaid at such date;

- (b) all amounts accrued but not yet due under the Contract Documents as at the date of the Intended Termination Notice (or, as the case may be, the date of receipt of the Step-In Notice) that will become due on or prior to the expiry of the Decision Period; and
 - (c) details of any unperformed obligations of ProjectCo of which the Contractor is aware (having made reasonable enquiry) under the Contract as at the date of the Intended Termination Notice (or, as the case may be, the date of receipt of the Step-In Notice),
- (the "**Statement**").

5.2 Updates

- (a) The Lenders may from time to time after receipt of the information provided by the Contractor under clause 5.1 (Statement of Amounts Due and Unperformed Obligations) request the Contractor to specify, as at the date of such request and to the best of the Contractor's knowledge, any other liabilities or unperformed obligations of ProjectCo which are or will become due and payable under the Contract Documents in the period specified in such request, such period not to exceed twelve months.
- (b) The Contractor shall promptly give the Lenders and the Security Agent a notice updating any Statement if the Contractor becomes aware that:
 - (i) the information contained in such Statement is untrue, incomplete and/or inaccurate; or
 - (ii) any information relevant to such Statement has yet to be disclosed to the Lenders and the Security Agent.

5.3 Sums or Obligations Not Notified

Subject to clause 6.2 (Rights and Obligations on Step-In), any sums or obligations not duly notified in accordance with clause 5.1 (Statement of Amounts Due and Unperformed Obligations) or clause 5.2 (Updates) shall not as between the Representative and the Contractor, unless the Representative otherwise agrees, be assumed by the Representative during any Step-In Period.

5.4 Verification

The Lenders may instruct the Technical Adviser and/or an independent chartered accountant to verify at ProjectCo's costs the Statements submitted by the Contractor.

6. STEP-IN

6.1 Step-In Notice

- (a) Without prejudice to the rights of the Security Agent under the Security Documents, the Lenders may, at any time during the Decision Period, give not less than five Business Days' notice (a "**Step-In Notice**") to the Contractor (with a copy to the Security Agent) that a Representative is to step in to the Contract Documents in accordance with clause 6.2(a) (Rights and Obligations on Step-In).
- (b) The Step-In Notice shall be in the form set out at schedule 1 to this Deed (or such other form as the Lenders or the Representative may approve) and shall specify (i) the appointed Representative and (ii) the proposed Step-In Date (which must fall at or prior to the expiry of the Decision Period).

- (c) The Lenders may revoke a Step-In Notice at any time prior to the Step-In Date by notice to the Contractor.

6.2 Rights and Obligations on Step-In

- (a) With effect from the Step-In Date and during the Step-In Period:
 - (i) the Representative shall, for the duration of the Step-In Period be deemed to be a party to the Contract Documents specified in the Step-In Notice as an additional obligor with ProjectCo and shall be jointly and severally liable with ProjectCo under the Contract Documents to the Contractor for (aa) the liabilities set out in each Statement and (bb) all obligations and liabilities arising under the Contract Documents on and after the Step-In Date and shall be entitled to the same rights as ProjectCo under the Contract Documents;
 - (ii) ProjectCo shall remain liable for all of its obligations under the Contract Documents regardless of the appointment of the Representative;
 - (iii) the Contractor shall continue to comply with all of its obligations under the Contract Documents in accordance therewith during the Step-In Period; and
 - (iv) the Contractor owes its respective obligations to ProjectCo and the Representative jointly but performance by the Contractor in favour of either the Representative or ProjectCo (unless otherwise notified by the Representative) alone shall be good discharge of its obligations under the Contract Documents.
- (b) Without prejudice to clause 6.3 (Termination or Suspension during Step-In Period) the Contractor shall not take steps to terminate or suspend performance of the Contract Documents or treat the Contract Documents as being repudiated during the Step-In Period on grounds:
 - (i) that the Lenders have taken any action referred to in clause 6.1 (Step-In Notice) or that the Security Agent has enforced any Security Document;
 - (ii) arising prior to the Step-In Date and whether or not continuing at the Step-In Date; or
 - (iii) arising out of an Insolvency Event.

6.3 Termination or Suspension During Step-In Period

The Contractor shall be entitled to terminate or suspend performance of the Contract Documents during the Step-In Period by written notice to the Lenders, the Security Agent and ProjectCo only if:

- (a) any amount referred to in clause 5.1(a) (Statement of Amounts Due and Unperformed Obligations) has not been paid on or before the date falling 30 days after the Step-In Date;
- (b) any amount referred to in clause 5.1(b) (Statement of Amounts Due and Unperformed Obligations) has not been paid on or before the date falling 30 days after the date on which sum amount became due; or
- (c) the grounds for termination arise after the Step-In Date in accordance with the terms of the Contract and the event or circumstance giving rise to such grounds has not been remedied within 30 days of receipt by the Representative of a notice in writing from the Contractor in respect thereof.

The provisions of clause 4.1 (No Termination or Suspension Without Notice) shall not apply to any Enforcement Action taken pursuant to this clause 6.3.

6.4 Contractor to Deal With the Representative

The Contractor shall deal with the Representative and not ProjectCo during the Step-In Period.

7. STEP-OUT

7.1 Notice of Step-Out Date

- (a) The Lenders or the Representative may at any time during the Step-In Period give to the Contractor (with a copy to the Security Agent) not less than five Business Days' notice that the Representative is to step out of the Contract Documents in accordance with clause 7.2 (Release From and Cessation of Liabilities), and such notice shall be in the form set out at schedule 2 to this Deed (or such other form as the Lenders or the Representative may approve).
- (b) The Lenders or the Representative shall be required to provide a notice to the Contractor in accordance with clause 7.1(a) above where:
 - (i) the Lenders or the Representative ceases to take any action to remedy any breach or event of default relating to the Relevant Event; or
 - (ii) the relevant breach or event of default relating to the Relevant Event has been remedied to the reasonable satisfaction of the Lenders.

7.2 Release From and Cessation of Liabilities

On the expiry of the Step-In Period:

- (a) the Representative shall be released from all of its obligations and liabilities to the Contractor under the Contract Documents and under this Deed save for any outstanding claims made by the Contractor prior to the expiry of the Step-In Period and the rights of the Representative against the Contractor shall be cancelled;
- (b) the Contractor shall no longer deal with the Representative and shall deal with ProjectCo in relation to the Contract Documents; and
- (c) ProjectCo shall continue to be bound by the terms of the Contract Documents and this Deed, notwithstanding the occurrence of the Step-Out Date.

8. COLLATERAL WARRANTY

The Contractor warrants and undertakes to the Lenders and the Security Agent that:

- (a) in performing the Services it will exercise all the reasonable skill, care and diligence to be expected of a properly qualified professional who has held himself out as competent to perform the Services and who is experienced in providing services of a similar size, scope, nature, complexity and value to the Services; and
- (b) it shall comply promptly and efficiently with the terms of and shall fulfil its duties and obligations set out in the Contract

provided that:

- (i) the liability of the Contractor (when calculated in aggregate) arising under the Contract and this Deed cannot in any circumstance exceed the liability of the Contractor under the Contract; and
- (ii) the Lenders and the Security Agent shall not make any claims under this clause 8 (Collateral Warranty) unless and until the Contract has been terminated in accordance with its terms.

9. **INTELLECTUAL PROPERTY**

- (a) The Contractor insofar as it is able hereby grants to the Lenders with full title guarantee a royalty-free, non-exclusive and irrevocable licence to copy, use and adapt the drawings, specifications, schedules and other information and documentation produced or to be produced by or on behalf of the Contractor in connection with the Project (the "**Documents**") and the designs contained in them (and to do all other acts restricted by copyright or other rights therein) for all purposes relating to the Project and the building or other structures comprising the completed Project, including (without limitation) the execution, completion, repair, maintenance, modification, mortgaging, advertisement, reinstatement, letting or sale thereof. Nothing in this clause 9(a) shall require the Contractor to disclose, and the licence hereby granted shall not extend to, any confidential information relating to the Contractor.
- (b) The Contractor agrees to grant to the Lenders such intellectual property rights as it undertakes to grant to ProjectCo pursuant to and on the same terms as set out in the Contract.
- (c) The licence granted pursuant to clause 9(a) (above) shall also permit the copying, use and adaptation of the Documents for an extension to the Project or the completed Development but such use shall not include a licence to reproduce the designs contained in them for any such extension. Such licence shall carry the right to grant sub-licences.
- (d) The Contractor shall not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Contract.
- (e) The Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Lenders or those authorised by it access to the Documents and to provide copies (including negatives and CAD disks) thereof at the expense of ProjectCo.
- (f) The Contractor warrants to the Lenders that the Documents (save to the extent that other duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Services will not infringe the rights of any third party.

10. **PAYMENT INSTRUCTION**

10.1 **Payment**

- (a) For the purposes of the Security Interest referred to in clause 2.1 (Notice of Security Interest), ProjectCo and the Security Agent hereby authorise and instruct the Contractor to make all payments which are or may become due from the Contractor under or arising from or in respect of a Contract Document (whether before or after termination of such agreement but arising prior to the Senior Discharge Date) to:

- (i) the Proceeds Account; or
- (ii) following the commencement of a Decision Period and at any time thereafter, to a Representative, the Security Agent, to such other account in the United Kingdom as such person may from time to time direct in writing to the Contractor in accordance with the provisions of this Deed,

and the Contractor agrees to comply with the authority and instruction in this clause 10.1.

- (b) Any payment made in accordance with clause 10.1(a) shall constitute a good discharge pro tanto of the obligation to make such payment.
- (c) The authority and instruction in this clause 10.1 may not be revoked or varied by ProjectCo without the prior written consent of the Security Agent (copied to the Contractor).

10.2 Set-off and Counterclaim

The Contractor agrees to make all payments due from it under the Contract Documents free and clear of, and without any deduction for or on account of, any such set-off or any counterclaim save only where the right of set-off or counterclaim is made pursuant to the Contract Documents.

11. REPRESENTATIONS

The Contractor makes the representations and warranties as to itself set out in clauses 11.1 (Incorporation) to 11.3 (Authorisation) (inclusive) to ProjectCo, the Lenders and the Security Agent.

11.1 Incorporation

It is duly incorporated and validly existing with limited liability under the laws of its place of incorporation and has the corporate power to own its assets and to carry on its business as contemplated by the Contract Documents (to which it is a party).

11.2 Power and Capacity

It has the power and capacity to enter into and comply with its obligations under this Deed and the Contract Documents.

11.3 Authorisation

It has taken all necessary corporate, shareholder and other action:

- (a) to authorise the entry into and compliance with its obligations under this Deed and the Contract Documents;
- (b) to ensure that its obligations under this Deed and the Contract Documents are valid, legally binding and enforceable in accordance with their terms; and
- (c) to make this Deed and the Contract Documents admissible in evidence in the courts of England.

12. MISCELLANEOUS

12.1 Further Assurance

The Contractor and ProjectCo shall, at ProjectCo's expense, take whatever action:

- (a) the Lenders; or
- (b) a Representative,

may reasonably require for perfecting any release or assumption under clause 6.1 (Step-In) or 7 (Step-Out), and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders or Representative reasonably requires.

12.2 Binding Agreement

This Deed shall remain in effect until the earlier of:

- (a) the date upon which all obligations of the Contractor under the Contract Documents have been finally discharged; and
- (b) the Senior Discharge Date (such date to be notified by the Lenders to the Contractor on or before the date falling 30 days after its occurrence).

12.3 Amendments in Writing

No purported amendment or modification of this Deed shall be valid unless in writing executed by the parties.

12.4 Amendments

- (a) No purported amendment or modification of this Deed shall be valid unless in writing executed by the parties.
- (b) ProjectCo shall as soon as reasonably practicable, inform the Security Agent where there has been an amendment or variation to the Contract relating to:
 - (i) the definition of "Services", "Termination Event", "Termination Notice"; or
 - (ii) the scope of events or circumstances constituting a Termination Event.

12.5 Security Agent

The Security Agent is only a party to this Deed so that it may exercise the rights conferred to it under this Deed. The Security Agent shall not, for the avoidance of doubt, assume any obligations by virtue of it entering into this Deed.

13. NO IMPLIED WAIVER

13.1 Failure to Exercise Rights

No failure or delay by the Lenders or the Security Agent in exercising any right, power or privilege under this Deed will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13.2 Cumulative Rights

The rights and remedies provided in this Deed are cumulative and not exclusive of any rights and remedies provided by law.

13.3 Grant of Waivers

A waiver given or consent granted by the Lenders or the Security Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

14. ASSIGNMENT

14.1 Assignment

Subject to clause 14.2 (Exceptions) no party to this Deed may assign or novate all or any part of its rights, benefits or obligations under this Deed.

14.2 Exceptions

Each of the Lenders and Security Agent may assign or novate its rights and (in the case of the Lenders) its obligations under this Deed to its successors, in accordance with the terms of the Finance Documents in which event the Contractor and ProjectCo shall enter into a direct agreement with the successor Lender or Security Agent on substantially the same terms as this Deed.

15. NOTICES

15.1 Mode of Service

- (a) Except as specifically provided otherwise in this Deed, any notice, demand, consent, agreement or other communication (a "**Notice**") to be served under or in connection with this Deed will be in writing and will be made by letter or by facsimile transmission to the party to be served.
- (b) The address and facsimile number of each party to this Deed for the purposes of clause 15.1(a) (above) are:
 - (i) the address and facsimile number shown immediately after its name on the signature pages of this Deed (in the case of any person who is a party as at the date of this Deed);
 - (ii) the address and facsimile number notified by that party for this purpose to the Lenders on or before the date it becomes a party to this Deed (in the case of any person who becomes a party after the date of this Deed); or
 - (iii) any other address and facsimile number notified by that party for this purpose to the other parties to this Deed by not less than five Business Days' notice.
- (c) Any Notice to be served by any party to this Deed on the Lenders or the Security Agent will be effective only if it is expressly marked for the attention of the department or officer (if any) specified in conjunction with the relevant address and facsimile number referred to in clause 15.1(b) (above).

15.2 Deemed Service

- (a) Subject to clause 15.2(b) (below), a Notice will be deemed to be given as follows:
 - (i) if by letter, when delivered personally or on actual receipt or two (2) Business Days from the date of posting if sent by first class post; and
 - (ii) if by facsimile, when delivered.

- (b) A Notice given in accordance with clause 15.2(a) (above) but received on a non-Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day.

15.3 Notice to the Security Agent

Notwithstanding anything else contained in this Deed, it is agreed that any communication or document delivered or required to be given under this Deed to the Security Agent shall be deemed to have been received only if made or delivered in accordance with the foregoing provisions of this clause 15 (Notices) to the Security Agent and then only on actual receipt by it.

16. CONFIDENTIALITY

The parties to this Deed will keep this Deed and their subject matter (including all details relating to the structure and financing of the Project) confidential, except to the extent that they are required by law or regulation to disclose the same or, in the case of ProjectCo, the Lenders and the Security Agent, to the extent permitted by clause 21.4 (Disclosure of Information) of the Senior Term Loan Facilities Agreement. Each of the Lenders and the Security Agent agrees with each other party to this Deed to hold confidential all information which it acquires under or in connection with this Deed, except to the extent it is required by law or regulation to disclose it or it comes into the public domain (otherwise than as a result of a breach of this clause 16). A party may, however, disclose any such information to its auditors, legal advisers or other professional advisers (the "Professionals") for any purpose connected with the Finance Documents, provided that the relevant party takes reasonable steps to procure that each Professional maintains the confidentiality of that information.

17. INVALIDITY OF ANY PROVISION

If any provision of this Deed is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

18. COUNTERPARTS

This Deed may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

19. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

Without prejudice to the rights of any Representative, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed. This clause 19 does not affect any right or remedy which exists or is available otherwise than pursuant to that Act.

20. GOVERNING LAW AND SUBMISSION TO JURISDICTION

20.1 Governing Law

This Deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Deed or its formation) shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.

20.2 Courts of England and Wales

Each of the parties hereto irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection

with this Deed and that any suit, legal action or proceedings (together in this clause 20 referred to as the "**Proceedings**") with respect to this Deed or any judgment in connection therewith, may be brought in such courts, and accordingly, each of them submits to the exclusive jurisdiction of such courts for the purposes of such Proceedings.

20.3 Irrevocable Agreements

Each of the parties hereto hereby irrevocably and unconditionally:

- (a) waives any objection it may now or hereafter have to the laying of venue of any such Proceedings, in any of the aforesaid courts and any claim it may now or hereafter have that any such Proceedings have been brought in an inconvenient forum; and
- (b) agrees that failure by any process agent to give notice of any process to it shall not impair the validity of such service or of any judgment based thereon.

IN WITNESS whereof this Deed has been duly executed on the date first above written.

SCHEDULE 1

Form of Step-In Notice

Date:[●]

To: [Contractor]

Attention: [●]

Copied to: The Law Debenture Trust Corporation p.l.c.
Fifth Floor
100 Wood Street
London
EC2V 7EX

Attention: The Manager, Commercial Trusts (Ref: 200840)

Dear Sirs,

Herefordshire and Worcestershire Waste Project

1. We refer to the Operation & Maintenance Services Direct Agreement dated [●] (the "**Direct Agreement**") between amongst others, us as Lenders and you as Contractor.
2. This is a Step-In Notice under clause 6 of the Direct Agreement.
3. Terms defined in (or defined by reference in) the Direct Agreement shall have the same meaning in this notice.
4. We hereby appoint [Insert name of Representative] as Representative under the Direct Agreement to step into the Contract Documents in accordance with clause 6.2(a) of the Direct Agreement.
5. The Step-In Date shall be [●].
6. Please acknowledge receipt of this notice by signing and returning the enclosed duplicate.

Yours faithfully

The COMMON SEAL of
WORCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of

Authorised Officer

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)
)
)

The COMMON SEAL of
THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence of

Authorised Officer

)
)
)
)
)
)

For and on behalf of [●], as Representative

.....[Director][Authorised Signatory]

[On duplicate]

Date: [●]

We [●] hereby acknowledge receipt of the Step-In Notice dated [●] 20[●] of which this is a duplicate.

For and on behalf of Severn Waste Services Limited

.....[Director][Authorised Signatory]

SCHEDULE 2

Form of Step-Out notice

Date: [●]

To: [Contractor]

Attention: [●]

Copied to: The Law Debenture Trust Corporation p.l.c.
Fifth Floor
100 Wood Street
London
EC2V 7EX

Attention: The Manager, Commercial Trusts (Ref: 200840)

Dear Sirs,

Herefordshire and Worcestershire Waste Project

1. We refer to the Operation & Maintenance Services Direct Agreement dated [●] (the "**Direct Agreement**") between amongst others, [us as] the Lenders and you as Contractor.
2. We refer also to the Step-In Notice dated [●] 20[●] given to you by us on [●].
3. Terms defined in (or defined by reference in) the Direct Agreement shall have the same meaning in this notice.
4. We hereby notify you that with effect from [●] 20[●] (the "**Step-Out Date**") the Representative will step out of the Contract Documents in accordance with clause 7.2 of the Direct Agreement.
5. Please acknowledge receipt of this notice by signing and returning the enclosed duplicate.

Yours faithfully

[The COMMON SEAL of
WORCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of

Authorised Officer

The COMMON SEAL of
THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence of

Authorised Officer

[For and on behalf of *[insert name of Representative]*]

.....[Director][Authorised Signatory]]¹

[On duplicate]

We [●] hereby acknowledge receipt of the step-out notice dated [●] 20[●] of which this is a duplicate.

For and on behalf of Severn Waste Services Limited

.....[Director][Authorised Signatory]

¹ Delete if to be served by the Lenders.

SIGNATURE PAGES TO THE DIRECT AGREEMENT

The Contractor

EXECUTED as a DEED)
for and on behalf of)
SEVERN WASTE)
SERVICES LIMITED)

By:

Print Name:

as Director

By:

Print Name:

as Director

Notice Details

Address: The Marina
Kings Road
Evesham
Worcestershire
WR11 3XZ

Facsimile: 01386 446757
Attention: XXXXXXXXXX

BWL

EXECUTED as a DEED)
for and on behalf of)
BEACON WASTE LIMITED)

By:

Print Name:

as Director

By:

Print Name:

as Director

Notice Details

Address: The Marina
Kings Road
Evesham
Worcestershire
WR11 3XZ

Facsimile: 01386 446757
Attention: XXXXXXXXXX

ProjectCo

EXECUTED as a DEED)
for and on behalf of)
MERCIA WASTE)
MANAGEMENT LIMITED)

By:

Print Name:

as Director

By:

Print Name:

as Director

Notice Details

Address: The Marina
Kings Road
Evesham
Worcestershire
WR11 3XZ

Facsimile: 01386 446757
Attention: XXXXXXXXXX

The Lenders

The County of Herefordshire District Council

The COMMON SEAL of
THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence of

Authorised Officer

)
)
)
)
)
)

Notice Details

Address: Brockington
35 Haford Road
Hereford
HR1 1SH

Facsimile: 01432 260500
Attention: The Section 151 Office

Worcestershire County Council

The COMMON SEAL of
WORCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of

Authorised Officer

)
)
)
)
)
)

Notice Details

Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Facsimile: 01905 766073
Attention: The Section 151 Officer

The Security Agent

Executed as a Deed for and on behalf of
THE LAW DEBENTURE TRUST
CORPORATION P.L.C. under a power of
attorney
dated.....2014 in the
presence of:

Witness's Signature

Name of witness

Address of witness

Occupation of witness

Notice Details

Address: The Law Debenture Trust Corporation p.l.c.
Fifth Floor
100 Wood Street
London
EC2V 7EX

Attention of: The Manager, Commercial Trusts (Ref: 200840)

Fax number: 020 7606 0643

**SCHEDULE 4
POWER OF ATTORNEY**

THIS POWER OF ATTORNEY is made by way of deed on the day of 2014 by Severn Waste Services Limited of The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ, England (Registered number 3618688) (the "**Company**").

1. The Company irrevocably **APPOINTS** Mercia Waste Management Limited of The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ, England (Registered number 3525188) (the "**Attorney**") to be the Company's attorney and on its behalf and in its name or otherwise to:
 - (a) sign or execute any documents necessary to transfer the Waste Management Licences for the Installations ("**Documents**") in the event that its appointment as Operator under the O&M Agreement is terminated; and
 - (b) do all other acts and things and sign or execute as a deed and deliver any and all other documents and give any and all notices which may be required or which the Attorney shall in his absolute and unfettered discretion consider desirable in connection with any of the Documents or the Waste Management Licences for the Installations or the transactions contemplated thereby.
2. The Company confirms and acknowledges that execution by the Attorney of any of the Documents shall be conclusive evidence of the Attorney's approval of any amendments which may have been made thereto.
3. The Company shall indemnify the Attorney and keep the Attorney indemnified against any and all costs, claims and liabilities which the Attorney may incur as a result of anything done by the Attorney in the exercise of any of the powers conferred, or purported to be conferred on him by this Power of Attorney.
4. The Company shall ratify and confirm all documents, deeds, acts and things which the Attorney shall execute or do in the exercise of any of the powers conferred, or purported to be conferred, on him by this Power of Attorney.
5. The authority conferred on the Attorney by this Power of Attorney shall terminate on the expiry of the Service Contract.
6. This Power of Attorney is governed by, and shall be construed in accordance with, English law.
7. In this Power of Attorney:

"**Installations**" has the meaning given to it in the O&M Agreement;

"**O&M Agreement**" means the Operation and Maintenance Services Agreement dated 22 December 1998 between the Company, the Attorney and Beacon Waste Limited, as amended and restated by an agreement made on or about the date of this deed between the Company, the Attorney and Beacon Waste Limited;

"**Operator**" has the meaning given to it in the O&M Agreement;

"Service Contract" means the waste management service contract dated 22 December 1998 between Worcestershire County Council, the County of Herefordshire District Council and the Attorney, as amended and supplemented by a variation agreement made on or about the date of this deed between Worcestershire County Council, the County of Herefordshire District Council and the Attorney; and

"Waste Management Licences" means all licences held by the Company in connection with or pursuant to its role as Operator under the O&M Agreement;

IN WITNESS WHEREOF this Power of Attorney has been executed as a deed by the Company and is intended to be and is hereby delivered on the date first above written.

EXECUTED as a DEED
for and on behalf of
SEVERN WASTE
SERVICES LIMITED

)
)
)
)

By:

Print Name:.....
as Director

By:

Print Name:.....
as Director

SCHEDULE 5
FORM OF CONFIRMATION IN RELATION TO THE OPERATION AND
MAINTENANCE SERVICES TECHNICAL SUPPORT AGREEMENT DATED 23
DECEMBER 1998

From: Urbaser S.A. ("**Urbaser**")
Camino de las Hormigueras, 171
28031, Madrid
Spain

FCC Environment Services (UK) Limited (formerly known as FOCSA Services (UK) Limited) (together with Urbaser the "**Shareholders**")
900 Pavilion Drive, Ground Floor West
Northampton Business Park
Northampton, Northamptonshire
NN4 7RG
England

To: Mercia Waste Management Limited ("**Contractor**")
The Marina
Kings Road
Evesham, Worcestershire
WR11 3XZ

Severn Waste Services Limited ("**Operator**")
The Marina
Kings Road
Evesham, Worcestershire
WR11 3XZ

Date: ____ May 2014

Dear Sirs

We refer to the Operation and Maintenance Services Agreement dated 22 December 1998 made between the Contractor, the Operator and Beacon Waste Limited (the "**OMA**") and the Operation and Maintenance Services Technical Support Agreement dated 23 December 1998 made between the Shareholders, the Contractor and the Operator (the "**OMTSA**")

Words and expressions defined in the OMTSA bear the same meaning in this letter.

We hereby confirm that the OMTSA shall:

- (a) continue in full force and effect in relation to all of the obligations specified therein and otherwise notwithstanding the amendments to the OMA effected by an amendment agreement of even date herewith made between the Contractor, the Operator and Beacon Waste Limited (the "**OMA Amendment Agreement**"); and

- (b) be construed as if all references in the OMTSA to the "Operation and Maintenance Services Agreement" are references to the OMA as amended by the OMA Amendment Agreement.

This letter is governed by English law.

Yours faithfully

For and on behalf of
URBASER S.A. by
its duly authorised signatory

.....
Authorised signatory

.....
Print Name

For and on behalf of
FCC ENVIRONMENT SERVICES
(UK) LIMITED by

.....
Director

.....
Print Name

.....
Director

.....
Print Name

Acknowledged by:

**MERCIA WASTE MANAGEMENT
LIMITED** by

)
)

By.....

Print Name:.....
as Director

By.....

Print Name:.....
as Director

)
)

SEVERN WASTE SERVICES LIMITED
by

By.....

Print Name:.....
as Director

By.....

Print Name:.....
as Director

SCHEDULE 6
FORM OF CONFIRMATION IN RELATION TO THE OPERATION AND
MAINTENANCE SERVICES PARALLEL LOAN AGREEMENT DATED 22
DECEMBER 1998

From: Severn Waste Services Limited ("Operator")

The Marina
Kings Road
Evesham, Worcestershire
WR11 3XZ

To: Mercia Waste Management Limited ("Contractor")

The Marina
Kings Road
Evesham, Worcestershire
WR11 3XZ

Date: ____ May 2014

Dear Sirs

We refer to the Operation and Maintenance Services Agreement dated 22 December 1998 made between the Contractor, the Operator and Beacon Waste Limited (the "OMA") and the Operation and Maintenance Services Parallel Loan Agreement dated 22 December 1998 made between the Contractor and the Operator (the "OMPLA")

Words and expressions defined in the OMPLA bear the same meaning in this letter.

We hereby confirm that the OMPLA shall:

- (a) continue in full force and effect in relation to all of the obligations specified therein and otherwise notwithstanding the amendments to the OMA effected by an amendment agreement of even date herewith made between the Contractor, the Operator and Beacon Waste Limited (the **"OMA Amendment Agreement"**);
- (b) be construed as if all references in the OMPLA to the "Operation and Maintenance Agreement" are references to the OMA as amended by the OMA Amendment Agreement; and
- (c) be construed as if all references in the OMPLA to "Clause 20.5 of the Operation and Maintenance Agreement" are references to Clause 26.5 of the OMA as amended by the OMA Amendment Agreement.

This letter is governed by English law.

Yours faithfully

SEVERN WASTE SERVICES)
LIMITED by)
)

By.....

Print Name:.....
as Director

By.....

Print Name:.....
as Director

Acknowledged by

MERCIA WASTE)
MANAGEMENT LIMITED by)
)

By.....

Print Name:.....
as Director

By.....

Print Name:.....
as Director

EXECUTION PAGE

EXECUTED as a DEED
for and on behalf of
MERCIA WASTE
MANAGEMENT LIMITED

)
)
)
)

By:

Print Name:.....
as Director

By:

Print Name:.....
as Director

EXECUTED as a DEED
for and on behalf of
SEVERN WASTE
SERVICES LIMITED

)
)
)
)

By:

Print Name:.....
as Director

By:

Print Name:.....
as Director

EXECUTED as a DEED
for and on behalf of
BEACON WASTE LIMITED

)
)
)

By:

Print Name:.....
as Director

By:

Print Name:.....
as Director

ANNEX 19

(SCHEDULE 12 (DETERMINATION OF THE IMPACT OF CHANGE IN COMPOSITION AND CALORIFIC VALUE OF CONTRACT WASTE) TO THE WASTE MANAGEMENT SERVICE CONTRACT)

PART A WASTE TO ENERGY SUPPLEMENT

1. **Specification**

The "CV Base Value" shall be [REDACTED] mega Joules per Kilogramme (MJ/kg), being the agreed calorific value at the design point of the firing diagram for the Waste to Energy Plant.

2. **Not Used.**

3. **Not Used.**

4. **Not Used.**

5. **Not Used.**

6. **Not Used.**

7. **Not Used.**

8. **Not Used.**

9. **Determination of CV for Further CV Reviews and correction for Non-Contract Waste**

9.1 On the final day of the first full Contract Year following the first anniversary of the Take-Over Date, the Contractor shall determine the average annual calorific value of Contract Waste (and on the final day of each Contract Year thereafter, each being a "Further CV Review") received and processed within the Waste to Energy Plant during that Contract Year.

Further CV Reviews shall be determined in accordance with this Paragraph 9 and using the Waste to Energy Plant boiler as a calorimeter.

9.2 The Contractor shall use reasonable endeavours to ensure that all Contract Waste, Non-Contract Waste or combined Contract Waste and Non-Contract Waste is adequately mixed to ensure that a relatively homogenous waste stream enters the grate of the Waste to Energy Plant (the "Waste Feedstock").

9.3 During operation of the Waste to Energy Plant, the Contractor shall use reasonable endeavours to ensure that the calorific value of the Waste Feedstock shall remain stable.

- [REDACTED]
- 9.5 In order to correct for the contribution of any Non-Contract Waste when carrying out the test under Paragraph 9.1 and in each Further CV Review, the Contractor shall perform two 5 Day Tests (each being a "Test Set") on the Waste Feedstock twice a year (totalling some 20 days in each Contract Year) following the Take Over Date.
- 9.6 Each 5 Day Test shall consist of a period of 5 consecutive Days of operation over which the performance of the Waste to Energy Plant shall be monitored in accordance with this Schedule 12 to determine the average calorific value of Contract Waste.
- 9.7 In any full Contract Year each Test Set shall be conducted over a continuous period of 14 days during which the Waste to Energy Plant is operating without interruption, shutdown or stoppage.
- 9.8 The timing of the Test Sets shall be such that they reasonably represent the waste received at the Waste to Energy Plant over the Contract Year.
- 9.9 Whilst time shall not be of the essence, commencement of each Test Set within two weeks after bank holidays shall be avoided wherever possible in order to minimise the potential influence of abnormal collection periods during these times.
- 9.10 At least four months shall have elapsed between the commencement of each Test Set in any Contract Year.
- 9.11 The Contractor shall provide details of its proposed plan and methodology for each Test Set not less than 15 Business Days in advance of that Test Set. The Superintendent Officer shall, acting reasonably, be entitled to object to the proposed plan and methodology not less than 5 days prior to the commencement of the each Test Set and the Contractor shall have due regard to any such objection or comment from the Superintendent Officer.
- 9.12 The Contractor shall notify the Superintendent Officer not less than 15 Business Days in advance of its intention to carry out each Test Set in any Contract Year.
- 9.13 In the first 5 Day Test of each Test Set, the calorific value shall be measured using combined Contract Waste and Non-Contract Waste (the combined Contract Waste and Non-Contract Waste test). During the second 5 Day Test in each Test Set, the calorific value shall be measured using Contract Waste alone (the Contract Waste test). Each 5 Day Test shall be performed in accordance with the principles set out in Paragraph 9.4 above. In each 5 Day Test, the average calorific value of the respective waste streams shall be determined, and applied to the assessment of the Variance in Calorific Value pursuant to Paragraph 10.1 below. In the event that the Waste to Energy Plant is unable to operate continuously throughout the period required to undertake either Test Set in any Contract Year, then that Test Set shall be rescheduled and repeated. The Superintendent Officer shall have the right to witness such tests and shall be provided with all necessary data to allow verification of the test results. A report setting out the results of the tests, with supporting calculations and data, shall be made available to the Superintendent Officer within 10 Business days of their completion.

- 9.14 Without prejudice to the terms of Paragraph 9.13, if there is insufficient Contract Waste to enable each 5 Day Test to be carried out, then the Contractor shall be entitled to use Non-Contract Waste in its stead to avoid disruption to the operation of the Waste to Energy Plant. The relevant Test Set will then be repeated when sufficient volumes of Contract Waste become available.

10. **Variance in Calorific Value**

- 10.1 Where a Further CV Review determines that the average annual calorific value of Contract Waste is in excess of [REDACTED] above the CV Base Value, the Contractor shall within 14 Days of such Further CV Review deliver to the Superintendent Officer a notice ("**Waste to Energy Supplement Increase Notice**"). This notice shall include appropriate average annual calorific value analysis taken from the DCS for the Waste to Energy Plant in accordance with the Further CV Review, together with the Contractor's notice of change to the Waste to Energy Supplement Price per tonne which shall apply from the first day of the first month of the Contract Year following the Contract Year of the relevant Further CV Review.

Where a Further CV Review determines that the average annual calorific value of Contract Waste is less than the [REDACTED] above the CV Base Value, the Waste to Energy Supplement Price per tonne as set out in Schedule 6 shall apply for the Contract Year following the Contract Year of the relevant Further CV Review. Where this results in a reduction to the current Waste to Energy Supplement Price, then the Contractor shall advise the Superintendent Officer within 14 Days of such Further CV Review by way of an Waste to Energy Supplement Decrease Notice which shall include appropriate average annual calorific value analysis taken from the DCS for the Waste to Energy Plant in accordance with the Further CV Review.

Where a Further CV Review determines the average annual calorific value for Contract Waste to be in excess of [REDACTED] above the CV Base Value, the Waste to Energy Supplement Price shall be multiplied by 'e' where:

$$e = \frac{CV_2 \left(\frac{CV_1}{CV_3} \right)}{CV_1}$$

- [REDACTED]
- [REDACTED]
- [REDACTED]
- 10.4 If the parties are unable to agree the appropriate increase or decrease in the Waste to Energy Supplement Price per tonne within 180 Days of the service of any Waste to Energy Supplement Increase Notice or Waste to Energy Supplement Decrease Notice (as the case may be) then either party may refer the same for dispute resolution in accordance with the Dispute Resolution Procedure.
- 10.5 The Contractor shall provide a monthly update of data on the average annual calorific value recorded from the commencement of each Contract Year and the projected annual average calorific value to the end of that Contract Year within its [REDACTED] report to the Superintendant Officer.

ANNEX 20
PROPERTY TRANSFER AGREEMENT

[This document is already publicly available and so is not included here or elsewhere in the revised version]

ANNEX 21
[NOT USED]

ANNEX 22
CMA

(inserted overleaf)

**C L I F F O R D
C H A N C E**

CLIFFORD CHANCE LLP

EXECUTION VERSION

AMENDMENT AGREEMENT

DATED **MAY 2014**

FOR

**MERCIA WASTE MANAGEMENT LIMITED
THE CONTRACTOR**

WITH

**SEVERN WASTE SERVICES LIMITED
THE CONSTRUCTION MANAGER**

**RELATING TO A CONSTRUCTION MANAGEMENT
AGREEMENT
DATED 22 DECEMBER 1998**

JA
207
11/11
[Signature]

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THIS AGREEMENT is dated ____ May 2014 and made between:

- (1) **MERCIA WASTE MANAGEMENT LIMITED** of The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ, England (the "**Contractor**"); and
- (2) **SEVERN WASTE SERVICES LIMITED** of The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ, England (the "**Construction Manager**").

RECITALS:

- (A) The Contractor and the Construction Manager are parties to a construction management agreement entered into on 22 December 1998 (the "**Original CMA**") for the provision of certain services in connection with the Project (as defined in the Original CMA).
- (B) In connection with certain modifications to the Service Contract (as defined in the Original CMA), the Guarantors (as defined in the Original CMA) will no longer construct the Waste to Energy Plant (as defined in the Original CMA).
- (C) The Contractor has on or about the date of this Agreement entered into an EPC contract pursuant to which Hitachi Zosen Inova AG as EPC contractor has undertaken to construct the Waste to Energy Plant.
- (D) The Parties have agreed to enter into this Agreement in order to record the amendments to and restatement of the Original CMA.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Amended CMA**" means the Original CMA, as amended and restated by this Agreement.

"**Amended CMA Effective Date**" has the meaning given to it in Clause 2.

"**Construction Management Parallel Loan Agreement**" means the construction management parallel loan agreement dated 22 December 1998 between the Contractor and the Construction Manager.

"**Construction Management Technical Support Agreement**" means the construction management technical support agreement dated 22 December 1998 between the Contractor, the Construction Manager and Urbaser S.A. and FCC Environment Services (UK) Limited (formerly known as FOCSA Services (UK) Limited) (the "**Technical Support Providers**").

"**Direct Agreement in favour of the Councils**" means the direct agreement substantially in the form attached as Schedule 2 (*Direct Agreement in favour of the Councils*).

"Direct Agreement in favour of the Funders" means the direct agreement substantially in the form attached as Schedule 3 (*Direct Agreement in favour of the Funders*).

"Deed of Guarantee" means the deed of guarantee substantially in the form attached as Schedule 4 (*Deed of Guarantee*).

"Parties" means the parties to this Agreement and "Party" means any of them as the context so requires.

1.2 Incorporation of defined terms

- (a) Unless a contrary indication appears, a term defined in the Original CMA has the same meaning in this Agreement.
- (b) The principles of construction set out in the Original CMA shall have effect as if set out in this Agreement.

1.3 Clauses

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause in or a Schedule to this Agreement.

1.4 Third party rights

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

2. CONDITIONS PRECEDENT TO THE AMENDED CMA

The Amended CMA shall not become effective until the execution and delivery by the respective parties thereto of the Direct Agreement in favour of the Councils, the Direct Agreement in favour of the Funders and the Deed of Guarantee (the "Amended CMA Effective Date").

3. CONDITION PRECEDENT TO THE ORIGINAL CMA

Without prejudice to Clause 2 of this Agreement, the conditions precedent referred to in Clause 2 (*Appointment of the Construction Manager*) of the Original CMA have been fully met by the Contractor and the Construction Manager and the Parties acknowledge and agree that the Original CMA is in full force and effect.

4. ACKNOWLEDGEMENT

The Parties acknowledge and agree that, as at the date of this Agreement:

- (a) the Construction Manager has been paid all amounts due; and
- (b) to the best of their knowledge, there are no outstanding claims against the Contractor,

pursuant to the Original CMA.

5. RESTATEMENT OF THE ORIGINAL CMA

With effect from the Amended CMA Effective Date the Original CMA shall be amended and restated so that it shall be read and construed for all purposes as set out in Schedule 1 (*Restated Agreement*).

6. LETTERS OF CONFIRMATION

6.1 Letter of confirmation relating to the Construction Management Technical Support Agreement

The Construction Manager shall procure that the Technical Support Providers shall provide, and the Parties shall acknowledge, a letter of confirmation relating to the Construction Management Technical Support Agreement in the form attached as Schedule 5 (*Confirmation in relation to the Construction Management Technical Support Agreement dated 22 December 1998*).

6.2 Letter of confirmation relating to the Construction Management Parallel Loan Agreement

The Parties shall execute a letter of confirmation in relation to the Construction Management Parallel Loan Agreement in the form attached as Schedule 6 (*Confirmation in relation to the Construction Management Parallel Loan Agreement dated 22 December 1998*).

7. CONTINUITY AND FURTHER ASSURANCE

7.1 Continuing obligations

The provisions of the Original CMA shall, save as amended by this Agreement, continue in full force and effect.

7.2 Further assurance

The Parties shall do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Agreement.

8. FEES AND EXPENSES

Each Party shall bear all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiations, preparation, and execution of this Agreement and any other documents referred to in this Agreement.

9. MISCELLANEOUS

9.1 Incorporation of terms

The provisions of clause 26 (*Adjudication Procedure*), clause 27 (*Arbitration Procedure*), clause 32 (*Notices*), clause 35 (*Waiver*), clause 36 (*Survival*), clause 37 (*Severance*) and clause 39 (*English Language*) of the Amended CMA shall be

incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "this Agreement" are references to this Agreement.

9.2 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

10. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
RESTATED AGREEMENT

**C L I F F O R D
C H A N C E**

CLIFFORD CHANCE LLP

EXECUTION VERSION

Originally dated 22 December 1998
and as Amended and Restated on ____ May 2014

**MERCIA WASTE MANAGEMENT LIMITED
AS CONTRACTOR**

AND

**SEVERN WASTE SERVICES LIMITED
AS CONSTRUCTION MANAGER**

CONSTRUCTION MANAGEMENT AGREEMENT

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THIS AGREEMENT is made as a deed and originally dated 22 December 1998 as amended and restated on ____ May 2014

BETWEEN:

- (1) **MERCIA WASTE MANAGEMENT LIMITED** of The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ (the "**Contractor**") which expression shall include its successors and assigns; and
- (2) **SEVERN WASTE SERVICES LIMITED** of The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ (the "**Construction Manager**") which expression shall include its successors and assigns.

WHEREAS:

- (A) The Contractor intends to undertake the Project and wishes to proceed with the Development including the design, construction or refurbishment and operation of pre-sorted material reclamation facilities, new and existing transfer stations, household waste sites, compost plants and a Waste to Energy Plant.
- (B) The Contractor has entered into the EPC Contract (as defined below) pursuant to which the EPC Contractor (as defined below) has undertaken to construct the Waste to Energy Plant.
- (C) The Contractor wishes to appoint the Construction Manager to act as its manager for co-ordinating the implementation of the Development and to perform the Services upon the terms and conditions contained in this Agreement.

NOW IT IS HEREBY AGREED as follows:

**PART I
DEFINITIONS AND INTERPRETATION**

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions by incorporation

Unless otherwise defined, terms and expressions in this Agreement shall bear the same meaning as set out in the Service Contract.

1.2 Definitions

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"**Adjudication**" means an adjudication under Clause 26 (*Adjudication Procedure*).

"**Adjudication Notice**" is defined in Clause 26.1 (*Adjudication Procedure*).

"**Adjudication Procedure**" means the procedure for adjudication set out in Clause 26 (*Adjudication Procedure*) and in the TeCSA Adjudication Rules provided that in the event of inconsistencies, Clause 26 (*Adjudication Procedure*) shall prevail.

"**Adjudicator**" is defined in Clause 26.2 (*Adjudication Procedure*).

"**Advance**" is defined in the Construction Management Parallel Loan Agreement.

"**Agreement**" means this Agreement, including the Recitals and Schedules.

"**Arbitrator**" means an arbitrator appointed pursuant to Clause 27 (*Arbitration Procedure*).

"**Claiming Party**" is defined in Clause 18 (*Definition of Force Majeure Event*).

"**Consequential Loss**" means any indirect or consequential loss (including loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, loss of use or liability under other agreements) resulting from the performance or non-performance of any obligation hereunder, any act of negligence, breach of contract or otherwise by any party and whether or not such party knew, or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach.

"**Construction Budget**" means the budget for the Project to be prepared pursuant to the Financing Agreements as the same may be amended or supplemented at the direction of the Contractor from time to time by notice in writing to the Construction Manager.

"**Construction Management Parallel Loan Agreement**" means the loan agreement dated 22 December 1998 between the Contractor and the Construction Manager substantially in the form annexed as Schedule 7 (*Construction Management Agreement Parallel Loan Agreement*).

"**Construction Management Technical Support Agreement**" means the technical support agreement dated 22 December 1998 between the Technical Support Providers, the Contractor and the Construction Manager.

"**Construction Manager Consents**" means all Planning Permission and Necessary Consents required for the provision of the Services to the standards of a Reasonable and Prudent Construction Manager and which can be obtained in the Construction Manager's name.

"**Construction Manager's Insurances**" is defined in Clause 15.1 (*Construction Manager's and Contractor's Insurances*).

"**Construction Manager's Monthly Invoice**" is defined in Paragraph 1 (*Construction Manager's Monthly Invoices*) of Section 3 (*Payment*) of Schedule 3 (*Reimbursable Costs and Fees*).

"**Construction Period**" means the period or periods for the construction and completion of the Development beginning on the Effective Date and ending in accordance with the Construction Programme.

"Construction Programme" means the programme prepared by the Construction Manager as part of the Implementation Services and approved by the Contractor as the same may be amended or supplemented from time to time in accordance with this Agreement.

"Construction Services" means the services to be performed during the Construction Period and at such other times as may be necessary or appropriate for the proper implementation and completion of the Project.

"Contract Year" means:

- (a) the First Contract Year; and
- (b) each succeeding period of 12 months commencing on 1 April and ending on 31 March *Provided* that if the date of expiry or termination of this Agreement is not 31 March, the final Contract Year shall end on such date.

"Contractor Consents" means all Planning Permission and Necessary Consents required for the provision of the Services, but excluding the Construction Manager Consents.

"Contractor's Insurances" is defined in Clause 15.1 (*Construction Manager's and Contractor's Insurances*).

"Contractor's Monthly Invoice" is defined in Paragraph 2 (*Contractor's Monthly Invoices*) of Section 3 (*Payment*) of Schedule 3 (*Reimbursable Costs and Fees*).

"Contractor's Representative" is defined in Clause 5.1 (*Contractor's Representative*).

"Councils" means WCC and HDC.

"Default Rate" means LIBOR plus two percent (2%) or in the event that no such rate is quoted in respect of the relevant period such equivalent rate as the parties may agree or in default of agreement as determined by an Adjudicator in accordance with Clause 26 (*Adjudication Procedures*).

"Development" means the works for the development or redevelopment of the Sites briefly described in Schedule 1 (*Particulars*) including all demolition and site clearance, site investigation and preparation, provision and diversion of services and all ancillary works.

"Direct Agreement in favour of the Funders" means the direct agreement dated on or about the date of this Agreement between the Contractor, the Construction Manager and the Funders.

"Direct Agreement in favour of the Councils" means the direct agreement dated on or about the date of this Agreement between the Contractor, the Construction Manager and the Councils.

"Dispute" means any dispute or difference of any kind whatsoever between any or all of the parties to this Agreement arising out of or in connection with this Agreement or

the subject matter thereof, including any question regarding (a) its existence, validity or termination or (b) payments or liabilities in respect thereof.

"Dispute Resolution Procedure" means together Part VIII (*Governing Law and Dispute Resolution*) of this Agreement and the TeCSA Adjudication Rules provided that in the event of inconsistencies Part VIII (*Governing Law and Dispute Resolution*) shall prevail over the TeCSA Adjudication Rules.

"Documents" means all drawings, plans, specifications, records, calculations, and other documents and all revisions thereof and additions thereto, and the designs contained in them, prepared or to be prepared by or on behalf of the Construction Manager in respect of the Project.

"Due Date for Payment" means the date on which payment becomes due under Paragraph 1(e) (*Construction Manager's Monthly Invoices*) or Paragraph 2 (*Contractor's Monthly Invoices*) (as relevant) of Section 3 (*Payment*) of Schedule 3 (*Reimbursable Costs and Fees*).

"Effective Date" is defined in Clause 2.2 (*Appointment of the Construction Manager*).

"EPC Contract" means the contract entered into on or about the date of this Agreement between the Contractor and the EPC Contractor.

"EPC Contractor" means Hitachi Zosen Inova AG.

"Estimated Reduced Fee" is defined in Clause 13.5 (*Remuneration*).

"Existing Dispute" is defined in Clause 27.6 (*Arbitration Procedure*).

"Fee" means [REDACTED]

"First Contract Year" means from the Effective Date to the following 31 March.

"Force Majeure Event" is defined in Clause 18 (*Definition of Force Majeure Event*).

"Force Majeure Period" is defined in Clause 13.5.1 (*Remuneration*).

"Guarantors" means Fomento de Construcciones Contratas S.A. and Urbaser S.A.

"HDC" means The County of Herefordshire District Council.

"HGCRA" means the Housing Grants, Construction and Regeneration Act 1996.

"ICE Rules" is defined in Clause 26.16 (*Adjudication Procedure*).

"Implementation Services" means the services described in Section 1 (*Implementation Services*) of Schedule 2 (*Services*) to be performed during the Construction Period and at such other times as may be necessary or appropriate for the proper implementation and completion of the Project.

"Insurances" means the Contractor's Insurances and the Construction Manager's Insurances.

"Legal Proceedings" is defined in Clause 27.13 (*Arbitration Procedure*).

"Monthly Invoice" means a Construction Manager's Monthly Invoice or a Contractor's Monthly Invoice.

"Non-Claiming Party" is defined in Clause 19 (*Notification of Force Majeure*).

"President" is defined in Clause 27.1 (*Arbitration Procedure*).

"Project Director" is that person appointed by the Construction Manager to act as project director pursuant to Clause 4 (*Construction Manager's Personnel*).

"Reasonable and Prudent Construction Manager" means a person seeking in good faith to perform its contractual obligations and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced construction manager complying with the Legal Requirements engaged in the same type of undertaking in the same or similar circumstances or conditions and **"standards of a Reasonable and Prudent Construction Manager"** has a corresponding meaning.

"Reduced Fee" is defined in Clause 13.5.1 (*Remuneration*).

"Reimbursable Cost" means

"Reimbursable Cost Items" is defined in Section 1 (*Definition of Reimbursable Cost*) of Schedule 3 (*Reimbursable Costs and Fees*).

"Related Dispute" is defined in Clause 27.6 (*Arbitration Procedure*).

"Representing Party" is defined in Clause 30 (*Representations and Warranties*).

"Service Contract" means the waste management service contract dated 22 December 1998 between WCC, HDC and the Contractor, as amended and supplemented by variation agreement on or about the date hereof between WCC, HDC and the Contractor (a copy of which the Construction Manager acknowledges receiving from the Contractor).

"Services" means the Implementation Services and the Construction Services.

"Sites" means the land and/or buildings (at various locations) on which the plant, machinery, roads and other structures forming the Development are situated and **"Site"** means each of them.

"Technical Support Providers" means FCC Environment Services (UK) Limited and Urbaser S.A.

"TeCSA" means the Technology and Construction Solicitors' Association.

"TeCSA Adjudication Rules" means version 3.2 of the adjudication rules of the TeCSA or the most recent edition of the TeCSA Adjudication Rules at the time of an Adjudication Notice.

"Third Party Agreements" means all or any agreements or contracts entered into, or to be entered into, between the Contractor and other persons in respect of the Project including relating to the provision of finance for the Project or the disposal of any product produced by the Project including the Project Documents.

"Trade Contract" means each contract to be executed by the Contractor and a Trade Contractor and, for the avoidance of doubt, includes the EPC Contract.

"Trade Contractors" means each contractor or supplier engaged from time to time by the Contractor under a Trade Contract to undertake and/or procure the construction and completion of part or parts of the Development and (to the extent required by the Trade Contract) the design thereof and the making good of defects therein and, for the avoidance of doubt, includes the EPC Contractor under the EPC Contract.

"Tribunal" means an arbitration tribunal appointed pursuant to Clause 27 (*Arbitration Procedure*).

"WCC" means Worcestershire County Council.

"Working Hours" means 9.00am to 5.30pm on a business day.

1.3 Interpretation

In this Agreement:

- 1.3.1 except to the extent that the context requires otherwise, references to the singular shall include references to the plural and vice versa;
- 1.3.2 words denoting natural persons shall include corporations, partnerships, firms, companies, joint ventures, trusts, associations and organisations or other entities (whether or not having a separate legal personality) and vice versa;
- 1.3.3 references to the words "**include**" and "**including**" are to be construed without limitation;
- 1.3.4 except to the extent that the context requires otherwise, references to a "**Recital**", "**Clause**" or "**Schedule**" shall be references to a recital, clause or schedule in, or to, this Agreement;
- 1.3.5 except to the extent that the context requires otherwise, references to a "**Part**" shall be references to a part of this Agreement;
- 1.3.6 except to the extent that the context requires otherwise, any reference to an agreement or document is a reference to it as further amended, supplemented or novated from time to time and includes a reference to any document which

amends, is supplemental to, novates, or is entered into, made or given pursuant to or in accordance with any terms of it;

- 1.3.7 unless the context requires otherwise, any reference to a statutory provision (including any secondary legislation) shall include such provision as from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation is applicable (whether before or after the date of this Agreement);
- 1.3.8 references to a "**party**" or "**parties**" are to a party or parties to this Agreement;
- 1.3.9 a person includes a reference to that person's legal personal representatives, successors and lawful assigns;
- 1.3.10 the headings are inserted for convenience only and are to be ignored for the purposes of construction;
- 1.3.11 all accounting terms used but not expressly defined herein shall have the meaning respectively given to them under generally accepted accounting principles;
- 1.3.12 the terms "**hereof**", "**herein**", "**hereby**", "**hereto**" and similar words refer to this Agreement;
- 1.3.13 references to pounds sterling shall include the references to the lawful currency of the United Kingdom, from time to time;
- 1.3.14 this Agreement includes the Schedules;
- 1.3.15 a "**day**" shall mean a period of 24 hours running from midnight to midnight;
- 1.3.16 a "**year**" or a "**month**" is a reference to a calendar year or calendar month as the case may be;
- 1.3.17 a "**business day**" means a day on which banks in London are generally open for business and excludes Saturday and Sunday;
- 1.3.18 except to the extent that the context requires otherwise, references to a "**Paragraph**" or "**Section**" are to a paragraph or section of a Schedule respectively; and
- 1.3.19 the masculine includes the feminine and vice versa.

1.4 Instructions

No instruction, direction, admission, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by, or on behalf of, the Contractor shall in any way relieve the Construction Manager from its liabilities or obligations hereunder nor shall such liabilities or obligations be restricted or qualified in any way.

1.5 Inspection

The liability and obligations of the Construction Manager under this Agreement shall not be released, diminished or in any other way affected by any enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Contractor.

1.6 Trade Contractor

Where by this Agreement the Construction Manager is required to act with or with reference to a Trade Contractor, but at the time that the obligation falls to be performed the person whom is to be appointed as the Trade Contractor (as the case may be) has been approved by the Contractor, but has not been appointed, the Construction Manager shall, if required in writing by the Contractor, act with or by reference to such person as if such person had already been appointed.

PART II
APPOINTMENT OF CONSTRUCTION MANAGER AND TERM

2. APPOINTMENT OF THE CONSTRUCTION MANAGER

- 2.1 The Contractor appoints the Construction Manager as construction manager and the Construction Manager hereby accepts such appointment and agrees to carry out and complete the Services fully and faithfully and in the best interests of the Contractor and in accordance with the terms and conditions of this Agreement.
- 2.2 The Construction Manager shall not commence the Services until it has received the Contractor's written instruction to proceed with the same (the "**Effective Date**"). The issue of such an instruction is a condition precedent to any liability or obligation of the Contractor to the Construction Manager in respect of the Services.
- 2.3 [Not used.]
- 2.4 [Not used.]

3. TERM

This Agreement will commence on the Effective Date and continue in force until the earlier of:

- 3.1 notice from the Contractor of the termination of the Service Contract;
- 3.2 notice from the Contractor, that the last in time of the defects liability periods under the Trade Contracts has ended; or
- 3.3 subject to the Direct Agreement in favour of the Funders and the Direct Agreement in favour of the Councils, the date on which this Agreement may be terminated in accordance with Part VII (*Suspension and Termination*).

PART III
REPRESENTATIVES AND PERSONNEL

4. CONSTRUCTION MANAGER'S PERSONNEL

4.1 The Construction Manager shall appoint a Project Director who shall:

- 4.1.1 be recruited from the personnel of either of the Technical Support Providers or either of the Guarantors;
- 4.1.2 have the skills and expertise necessary to co-ordinate the implementation of the Development and the performance of the Services under this Agreement; and
- 4.1.3 be based in the United Kingdom,

whose appointment the Contractor shall previously have agreed to in writing, to direct and control the overall performance by the Construction Manager of the Services. Such person, or any replacement approved from time to time by the Contractor pursuant to Clause 4.4, shall have full authority to act on behalf of the Construction Manager for all purposes in connection with this Agreement and (unless the Contractor otherwise agrees) shall represent the Construction Manager at each and every meeting in relation to the Project.

4.2 The Construction Manager shall appoint, in addition to the Project Director, sufficient staff (including resident Site staff whether full-time or part-time) as may be necessary to ensure the proper and efficient performance by the Construction Manager of the Services in accordance with this Agreement and to whose appointment the Contractor shall previously have agreed in writing.

4.3 The Construction Manager shall:

- 4.3.1 not remove the Project Director without the prior written approval of the Contractor (such approval not to be unreasonably withheld); and
- 4.3.2 promptly remove any person engaged in the performance of the Services (including the Project Director) if required to do so by the Contractor due to their performance or conduct being, in the opinion of the Contractor, unsatisfactory.

4.4 If any of the persons referred to in this Clause 4 are so removed, or if any of them resign or die or become incapacitated, the Construction Manager shall be responsible for replacing such person forthwith with a person who shall, in the case of a person removed pursuant to Clause 4.3, have been previously approved in writing by the Contractor. Any costs incurred by the Construction Manager in removing and replacing any of the persons referred to in this Clause 4 shall be borne by the Construction Manager.

4.5 The Construction Manager shall employ only such persons as are properly qualified, experienced and competent to perform the work assigned to them.

5. **CONTRACTOR'S REPRESENTATIVE**

5.1 The Contractor shall appoint a representative (the "Contractor's Representative"):

5.1.1 who shall be authorised to act on behalf of the Contractor;

5.1.2 with whom the Construction Manager (and its Project Director) may consult at all reasonable times; and

5.1.3 whose instructions, requests and decisions shall be binding upon the Contractor as to all matters pertaining to this Agreement.

5.2 The Contractor shall give notice to the Construction Manager of the appointment and identity of the Contractor's Representative as soon as reasonably possible after the execution of this Agreement.

5.3 The Contractor may, from time to time, appoint some other person as the Contractor's Representative in place of the person previously so appointed and shall give notice of the name of such other person to the Construction Manager without delay. Such appointment shall take effect upon receipt of such notice by the Construction Manager.

PART IV
OBLIGATIONS OF THE CONSTRUCTION MANAGER

6. OBLIGATIONS OF THE CONSTRUCTION MANAGER

6.1 Subject to Clause 2.2 (*Appointment of the Construction Manager*), the Construction Manager shall proceed regularly and diligently with the Services and warrants to the Contractor:

- 6.1.1 that it has exercised and will continue to exercise in the performance of the Services all the reasonable skill, care and diligence to be expected of a properly qualified and competent construction manager experienced in carrying out services for a project of a similar size, scope and complexity to the Project;
- 6.1.2 that substances generally known, expected or reasonably suspected within the United Kingdom construction industry to be deleterious at the time of specification or use, as the case may be, or not in accordance with all relevant British Standards and/or Codes of Practice in force as at the date of the Agreement or published in the Building Research Establishment Digest as being deleterious, have not been stipulated for use by the Construction Manager and the Construction Manager will use all reasonable endeavours to ensure that the Trade Contractors do not use such substances in the construction of any of the works comprising the Development, including the Waste to Energy Plant; and
- 6.1.3 that all aspects of the Development and the Project will accord with a quality management system, which will comply with the appropriate British/European Standards (BS EN 9001), all technical requirements and good industry practice and which will be reflected in a quality plan.
- 6.1.4 that it shall do all things necessary and within its power to comply with its obligations hereunder and to the standards of a Reasonable and Prudent Construction Manager. The Construction Manager shall do all things necessary and within its power to comply with its obligations hereunder in accordance with the Project Documents so as to avoid placing the Contractor in breach of its obligations thereunder.

6.2 Without prejudice to the generality of Clause 6.1, the Construction Manager shall:

- 6.2.1 comply with all reasonable instructions and directions given to the Construction Manager by the Contractor on any matter connected with the Project;
- 6.2.2 keep the Contractor fully and properly informed on all aspects of the Project for which the Construction Manager is responsible and provide the Contractor with such information, consents, comments, approvals or instructions required by or from the Construction Manager with regard to the Project promptly and in good time so as not to delay or disrupt the progress of the Project or to cause the Contractor to be in breach of any of its obligations under any of the Third Party Agreements;

- 6.2.3 if and whenever it becomes reasonably apparent that the performance of the Services is being or is likely to be delayed, immediately give written notice to the Contractor setting out the material circumstances of the delay, including the cause or causes thereof, and the estimated effect of the delay on the Construction Programme.
- 6.2.4 use all reasonable endeavours to cause the Services to be performed and the Development to be implemented and completed within the Construction Period and the Construction Budget;
- 6.2.5 ensure that it has full knowledge of and complies with all Legal Requirements, Planning Permissions and Necessary Consents affecting or which it is reasonably foreseeable are likely to affect the Development with the passage of time and procure and maintain all Construction Manager Consents and assist the Contractor (as reasonably required) in obtaining Contractor Consents;
- 6.2.6 ensure that it has full knowledge of, and complies (as applicable) with, the provisions of each Trade Contract and of the Third Party Agreements, extracts of which the Contractor may from time to time have supplied to the Construction Manager; and
- 6.2.7 at all times:
 - (a) ensure that all reasonable precautions are taken to prevent any public or private nuisance or any other interference with the rights of any owner of any of the Sites or of the general public or of the Councils; and
 - (b) use its reasonable endeavours to ensure that no Trade Contractor causes contamination or pollution to the atmosphere, water courses or surrounding areas,

arising out of, or in the course of, or caused by the carrying out of the Services or the construction of any of the works comprising the Development and/or the Project.

6.3 The Construction Manager shall:

- 6.3.1 perform the Services and all other obligations on the part of the Construction Manager under, or pursuant to, this Agreement; and
- 6.3.2 ensure, by way of appropriate terms and obligations to be included in all Trade Contracts, that the Trade Contractors perform all obligations under, or pursuant to, their relevant Trade Contracts,

taking fully into account, and in such a manner as to enable the Contractor to comply with, all obligations and warranties, both express and implied, on the part of the Contractor which are contained in or which arise from any Legal Requirements, Planning Permissions and Necessary Consents, the Third Party Agreements or of any Trade Contract and so that nothing done or omitted to be done by the Construction Manager or the Trade Contractors shall cause the Contractor to be in breach of the said obligations and warranties.

- 6.4 The Construction Manager shall procure compliance by its employees, agents, sub-contractors and suppliers and by the Trade Contractors, and by others from time to time on the Site, with all Legal Requirements, Planning Permissions and Necessary Consents. The Construction Manager shall further procure that each Trade Contractor complies with all of its obligations under, and all the requirements of, their respective Trade Contracts.
- 6.5 Other than in relation to the Waste to Energy Plant, the Construction Manager shall be, unless and until replacement principal contractors are appointed in relation to individual Trade Contracts, the principal contractor for the purposes of the CDM Regulations and hereby warrants to the Contractor that it is competent and adequately resourced for the purposes of carrying out its obligations as principal contractor.
- 6.6 The Construction Manager shall develop a detailed minimum functional specification for the Waste to Energy Plant (including details of redundancy, quality of equipment to be provided and standards to be worked to during construction) which shall be reviewed by, and subject to the approval of, the Councils.
- 6.7 Notwithstanding compliance with its obligations and warranties under Clauses 6.1 to 6.5, if for any reason the Construction Manager is prevented from performing or hindered in the performance of the Services due to any event whatsoever (including any act, omission or default of the Contractor or any person employed by the Contractor) the Construction Manager shall use best endeavours to eliminate or minimise the effect of the event.
- 6.8 Subject at all times to the provisions of Clause 8 (*Limitations on Construction Manager's Authority*), if in the performance of the Services the Construction Manager has a discretion exercisable as between the Contractor and a Trade Contractor, the Construction Manager shall exercise its discretion properly and fairly. Subject thereto, and except as required by law (but not otherwise), the Construction Manager shall in all respects act in the best interests of the Contractor and at no time shall the Construction Manager permit the Construction Manager's interests or the interests of any other person to take precedence over the interests of the Contractor.
- 6.9 The Construction Manager shall co-ordinate the work of each Trade Contractor with each other and with the Services so as to ensure that the Project shall be completed within the Construction Budget and the Construction Period.
- 6.10 If, notwithstanding its undertakings pursuant to Clauses 6.2 to 6.5, the Construction Manager shall discover any part of the Development that does not or may not comply with any Legal Requirements, Planning Permissions or Necessary Consents then it shall immediately notify the Contractor of those aspects of the Development which fail so to comply. As soon as practicable following such notice, the Construction Manager shall provide the Contractor with its comments and recommendations for overcoming the non-compliance at the least additional cost and causing as little delay and disruption to the Project as possible and shall comply with (and shall procure that each Trade Contractor complies with) any instruction given by the Contractor in respect of such non-compliance.

7. SITE AND SITE SAFETY

- 7.1 To enable the Construction Manager to carry out the Services and for the purposes of all Legal Requirements, Planning Permissions and Necessary Consents, the Construction Manager shall be deemed to be in possession of the Sites (other than the Site at which the Waste to Energy Plant is to be located) from the date of the Contractor's written instruction pursuant to Clause 2.2 (*Appointment of the Construction Manager*) until the end of the Construction Period and shall be deemed to be in control of the operations on all of the Sites, including the Site at which the Waste to Energy Plant is to be located.
- 7.2 The Construction Manager shall procure that any temporary works required in or about the execution and completion of the Development including any temporary works which become part of the Project and any part of the Project used as temporary works during construction are adequate, safe, stable and have no adverse effects on adjacent property and buildings.

8. LIMITATIONS ON CONSTRUCTION MANAGER'S AUTHORITY

- 8.1 The Construction Manager shall have authority to exercise and perform all those rights and obligations ascribed to it by the terms of the Trade Contracts, but notwithstanding anything to the contrary contained elsewhere in this Agreement, the Construction Manager shall have no authority without the prior written approval of the Contractor:
- 8.1.1 to issue an instruction or direction to any Trade Contractor varying the design, cost, specification, quality or quantity of work, materials and/or goods as shown or described in any Trade Contract;
 - 8.1.2 to agree to any amendment to the terms of any Trade Contract with any Trade Contractor;
 - 8.1.3 to agree to any waiver or release of any obligation of any Trade Contractor under, and in connection with, a Trade Contract;
 - 8.1.4 to give any notice of default pursuant to any condition of the Trade Contract that provides for the termination of the employment of a Trade Contractor by the Contractor or to terminate, or allow to be treated as terminated, the employment of a Trade Contractor;
 - 8.1.5 to approve or express satisfaction with any design carried out by any Trade Contractor, or with the quality of materials or the standards of workmanship where and to the extent that the Trade Contract requires that such approval or satisfaction is a matter for the opinion of the Construction Manager;
 - 8.1.6 to grant any extension of time to any Trade Contractor pursuant to the terms of any Trade Contract; or
 - 8.1.7 to agree or accept any financial claim of any kind whatsoever pursuant to the terms of any Trade Contract.

- 8.2 The Construction Manager shall not issue any certificate whatsoever (including interim and final certificates for payment and the certificates of practical completion and completion of making good of defects) to any Trade Contractor unless the same has been countersigned by the Contractor where this is a requirement of the Trade Contract to which the certificate relates.

9. TIME FOR PERFORMANCE

The Construction Manager shall, subject to the provisions of this Agreement, proceed with the Development regularly and diligently and shall perform its Services in accordance with the Construction Programme. If the Construction Manager is prevented or delayed in the performance of the whole or any part of the Services or if the Development is delayed for any reason (whether arising out of delay by any Trade Contractors and/or whether amounting to Force Majeure or otherwise), then the Construction Manager shall use its best endeavours, as soon as practicable and in accordance with the terms of this Agreement, to resume and expedite the performance of the Services so as to complete the same with all possible speed.

10. DEED OF GUARANTEE

The Construction Manager shall procure that the Guarantors shall provide a Deed of Guarantee in the form attached as Schedule 4 (*Deed of Guarantee*).

11. EPC CONTRACT

- 11.1 The Construction Manager acknowledges that the Contractor has entered, or will enter, into the EPC Contract in respect of the construction of the Waste to Energy Plant.
- 11.2 Without limiting Schedule 2 (*Services*), the Construction Manager undertakes to ensure the co-ordination of the construction of the Waste to Energy Plant with all other aspects of the Services.

**PART V
PAYMENT**

12. REIMBURSABLE COST ITEMS

[REDACTED]

[REDACTED]

13. REMUNERATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.5 The Fee:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.7 If in respect of any amount to which Clause 13.6 applies:

13.7.1 for whatever reason either of the conditions referred to in Clause 13.6 is or is claimed to be ineffective, illegal, unenforceable, invalid, void or voidable in whole or in part or is changed or amended pursuant to any order or decision of any adjudicator, court, tribunal or arbitration or by any provision of any statute; and

13.7.2 the Construction Manager demands payment of such amount,

the provisions of Clause 13.8 shall apply.

13.8 Where this Clause 13.8 applies by reason of the provisions set out in Clause 13.7, the Contractor shall pay the Construction Manager the relevant amount subject to the Construction Manager simultaneously making an Advance to the Contractor under and in accordance with the Construction Management Parallel Loan Agreement.

13.9 If Clauses 13.6, 13.7 and/or 13.8 are or are claimed to be ineffective, illegal, unenforceable, invalid, void or voidable in whole or in part or are changed or amended pursuant to any order or decision of any adjudicator, court, tribunal or arbitration or by any provision of any statute then, notwithstanding any other provision of this Agreement, the final date for payment of the relevant amount shall be 2 years after the date that, but for this Clause 13.9, such amount would have been payable.

13.10 If, at any time, after the date of this Agreement, an Exclusion Order comes into effect which would have excluded this Agreement from the operation of Part II of the HGCRA, or from the operation of Section 113(1) thereof, had this Agreement been executed after the date on which such Exclusion Order comes into effect, the parties hereby agree to re-execute this Agreement after the date on which such Exclusion Order comes into effect forthwith following notice from one party to the others requesting such re-execution.

**PART VI
RISK ALLOCATION**

14. CONSTRUCTION MANAGER'S INDEMNITIES

[REDACTED]

[REDACTED]

15. CONSTRUCTION MANAGER'S AND CONTRACTOR'S INSURANCES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

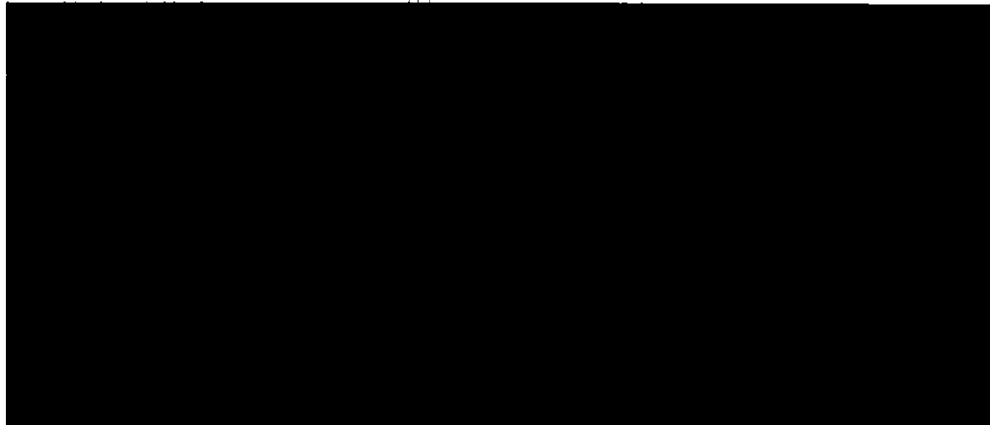
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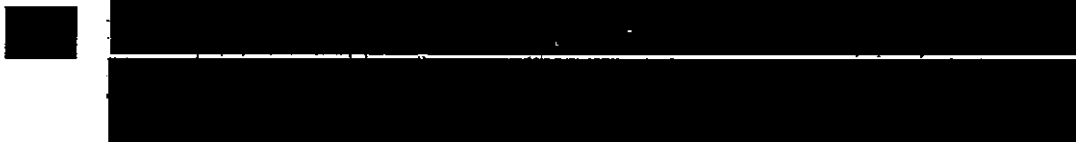
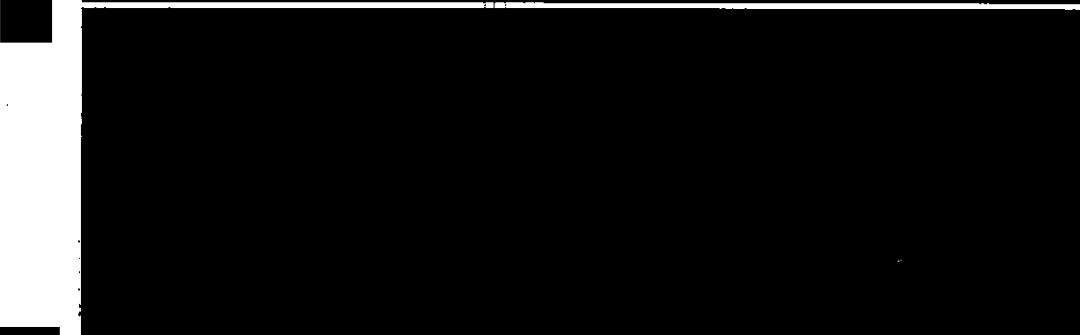
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16. **FINES AND PENALTIES**



17. **LIABILITY**



18. DEFINITION OF FORCE MAJEURE EVENT

In this Agreement, "**Force Majeure Event**" shall mean any event or circumstance or combination of events or circumstances defined as a Force Majeure Event or a Relief Event in the Service Contract that materially and adversely affects a party (the "**Claiming Party**") in the performance of its obligations in accordance with the terms of this Agreement but only if and to the extent that such events and circumstances are not within the reasonable control, directly or indirectly, of such Claiming Party and the Claiming Party has used all reasonable efforts to prevent or avoid the Force Majeure Event and mitigate its effects.

19. NOTIFICATION OF FORCE MAJEURE

19.1 The Claiming Party shall notify the other party (the "**Non-Claiming Party**") in writing of the occurrence of any Force Majeure Event as soon as reasonably practicable, and in any event within 7 days after the Claiming Party knew, or ought reasonably to have known, of its occurrence and that the Force Majeure Event would be likely to have an impact on its performance of its obligations under this Agreement.

19.2 Any notice pursuant to Clause 19.1 shall set out full particulars of;

19.2.1 the nature of each Force Majeure Event which is the subject of any claim for relief;

19.2.2 the effect which such Force Majeure Event is having or had on the Claiming Party's performance of its obligations under this Agreement;

19.2.3 the measures which the Claiming Party is taking, or proposes to take, to mitigate the impact of each Force Majeure Event; and

19.2.4 any other information relevant to the Claiming Party's claim.

19.3 For so long as the Claiming Party continues to claim to be affected by a Force Majeure Event, it shall provide the Non-Claiming Party with regular (and not less than monthly) written reports containing:

19.3.1 the information called for by Clause 19.2; and

19.3.2 such other information and evidence as the Non-Claiming Party may reasonably request concerning the Claiming Party's claim.

19.4 The Claiming Party shall promptly notify the Non-Claiming Party in writing when any Force Majeure Event, which is the subject of any claim, ceases or when there is any material change in its impact on the Claiming Party's performance of its obligations under this Agreement.

20. CONSEQUENCES OF FORCE MAJEURE

20.1 Except as expressly provided in this Agreement, the Claiming Party shall not be in breach of its obligations pursuant to this Agreement or otherwise liable to the Non-Claiming Party for any delay in performance or any non-performance of any

such obligations if and to the extent that such delay or non-performance is due to a Force Majeure Event *Provided that*:

- 20.1.1 the Claiming Party could not have avoided the effect of the Force Majeure Event by taking all reasonable precautions which, having regard to all matters known to it before the occurrence of the Force Majeure Event and all other relevant factors, it ought to have taken;
- 20.1.2 the Claiming Party has used its best endeavours to mitigate the effect of the Force Majeure Event; and
- 20.1.3 in the case of Force Majeure Event claimed by the Construction Manager, such event can be, and is, claimed as an event of Force Majeure or Relief Event by the Contractor under the Service Contract. The parties agree that the Construction Manager's relief under this Agreement for a Force Majeure Event shall be limited to that obtained by the Contractor under the Service Contract for an event of Force Majeure or Relief Event.

21. EXTENSION OF TIME

Upon the occurrence of a Force Majeure Event and subject to the Claiming Party being entitled to claim a Force Majeure Event pursuant to Clause 20 (*Consequences of Force Majeure*), any deadlines for performance of obligations under this Agreement shall be extended to the extent reasonably necessary to compensate for the delay *Provided that* relief shall not be granted to the extent that such delay would nevertheless have been experienced by the Claiming Party had the Force Majeure Event not occurred *Provided that*, for the avoidance of doubt:

- 21.1 the Construction Manager shall not be entitled to an extension of time unless such extension is claimed under the Service Contract; and
- 21.2 the period of any extension under this Agreement shall be limited to the period of time granted to the Contractor under the Service Contract.

**PART VII
SUSPENSION AND TERMINATION**

22. SUSPENSION OF SERVICES

- 22.1 The Contractor may at any time by notice in writing to the Construction Manager require the Construction Manager forthwith to suspend performance of the Services in which event the Contractor shall pay to the Construction Manager any instalment (if any) of the Fee together with any amount of Reimbursable Cost due and unpaid at the date of such suspension and a fair and reasonable proportion of the next instalment of the Fee which would otherwise have become due having regard to the Services performed by the Construction Manager at the date of suspension.
- 22.2 Unless the Construction Manager shall terminate this Agreement pursuant to Clause 23.2 (*Termination*), the Contractor may, at any time after a suspension thereof, require the Construction Manager to resume its performance of the Services in which event the Construction Manager shall resume such performance under this Agreement and any payment made to the Construction Manager pursuant to Clause 22.1 shall constitute payment on account towards the Fee or Reimbursable Cost to be paid or reimbursed to the Construction Manager under this Agreement.

23. TERMINATION

- 23.1 The employment of the Construction Manager will terminate automatically in the event that the Service Contract is terminated.
- 23.2 Without prejudice to any other rights or remedies of the parties hereto, this Agreement may be terminated by the Contractor if any one or more of the following events occur:
- 23.2.1 the Construction Manager is in breach of this Agreement in any material respect and has failed to comply with an earlier written notice from the Contractor requiring it to remedy such breach within 60 days after the date of service of such notice;
- 23.2.2 the Funders, pursuant to their rights under the Funding Agreement, direct the Contractor to replace the Construction Manager;
- 23.2.3 the Contractor has given written notice to the Construction Manager in the event of the Construction Manager:
- (a) appointing a provisional liquidator or liquidator or entering into liquidation whether compulsory or voluntary (except in the case of a voluntary winding-up solely for the purposes of reconstruction or amalgamation);
 - (b) suffering the appointment of a receiver or administrative receiver over any of its property or assets or making or agreeing to any compromise, arrangement or moratorium with its creditors;
 - (c) being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- (d) becoming the subject of a petition seeking an administration order under the provisions of the Insolvency Act 1986;
- 23.2.4 any change in the ownership or control of the Construction Manager or amalgamation, merger, consolidation by the Construction Manager with any other person without the prior written consent of the Contractor where such change in ownership or such amalgamation may adversely affect the interests of the Contractor; or
- 23.2.5 wilful misconduct on the part of the Construction Manager.
- 23.3 Without prejudice to any other rights or remedies of the parties hereto, the Contractor may at any time voluntarily terminate this Agreement by providing at least 2 months' written notice to the Construction Manager.
- 23.4 For the purposes of Clause 23.2.1, a material breach of this Agreement shall include failure on the part of the Construction Manager to proceed regularly and diligently with any part of the Services.
- 23.5 Without prejudice to any other rights or remedies of the parties hereto, this Agreement may be terminated by the Construction Manager, subject to the Direct Agreement in favour of the Funders and the Direct Agreement in favour of the Councils, if any one or more of the following events occur:
 - 23.5.1 the Contractor is in breach of this Agreement in any material respect and has failed to comply with an earlier written notice from the Construction Manager requiring it to remedy such breach within 60 days after the date of service of such notice;
 - 23.5.2 the Construction Manager has given written notice to the Contractor in the event of the Contractor:
 - (a) appointing a provisional liquidator or liquidator or entering into liquidation whether compulsory or voluntary (except in the case of a voluntary winding-up solely for the purposes of reconstruction or amalgamation);
 - (b) suffering the appointment of a receiver or administrative receiver over any of its property or assets or making or agreeing to any compromise, arrangement or moratorium with its creditors;
 - (c) being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (d) becoming the subject of a petition seeking an administration order under the provisions of the Insolvency Act 1986; or
 - 23.5.3 wilful misconduct on the part of the Contractor.

- 23.6 Upon any termination of this Agreement, the Construction Manager shall:
- 23.6.1 take immediate action to wind-up the Services in an orderly manner and with all reasonable speed and economy and quit the Sites as soon as is reasonably practicable;
 - 23.6.2 cause to be delivered to the Contractor, the Documents (whether in the course of preparation or completed) together with all correspondence and documentation in the possession or under the control of the Construction Manager relating to the Project;
 - 23.6.3 if so required by the Contractor, forthwith assign to the Contractor, the Construction Manager's entire benefit and interest in all subcontracts and supply contracts; and
 - 23.6.4 if so required by the Contractor, forthwith assist in the smooth and economical transfer of the Construction Manager's obligations to any new contractor nominated by the Contractor.
- 23.7 Without prejudice to any further rights of the Contractor arising under this Agreement and to the Contractor's right to set off any amounts owing by the Construction Manager to the Contractor, if this Agreement is terminated by the Contractor pursuant to Clauses 23.2.1 to 23.2.5, the Contractor shall not be obliged to pay to the Construction Manager any sum owing to the Construction Manager under this Agreement as at the date of termination until all sums owing by the Construction Manager to the Contractor, including all additional costs reasonably and properly incurred by the Contractor as a result of such termination, have been settled whether by way of payment, set-off, counterclaim or otherwise.
- 23.8 Without prejudice to any further rights of the Construction Manager arising under this Agreement and to the Contractor's right to set off any amounts owing by the Construction Manager to the Contractor, if this Agreement is terminated by the Construction Manager pursuant to Clauses 23.5.1 to 23.5.3, the Contractor shall pay to the Construction Manager only the sums specified in Clause 22.1 (*Suspension of Services*) (substituting the word "termination" for "suspension" wherever such word appears in that clause).
- 23.9 Termination of this Agreement for any reason whatsoever shall be without prejudice to the accrued rights or claims of either party hereto in relation to any act or omission of the other prior to such termination.
- 23.10 Notwithstanding the termination of this Agreement, the provisions of this Agreement shall continue to bind each party insofar as and so long as may be necessary to give effect to their respective rights and obligations hereunder.