

DATED _____ 2014

WORCESTERSHIRE COUNTY COUNCIL

AND

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

AND

MERCIA WASTE MANAGEMENT LIMITED

VARIATION AGREEMENT TO THE WASTE
MANAGEMENT SERVICE CONTRACT

THIS AGREEMENT is made on

2014

BETWEEN:

- (1) **WORCESTERSHIRE COUNTY COUNCIL** of County Hall, Spetchley Road, Worcester WR5 2NP ("**Worcestershire Council**") which expression shall include its successors and assigns;
- (2) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Brockington, 35 Hafod Road, Hereford HR1 1SH ("**Herefordshire Council**") which expression shall include its successors and assigns; and
- (3) **MERCIA WASTE MANAGEMENT LIMITED** of The Marina, Kings Road, Evesham, Worcestershire WR11 3XZ (the "**Contractor**") which expression shall include its successors and assigns,

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

WHEREAS:

- (A) The Hereford & Worcester (Structural Boundary and Electoral Changes) Order 1996 (the "**Order**") provided for the abolition of the Hereford and Worcester County Council and its replacement by Worcestershire County Council and The County of Herefordshire District Council with effect on and from 1 April 1998.
- (B) By virtue of its creation as a County Council from 1 April 1998, Worcestershire Council has the functions of a waste disposal authority conferred by Section 30 of Environmental Protection Act 1990.
- (C) From 1 April 1998 Herefordshire Council has the functions of a waste disposal authority conferred by Paragraph 12 of the Order.
- (D) On 22 December 1998 the Parties concluded an agreement setting out their rights and obligations in respect of the provision of an integrated waste management service and related activities throughout the administrative area of each of the Councils (the "**Waste Management Service Contract**"). Under the Waste Management Service Contract, the Contractor's obligations include the design, construction, financing and operation of an energy-from-waste facility.
- (E) In order to promote the efficient management of the Waste Management Service Contract and to facilitate communication between the Contractor and each of the Councils, the Councils agreed under the terms of an agreement (entered into under powers granted by Section 101 of the Local Government Act 1972) (the "**Council Liability Agreement**") *inter alia* to appoint a Superintendent Officer under the terms of Clause 4 (*Advisers and Representatives*) of the Waste Management Service Contract to nominate Worcestershire Council as the Lead Authority of the two in connection with the Waste Management Service Contract and otherwise to regulate their respective rights and obligations under the Waste Management Service Contract. The Superintendent Officer has the power to bind both Councils in accordance with

Clause 4.5 (*Authority of Superintendent Officer*) of the Waste Management Service Contract.

- (F) Pursuant to Clause 5 (*Planning Permission and Necessary Consents*) of the Waste Management Service Contract the Contractor was required to use all reasonable endeavours to obtain Planning Permission and other Necessary Consents required from time to time to undertake the Works and to deliver the Services.
- (G) The Contractor encountered difficulties in obtaining the Planning Permission for certain parts of the Works. The Parties have subsequently implemented interim measures for management of waste, while seeking a permanent solution for the management of the Councils' waste in accordance with Clause 5.4.2(ii) (*Non Commencement and Cessation of Proceedings*) and Clause 20 (*Variations*) and Schedule 2 (*Variations*) of the Waste Management Service Contract.
- (H) During this interim period, the Contractor's original financing arrangements were cancelled.
- (I) The Parties have now agreed upon modifications to the Waste Management Service Contract whereby the Contractor will design, build and finance a modified energy-from-waste facility on a site different from that originally contemplated by the Waste Management Service Contract. The Contractor has now obtained Planning Permission and other Necessary Consents for this revised energy-from-waste solution, and has arranged new financing from the Councils in their roles as providers of debt to the Contractor pursuant to the terms of the Funding Agreement.
- (J) Accordingly, the Parties now wish to vary the Waste Management Service Contract in the manner set out below, pursuant to Clause 5.4.2(ii) (*Non Commencement and Cessation of Proceedings*), Clause 20 (*Variations*) and Schedule 2 (*Variations*) of the Waste Management Service Contract.

NOW IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

- 1.1 Capitalised terms used in this Agreement which are not otherwise defined in this Agreement shall have the meaning given to them in the Waste Management Service Contract.
- 1.2 The rules of interpretation set out in Clause 1 (*Definitions and Interpretation*) of the Waste Management Service Contract shall apply in this Agreement *mutatis mutandis*.

2. CONDITIONS PRECEDENT TO THIS AGREEMENT

2.1 This Agreement shall not become effective until satisfaction of the following conditions precedent (the "**Variation Agreement Effective Date**"):

2.1.1 the execution and delivery by the respective parties thereto of the following:

- (a) Guarantee between Fomento de Construcciones y Contratas S.A., Urbaser S.A. and the Councils;
- (b) Councils' Direct Agreement relating to the Waste Management Service Contract between the Councils, the Funders, the Contractor and the Security Agent;
- (c) EPC Contract between the Contractor and the EPC Contractor;
- (d) EPC Contract Guarantee between Hitachi Zosen Corporation, the EPC Contractor and the Contractor;
- (e) EPC Contract Advance Payment Bond between the EPC Contractor, Mizuho Bank, Ltd. and the Contractor;
- (f) [Not Used];
- (g) EPC Contract Performance Bond between the EPC Contractor, The Bank of Tokyo-Mitsubishi UFJ, Ltd and the Contractor;
- (h) EPC Contract Funders' Direct Agreement between the Funders, the Contractor, Hitachi Zosen Corporation, the EPC Contractor and the Security Agent;
- (i) EPC Contract Councils' Direct Agreement between the Councils, the Contractor and the EPC Contractor;
- (j) [Not Used];
- (k) Owner's Engineer Agreement between, among others, the Contractor and Fichtner Consulting Engineers Limited;
- (l) Owner's Engineer Collateral Warranty between Fichtner Consulting Engineers Limited and the Councils;
- (m) Owner's Engineer Collateral Warranty between Fichtner Consulting Engineers Limited and the Funders;
- (n) amended and restated Operation and Maintenance Services Agreement between the Contractor, Severn Waste Services Limited and Beacon Waste Limited;

- (o) Operation and Maintenance Services Funders' Direct Agreement between the Contractor, Severn Waste Services Limited, Beacon Waste Limited, the Funders and the Security Agent;
- (p) Operation and Maintenance Services Councils' Direct Agreement between the Contractor, Severn Waste Services Limited, Beacon Waste Limited and the Councils;
- (q) Power of Attorney from the Operator authorising the Contractor to sign or execute or do all other acts and things which may be required to transfer the Waste Management Licences for the Installations held by the Operator to the Contractor in circumstances where the amended and restated Operation and Maintenance Services Agreement has been terminated;
- (r) amended and restated Construction Management Agreement between the Contractor and Severn Waste Services Limited;
- (s) Construction Management Agreement Funders' Direct Agreement between the Contractor, Severn Waste Services Limited, the Funders and the Security Agent;
- (t) Construction Management Agreement Councils' Direct Agreement between the Contractor, Severn Waste Services Limited and the Councils;
- (u) Deed of Guarantee relating to the Construction Management Agreement between the Contractor, Fomento de Construcciones y Contratas S.A. and Urbaser S.A.;
- (v) amended and restated Property Transfer Agreement between the Councils, the Contractor and Beacon Waste Limited;
- (w) Hartlebury Lease between Worcestershire Council and the Contractor;
- (x) Certificate of Title for the Hartlebury site (H600);
- (y) lease of (i) the land known as 111/117 Hartlebury Trading Estate, Hartlebury, Worcestershire comprising part of title number HW123654 between Bristol Road Management Limited and the Contractor and (ii) units 1-5 Cortex, Oak Drive, Hartlebury Trading Estate between the Contractor and Bristol Road Management (together, the "**Laydown Lease**");
- (z) Certificate of Title for the land adjoining Plot H600;
- (aa) Certified copy of the Clifford Chance LLP report on the sub-underlease;

- (bb) service and acknowledgement of a Notice and a Declaration (as defined in the Hartlebury Lease) excluding the provisions of Sections 24-28 of the Landlord and Tenant Act 1954 pursuant to Schedule 1 and 2 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;
- (cc) a licence for alterations between Worcestershire Council, the Contractor, British Overseas Bank Nominees Limited and W.G.T.C. Nominees Limited (as nominees for and on behalf of National Westminster Bank);
- (dd) [Not Used];
- (ee) amended and restated Environmental Deed between the Councils and the Contractor;
- (ff) Grid Connection Offer Letter between the Contractor and Western Power Distribution (West Midlands) plc;
- (gg) [Not Used];
- (hh) Water Main Connection Agreement between Severn Trent Water Limited and Mercia Waste Management Limited;
- (ii) APC Disposal Contract heads of terms;
- (jj) Power Purchase Agreement heads of terms;
- (kk) Borrower Loan Note Instrument;
- (ll) [Not Used];
- (mm) Collateral Agreement between the Councils, Funders and the Contractor;
- (nn) Equity Agreement between the Contractor, FCC Environment Services (UK) Limited, Urbaser Limited, Urbaser S.A and the Security Agent;
- (oo) [Not Used];
- (pp) amended and restated MWML Shareholders' Agreement between FCC Environment Services (UK) Limited and Urbaser Limited;
- (qq) amended and restated SWSL Shareholders Agreement between FCC Environment Services (UK) Limited and Urbaser Limited;
- (rr) transfer deed in relation to the leasehold land on the east side of Stourport Road, Kidderminster registered pursuant to title number WR69155 (the "**British Sugar Site**") between Worcestershire Council and the Contractor (the "**Transfer Deed**"); and

- (ss) a letter from the Superintendent Officer to the Contractor dated on or about the date hereof (the "**Superintendent Officer Letter**");
- 2.1.2 execution and delivery by the bond provider of a letter of acknowledgment to the Contractor and the Councils, in the form set out in Annex 1 (*Bond Provider Letter of Acknowledgement*) to this Agreement;
- 2.1.3 execution and delivery by FCC Environment Services (UK) Limited and Urbaser S.A. of a letter of confirmation, as acknowledged by the Contractor and Severn Waste Services Limited, that the Construction Management Technical Support Agreement is in full force and effect;
- 2.1.4 execution and delivery by the Contractor and Severn Waste Services Limited of a letter of confirmation that the Construction Management Parallel Loan Agreement is in full force and effect;
- 2.1.5 execution and delivery by FCC Environment Services (UK) Limited and Urbaser S.A. of a letter of confirmation, as acknowledged by the Contractor and Severn Waste Services Limited, that the Operation and Maintenance Services Technical Support Agreement is in full force and effect;
- 2.1.6 letter from the Contractor to the Councils in relation to the Waste Management Service Contract and the Base Financial Model;
- 2.1.7 execution and delivery by the Contractor and Severn Waste Services Limited of a letter of confirmation that the Operation and Maintenance Services Parallel Loan Agreement is in full force and effect;
- 2.1.8 execution and delivery by the Contractor and the Funders of the Funding Agreement and satisfaction of all initial conditions precedent to first drawdown (other than the effectiveness of this Agreement);
- 2.1.9 execution and delivery by the Contractor and the Funders of the Intercreditor Deed between the Contractor, the Funders, FCC Environment Services (UK) Limited and Urbaser Limited;
- 2.1.10 execution and delivery by the Contractor, the Account Bank and the Funders of the Account Bank Agreement between the Account Bank, the Contractor and the Funders;
- 2.1.11 execution and delivery by the Contractor and the Funders of the Borrower Debenture;
- 2.1.12 [Not Used];
- 2.1.13 execution and delivery by the Funders of the Beacon Waste Limited Debenture;
- 2.1.14 execution and delivery by the Contractor and Funders of the Mercia Waste Management Limited Share Mortgages;

- 2.1.15 execution and delivery by the Contractor and Funders of the Severn Waste Services Limited Share Mortgages;
- 2.1.16 copies of the Planning Permission and all Necessary Consents for the Waste to Energy Plant;
- 2.1.17 copies of the current policies, certificates or brokers letter of undertaking in respect of the Insurances required to be effected under this Agreement or the Waste Management Service Contract;
- 2.1.18 sight of all original Certificates by the Contractor in the form set out in Annex 2 (*Certificates to be issued under the Local Government (Contracts) Act 1997*) to this Agreement, and delivery to the Contractor and the Funders of a copy of the Certificates in respect of this Agreement and the Council's Direct Agreement issued by each of the Councils and duly signed in accordance with the Local Government (Contracts) Act 1997;
- 2.1.19 sight of the Voluntary Ex Ante Transparency Notice issued by each of the Councils at least 10 Days prior to the date hereof, in the form set out in Annex 3 (*Voluntary Ex Ante Transparency Notice*) to this Agreement, and delivery to the Contractor and the Funders of a copy of the Voluntary Ex Ante Transparency Notice;
- 2.1.20 the Contractor shall have received evidence that the amount of [REDACTED] (excluding VAT), representing the agreed amount owing by the Councils to the Contractor for the costs of obtaining Planning Permission and Necessary Consents with respect to the Waste to Energy Plant, has been deposited by the Councils to the Contractor, without any set-off or deduction whatsoever, including with respect to Taxes;
- 2.1.21 the Contractor shall have received evidence that the amount of [REDACTED] (excluding VAT), representing the agreed amount owing by the Councils to the Contractor for enabling works in relation to the Waste to Energy Plant, has been deposited by the Councils to the Contractor, without any set-off or deduction whatsoever, including in respect of Taxes;
- 2.1.22 the Contractor shall have received evidence that the amount of £664,000.00, representing the consideration for the transfer of the British Sugar Site from the Contractor to Worcestershire Council in accordance with the Transfer Deed (but for the avoidance of doubt, does not include any costs incurred by the Contractor associated with such transfer), has been deposited by the Councils to the Contractor, without set-off or deduction whatsoever, including with respect to Taxes; and
- 2.1.23 the Council shall have received evidence that the amount of [REDACTED] (excluding VAT), representing the agreed amount owing by the Contractor to the Councils as a result of certain variations to the Waste Management Service Contract set out in Annex 4 (*Non-Waste to Energy Plant Variations to the Waste Management Service Contract*) to this Agreement, has been deposited

by the Contractor to the Councils, without any set-off or deduction whatsoever, including with respect to Taxes

3. CONDITIONS PRECEDENT TO THE WASTE MANAGEMENT SERVICE CONTRACT

- 3.1 Without prejudice to clause 2 of this Agreement, the conditions precedent referred to in Clause 3 (*Conditions Precedent*) of the Waste Management Service Contract have been fully met by the Contractor and the Councils and the Parties acknowledge and agree that the Waste Management Service Contract is in full force and effect.
- 3.2 The Parties acknowledge that the following agreements have been terminated and, where applicable, the Parties acknowledge that as between each other that all liabilities and obligations under them are no longer in effect:
- 3.2.1 Funding Agreement dated 22 December 1998 between, amongst others, the Contractor and the Governor and Company of the Bank of Scotland, as amended by an First Credit Agreement Amendment Agreement dated 22 November 1999;
 - 3.2.2 Equity Agreement dated 22 December 1998 between the Contractor, Focsa Services (UK) Limited, Urbaser S.A, Fomento de Construcciones y Contratas S.A and Dragados y Construcciones S.A.;
 - 3.2.3 Equity Bridge Guarantee dated 23 December 1998 between the Guarantors and the Governor and Company of the Bank of Scotland;
 - 3.2.4 Intercompany Loan to the Contractor (1998) between Focsa Services (UK) Limited, Urbaser Limited and the Contractor;
 - 3.2.5 Intercompany Loan to Severn Waste Services Limited (1998) between Focsa Services (UK) Limited, Urbaser Limited and Severn Waste Services Limited;
 - 3.2.6 Intercompany Loan to Beacon Waste Limited (1998) between Beacon Waste Limited and the Contractor;
 - 3.2.7 Loan Agreement (2002) between the Contractor and Focsa Services (UK) Limited and Urbaser Limited;
 - 3.2.8 Account Bank Agreement dated 23 December 1998 between, amongst others, the Contractor and the Governor and Company of the Bank of Scotland;
 - 3.2.9 Share Mortgage relating to the shares in Beacon Waste Limited dated 23 December 1998 between the Contractor and the Governor and Company of the Bank of Scotland;
 - 3.2.10 Share Mortgage relating to the shares in the Contractor dated 23 December 1998 between Focsa Services (UK) Limited and the Governor and Company of the Bank of Scotland;

- 3.2.11 Share Mortgage relating to the shares in the Contractor dated 23 December 1998 between Urbaser S.A. and the Governor and Company of the Bank of Scotland;
- 3.2.12 Cross Guarantee & Debenture dated 23 December 1998 between the Contractors, Beacon Waste Limited and the Governor and Company of the Bank of Scotland;
- 3.2.13 Hedging Agreement dated 22 November 1999 between the Contractor and Bank of Scotland Treasury Services PLC;
- 3.2.14 Intercreditor Agreement dated 23 December 1998 between the Contractor, Beacon Waste Limited, Focsa Services (UK) Limited, Urbaser S.A., the Guarantors and the Governor and Company of the Bank of Scotland, as amended by a First Intercreditor Agreement Amendment Agreement dated 22 November 1999;
- 3.2.15 Direct Agreement relating to the Waste Management Service Contract dated 22 December 1998 between the Contractor, the Councils and the Governor and Company of the Bank of Scotland;
- 3.2.16 EPC Guarantee dated 22 December 1998 between the Contractor and the Guarantors;
- 3.2.17 EPC Guarantee Direct Agreement dated 23 December 1998 between the Contractor, the Guarantors and the Governor and Company of the Bank of Scotland;
- 3.2.18 EPC Councils' Direct Agreement dated 23 December 1998 between the Contractor, the Councils, the Governor and Company of the Bank of Scotland and the Guarantors;
- 3.2.19 EPC Guarantee Parallel Loan Agreement dated 22 December 1998 between the Contractor and the Guarantors;
- 3.2.20 Operation and Maintenance Services Direct Agreement dated 23 December 1998 between the Contractor, Severn Waste Services Limited, Beacon Waste Limited and the Governor and Company of the Bank of Scotland;
- 3.2.21 Construction Management Direct Agreement dated 23 December 1998 between the Contractor, Severn Waste Services Limited and the Governor and Company of the Bank of Scotland;
- 3.2.22 Construction Management Agreement Councils' Direct Agreement dated 23 December 1998 between the Councils, the Governor and Company of the Bank of Scotland, the Contractor, Severn Waste Services Limited, and Dragados y Construcciones S.A. and Fomento de Construcciones y Contratas S.A.;
- 3.2.23 Agreement for the Supply, Treatment and Disposal of Organic Waste dated 23 December 1998 between the Contractor and Thames Water Services Limited;

- 3.2.24 Thames Water Direct Agreement dated 23 December 1998 between the Contractor, Thames Water Services Limited and the Governor and Company of the Bank of Scotland;
- 3.2.25 Thames Councils Direct Agreement dated 23 December 1998 between the Councils, the Contractor, Thames Water Services Limited and the Guarantors and the Governor and Company of the Bank of Scotland;
- 3.2.26 Thames Water Guarantee dated 22 December 1998 between the Contractor and Thames Water PLC;
- 3.2.27 Thames Water Parent Company Guarantee dated 23 December 1998 between the Guarantors, Thames Water Services Limited and the Councils;
- 3.2.28 Agreement for Lease relating to land at Kidderminster in the County of Worcestershire dated 23 December 1998 between the Contractor and British Sugar PLC (the "**Lease**");
- 3.2.29 Guarantee relating to the Lease dated 23 December 1998 between the Guarantors and the British Sugar PLC and
- 3.2.30 British Sugar Direct Agreement dated 23 December 1998 between the Contractor, British Sugar PLC and the Governor and Company of the Bank of Scotland.

4. VARIATIONS TO THE WASTE MANAGEMENT SERVICE CONTRACT

- 4.1 On and from the Variation Agreement Effective Date, the Parties agree that the Waste Management Service Contract shall be read and construed in accordance with this Agreement.
- 4.2 The Parties hereby agree that certain provisions of the Waste Management Service Contract shall be amended pursuant to Schedule 1 of this Agreement.
- 4.3 After the date of the Waste Management Service Contract and before the date of this Agreement, the Parties agreed certain variations to the Waste Management Service Contract. Details of these variations are set out in Annex 4 (*Non-Waste to Energy Plant Variations to the Waste Management Service Contract*) to this Agreement. The variations set out in Annex 4 (*Non-Waste to Energy Plant Variations to the Waste Management Service Contract*) to this Agreement shall continue to have effect, save to the extent expressly amended by this Agreement. Each of the Parties confirms to the others that no variations have been made to the Waste Management Service Contract except as set out in Annex 4 (*Non-Waste to Energy Plant Variations to the Waste Management Service Contract*) to this Agreement. The Parties agree that any variation or amendment to, or agreement collateral to, the Waste Management Service Contract which was (notwithstanding the Parties' said confirmation) made prior to the date of this Agreement, and not described in Annex 4 (*Non-Waste to Energy Plant Variations to the Waste Management Service Contract*) to this Agreement, shall be of no effect.

- 4.4 The Parties hereby acknowledge and agree that, as at the date of this Agreement the Variation Costs payable by the Councils to the Contractor in respect of certain Changes in Legal Requirements, Council Changes or Contractor Changes as set out in Annex 4 (*Non-Waste to Energy Plant Variations to the Waste Management Service Contract*) to this Agreement are included in the Base Financial Model.

5. CHANGE IN LAW

- 5.1 The Parties hereby acknowledge and agree that, as at the date of this Agreement, the Capital Expenditure incurred by the Contractor as a result of a Discriminatory Change in Legal Requirement or a Change in Environmental Legal Requirement for the purposes of Clause 45.6 (*Changes in Law*) of the Waste Management Service Contract and which has been borne by the Contractor but is not included in the Base Financial Model is:

5.1.1 [REDACTED] on a current Rolling 12 Months Basis; and

5.1.2 [REDACTED] during the Contract Period.

6. PLANNING PERMISSION, NECESSARY CONSENTS ETC.

- 6.1 Without prejudice to Mercia's obligations under Clause 5 (*Planning Permission and Necessary Consents*) of the Waste Management Service Contract to obtain Planning Permissions and Necessary Consents from the date of this Agreement in order to undertake the Works and deliver the Services, the Councils hereby irrevocably waive any rights they may have and releases the Contractor from any actions, proceedings, claims and demands which accrued prior to the date of this Agreement in connection with and arising out of:

6.1.1 the Contractor using all reasonable endeavours to obtain such Planning Permissions and other Necessary Consents as were required to undertake the Works and to deliver the Services pursuant to Clause 5 (*Planning Permission and Necessary Consents*) of the Waste Management Service Contract; and

6.1.2 the Contractor performing and discharging its obligations under Clause 28.2 (*Representations, Warranties, Covenants and Undertakings of the Contractor*) of the Waste Management Service Contract.

7. FINANCING AGREEMENTS

The Councils hereby confirm their approval of the Financing Agreements dated on or about the date of this Agreement, including (without limitation) the Funding Agreement as set out in Annex 5 (*Financing Agreements*) to this Agreement, and hereby acknowledges that, from the Variation Agreement Effective Date, such documents comprise the "Financing Documents" for all purposes under the Waste Management Service Contract

8. OUTLINE DETAILED MAINTENANCE PLAN AND EXIT PLAN

- 8.1 Without prejudice to Clause 29 (*Detailed Maintenance Plan*) of the Waste Management Service Contract, an outline Detailed Maintenance Plan in relation to the Waste to Energy Plant is contained in Annex 6 (*Outline Detailed Maintenance Plan*) to this Agreement.
- 8.2 The Parties hereby agree that as at the Variation Agreement Effective Date the Exit Plan has been updated, and the updated Exit Plan is contained in Annex 8 (*Exit Plan*) to this Agreement (which shall supersede previous versions of the Exit Plan).

9. SUBCONTRACTING

The Councils hereby approve the following documents:

- (a) the EPC Contract (as contained in Annex 7 (*EPC Contract*));
- (b) the amended and restated O&M Agreement (as contained in Annex 18 (*O&M Agreement*)); and
- (c) the amended and restated Construction Management Agreement (as contained in Annex 22 (*Construction Management Agreement*)),

as Construction Contracts and the O&M Agreement (as applicable) for all purposes of the Waste Management Service Contract.

10. TERMINATION AND EVENTS OF CONTRACTOR DEFAULT

- 10.1 The Councils hereby waive and release any rights which accrued prior to the date of this Agreement under Clause 48.2 (*Termination without Default*) of the Waste Management Service Contract.
- 10.2 The Parties hereby acknowledge and agree that, as at the date of this Agreement, the aggregate amount of Unavailability Deductions and/or Performance Factor deductions calculated pursuant to Paragraph 32 (*Cap on Deductions*) of Schedule 4 (*Payment Mechanism*) of the Waste Management Service Contract shall be deemed to be [REDACTED]
- 10.3 The Parties hereby acknowledge and agree that, as at the date of this Agreement, the Capital Expenditure incurred by the Contractor as a result of a Change in Legal Requirement for the purposes of Clause 48.1.3 (*Termination without Default*) of the Waste Management Service Contract and which is not included in the Base Finance Model is [REDACTED] in aggregate in respect of all Changes in Legal Requirements (other than a Discriminatory Change in Legal Requirement or a Change in Environmental Legal Requirement).

11. APPLICATION OF PROVISIONS OF THE WASTE MANAGEMENT SERVICE CONTRACT

The following provisions of the Waste Management Service Contract shall apply, *mutatis mutandis*, to this Agreement: Clause 1 (*Definitions and Interpretation*); Clause 7 (*Fees*); Clause 8 (*Notices*); Clause 9 (*No waiver of forbearance*); Clause 12 (*Agency*); Clause 13 (*Assignment, Novation and Subcontracting*); Clause 38.3 (*Payment*); Clause 57 (*Dispute Resolution Procedure*); Clause 61 (*Confidentiality*); and Clause 67 (*Effect of Monetary Union*).

12. CONFLICT

In the event of any conflict between the terms of this Agreement and the terms of the Waste Management Service Contract, the terms of this Agreement shall prevail.

13. CONTINUING OBLIGATIONS

Save as expressly varied by this Agreement, the Waste Management Service Contract shall remain in full force and effect.

14. ENTIRE AGREEMENT

14.1 Except where expressly provided otherwise in this Agreement and without prejudice to the Superintendent Officer Letter, this Agreement (together with the documents referred to herein) constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations, agreements, variations and understandings concerning the subject matter of this Agreement.

14.2 Each Party acknowledges that:

14.2.1 it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) expect those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement or the Waste Management Service Contract; and

14.2.2 this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement, which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

15. SEVERABILITY

If any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

16. 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 any term of this Agreement.

17. GOVERNING LAW AND JURISDICTION

17.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.

17.2 Subject to the provisions of the Dispute Resolution Procedure, the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrecoverably submit to the jurisdiction of those courts.

18. COUNTERPARTS

This Agreement 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 original of this Agreement for all purposes.

**SCHEDULE 1
SCHEDULE OF AMENDMENTS TO THE WASTE MANAGEMENT SERVICE
CONTRACT**

Reference	Amendment
Definition of "Acceptance Notice"	Delete the definition "Acceptance Notice"
Definition of "Account Bank"	Insert new definition as follows: "Account Bank" means HSBC Bank plc as holder of the Joint Performance Liquidated Damages Account and other Contractor accounts or any other person with whom the Joint Performance Liquidated Damages Account is maintained pursuant to the terms of the Funding Agreement;
Definition of "Account Bank Agreement"	Insert new definition as follows: "Account Bank Agreement" means the account bank agreement dated on or about the date of the Variation Agreement between, among others, the Contractor and the Account Bank;
Definition of "Advance"	Insert new definition as follows: "Advance" means any advance of which the Funders are obliged to make to the Contractor pursuant to the terms of the Funding Agreement;
Definition of "Agent"	Delete the definition of "Agent"
Definition of [REDACTED]	[REDACTED]
Definition of "Appropriate Limit"	Insert new definition as follows: "Appropriate Limit" has the meaning given to that term in Clause 60.7;
Definition of "Anaerobic Digestion Plant"	Delete the definition "Anaerobic Digestion Plant"
Definition of "Bond"	Delete "Argentaria, Caja Postal Y Banco Hipotecario S.A." and replace with "Banco Bilbao Vizcaya Argentaria, S.A."

Reference	Amendment
Definition of "British Sugar"	Delete the definition of "British Sugar"
Definition of "British Sugar Agreement"	Delete the definition of "British Sugar Agreement"
Definition of "British Sugar Site"	Delete the definition of "British Sugar Site"
Definition of "Bullet Payment"	Insert new definition as follows: "Bullet Payment" has the meaning given to that term in Clause 49A.1 (<i>Payment at Expiry</i>);
Definition of "BWL"	Delete "of 106 High Street, Evesham, Worcestershire WR11 4EL" and replace with "The Marina, Kings Road, Evesham, Worcestershire WR11 3XZ"
Definition of "Category A Relief Event"	Delete "and Mixed Waste MRF" in limb (i) of the definition
Definition of "Category C Relief Event"	Delete "and Mixed Waste MRF" in limb (iv) of the definition.
Definition of "Certification Requirements"	Insert new definition as follows: "Certification Requirements" means the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;
Definition of "Change in Costs"	Insert new definition as follows: "Change in Costs" means in respect of any Compensation Event, the effect of that Compensation Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor and/or Sub-Contractors (without double counting), including, as relevant, the following: (a) the costs of continued employment of, or making redundant, staff who are no longer required; (b) the costs of employing additional staff; (c) reasonable professional fees; (d) the costs to the Contractor of financing any

Reference	Amendment
	<p>Compensation Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Unitary Payment;</p> <p>(e) the effects on costs of implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent) in respect of that insurance reinstatement and any extension of that period of implementation of insurance reinstatement;</p> <p>(f) operating costs, or lifecycle, maintenance or replacement costs;</p> <p>(g) Capital Expenditure;</p> <p>(h) the costs required to ensure continued compliance with the Financing Agreements;</p> <p>(i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and</p> <p>(j) Losses, including reasonable legal expenses on an indemnity basis.</p>
<p>Definition of "Change in Revenue"</p>	<p>Insert new definition as follows:</p> <p>"Change in Revenue" means in respect of any Compensation Event, the effect of that Compensation Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Contractor and/or any Sub-Contractor including third party income (without double counting).</p>

Reference	Amendment
Definition of "Change Specifics"	<p>Insert ", the Planned Take-Over Date, Construction Long-Stop Date" after "the Recovery Target Date" in limb (ii) of the definition.</p> <p>Insert ", Planned Take-Over Date, Construction Long-Stop Date" after "the relevant Construction Completion Date" in limb (iv) of the definition.</p> <p>Insert "and/or the Planned Take-Over Date," after" the Full Operational Date" in both instances where "Full Operational Date" is referred to.</p>
Definition of "Code"	<p>Insert new definition as follows:</p> <p>"Code" has the meaning given to that term in Clause 60.8;</p>
Definition of "Commercially Sensitive Information"	<p>Insert new definition as follows:</p> <p>"Commercially Sensitive Information" means the subset of Confidential Information listed in column 1 of Schedule 31 (<i>Commercially Sensitive Information</i>) for the period specified in column 2 of Schedule 32 (<i>Commercially Sensitive Information</i>);</p>
Definition of "Compensation Event"	<p>Insert new definition as follows:</p> <p>"Compensation Event" means:</p> <ul style="list-style-type: none"> (a) any breach by the Councils of its obligations under the Property Agreements or a breach of Clause 21.5 (<i>Waste to Energy Plant</i>), save where such breach arises from events outside the control of the Councils including, but not limited to, the actions of any trespassers or protestors; and/or (b) the grant of any injunction arising from a failure of the s237 Appropriation to convert any relevant claims pursuant to Section 237 of the Town and Country Planning Act 1990 into compensatory claims and/or a determination that the s237 Appropriation was not properly made;

Reference	Amendment
Definition of "Completion Date"	Insert new definition as follows: "Completion Date" has the meaning given to it in the Funding Agreement;
Definition of "Compost"	Delete "and for the avoidance of doubt does not include output from the Anaerobic Digestion Plant" from the definition.
Definition of "Compost Plant"	Delete "but excluding for the avoidance of doubt the Anaerobic Digestion Plant" from the definition.
Definition of "Confidential Information"	Insert new definition as follows: "Confidential Information" means: (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how, of either Party and all persona data and sensitive personal data within the meaning of the Data Protection Act 1988; and (b) Commercially Sensitive Information;
Definition of "Construction Completion Date"	Insert "Clause 52A (<i>Compensation Event</i>), Clause 52B (<i>Supervening Events</i>)," before "Clause 53 (<i>Force Majeure and Relief Events</i>)".
Definition of "Construction Contract"	Delete "including the EPC Guarantee" and replace with "the EPC Contract". Insert "(save for the EPC Contract)" after "(the conditions of each of which Construction Contract".
Definition of "Construction Long-Stop Date"	Insert new definition as follows: "Construction Long-Stop Date" means the date [REDACTED] after the Planned Take-Over Date (as the same may be adjusted from time to time in accordance with this Contract) for the Waste to Energy Plant;
Definition of "Contractor Insolvency Event"	Delete "or" at the end of limb (iii).

Reference	Amendment
	<p>Delete limb (iv) and replace with:</p> <p>"any receiver or receiver manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge and such appointment or possession is not discharged within 21 Business Days; or"</p> <p>Insert a new limb (v):</p> <p>"an administration order is made or an administrator is appointed in respect of the Contractor and is not discharged within 21 Business Days;"</p>
Definition of "Councils' Direct Agreement"	Delete "BWL and the Governor and Company of the Bank of Scotland" and replace with "the Funders and Security Agent".
Definition of "DCS"	<p>Insert new definition as follows:</p> <p>"DCS" has the meaning given to it in Paragraph 9.4 of Schedule 12 (<i>Determination of the Impact of Change in Composition and Calorific value of Contract Waste</i>)</p>
Definition of "Dispute Resolution Procedure"	<p>Delete the definition of "Dispute Resolution Procedure" and replace with the following:</p> <p>"Dispute Resolution Procedure" means together Clause 57 (<i>Dispute Resolution Procedure</i>), Schedule 1 (<i>Dispute Resolution Procedure</i>) and Version 3.2 of the TeCSA Adjudication Rules or the most recent edition of the TeCSA Adjudication Rules at the time of an Adjudication Notice (the "TeCSA Adjudication Rules") provided that, in the event of inconsistencies, Clause 57 (<i>Dispute Resolution Procedure</i>) and Schedule 1 (<i>Dispute Resolution Procedure</i>) shall prevail over the TeCSA Adjudication Rules.</p>
Definition of "Effective Date"	Delete "the date on which all the conditions precedent set out in Clause 3.4 (<i>Conditions Precedent</i>) have either been fulfilled or, where applicable, have been waived pursuant to Clause 3.3 (<i>Conditions Precedent</i>) by the relevant party set out in Clause 3.3.1 (<i>Conditions Precedent</i>) or Clause 3.3.2 (<i>Conditions Precedent</i>) as the case may be and as certified pursuant to Clause 3.3 (<i>Conditions Precedent</i>)" and replace with "11 January

Reference	Amendment
	1999;"
Definition of "Environmental Information Regulations"	Insert new definition as follows: "Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Definition of "EPC Contract"	Insert new definition as follows: "EPC Contract" means the contract entered into on or about the date of the Variation Agreement between the Contractor and the EPC Contractor;
Definition of "EPC Contractor"	Insert new definition as follows: "EPC Contractor" means Hitachi Zosen Inova AG whose registered address is Hardturmstrasse 127, p.o.box 680, 8037 Zurich, Switzerland;
Definition of "EPC Councils' Direct Agreement"	Delete "and the Governor and Company of the Bank of Scotland" and replace with "the Funders". Delete "each Guarantor" and replace with "the EPC Contractor".
Definition of "EPC Guarantee"	Delete the definition of "EPC Guarantee".
Definition of "EPC Guarantor"	Insert new definition as follows: "EPC Guarantor" means Hitachi Zosen Corporation whose registered address is 7-89, Nanko-Kita, 1-Chome Suminoe-Ku, Osaka 559-8559, Japan;
Definition of "Equity Agreement"	Insert new definition as follows: "Equity Agreement" means the Equity Agreement between the Contractor, FCC Environment Services (UK) Limited, Urbaser Limited and Urbaser S.A,

Reference	Amendment
Definition of "Estimated Change in Project Costs"	Insert new definition as follows: "Estimated Change in Project Costs" means in respect of any Compensation Event the aggregate of any estimated Change in Costs and/or (without double counting) Change in Revenue (as relevant);
Definition of "Expiry Date"	Insert new definition as follows: "Expiry Date" means the 25 th anniversary of the Effective Date or such later date as may be agreed pursuant to Clause 37 (<i>Voluntary Extension of the Contract Period</i>) or as may be determined pursuant to Clause 54 (<i>Mandatory Contract Period Extension</i>).
Definition of "Feasibility Study"	Delete the definition of "Feasibility Study".
Definition of "Financing Agreements"	Delete "Hedging Agreements".
Definition of "Fees Regulations"	Insert new definition as follows: "Fees Regulations" means the Freedom of Information and Data Protection (Appropriate Limit and Dees) Regulations 2004;
Definition of "Flue Abatement"	Delete the definition "Flue Abatement".
Definition of "FOIA"	Insert new definition as follows: "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to the Freedom of Information Act 2000;
Definition of "Full Operational Date"	Insert "Clause 52A (<i>Compensation Event</i>), Clause 52B (<i>Supervening Events</i>)," before "Clause 53 (<i>Force Majeure and Relief Events</i>)".
Definition of "Funders"	Insert "entity," before "bank or other financial institution". Insert "and, as at the Variation Agreement Effective Date, shall include the Councils in their roles as

Reference	Amendment
	providers of debt to the Contractor pursuant to the terms of the Funding Agreement" at the end of the definition.
Definition of "Funding Agreement"	Delete "the agreement in the Agreed Form entered into, or to be entered into, on or after the date hereof between the Contractor and the Governor and Company of the Bank of Scotland" and replace with "the agreement in the Agreed Form to be entered into on the Variation Agreement Effective Date between the Contractor and the Funders".
Definition of "Further CV Review"	Insert new definition as follows: "Further CV Review" has the meaning given to it in Paragraph 9.1 of Schedule 12 (<i>Determination of the Impact of Change in Composition and Calorific value of Contract Waste</i>).
Definition of "Guarantor"	Delete "Dragados y Construcciones, S.A. whose registered address is Avenida de Burgos 12 Madrid, Spain" and replace with "Urbaser S.A. whose registered address is 171 Camino de las Hormigueras, 28031, Madrid, Spain".
Definition of "Hartlebury Lease"	Insert new definition as follows: "Hartlebury Lease" means the lease in respect of the land at Site H600, Oak Drive, Hartlebury Trading Estate, Hartlebury, Kidderminster to be entered in on or around the date of the Variation Agreement between the Borrower and Worcestershire County Council to be granted out of title number WR109498.
Definition of "Hartlebury Site"	Insert new definition as follows: "Hartlebury Site" means the land at Site H600, Oak Drive, Hartlebury Trading Estate, Hartlebury, Kidderminster.
Definition of "Hedge Provider"	Delete the definition of "Hedge Provider".
Definition of "Hedging Agreement"	Delete the definition of "Hedging Agreement".
Definition of "Independent Engineer"	Delete the definition of "Independent Engineer."

Reference	Amendment
Definition of "Independent Expert"	Insert new definition as follows: "Independent Expert" has the meaning given to that term in Clause 50.1A;
Definition of [REDACTED]	Insert new definition as follows: [REDACTED]
Definition of "Information"	Insert new definition as follows: "Information" has the meaning given under Section 84 of the Freedom of Information Act 2000;
Definition of [REDACTED]	Insert new definition as follows: [REDACTED]
Definition of "Joint Performance Liquidated Damages Account"	Insert new definition as follows: "Joint Performance Liquidated Damages Account" means the account in the names of the Contractor and the Councils and with a required signatory from each of the Contractor and the Lead Authority for any withdrawal from such account into which all Performance Liquidated Damages are required to be paid in accordance with Clause 24A (<i>Performance Liquidated Damages</i>);
Definition of "JPLD Permitted Withdrawal"	Insert new definition as follows: "JPLD Permitted Withdrawal" has the meaning given to that term in the Funding Agreement;
Definition of "Losses"	Insert new definition as follows: "Losses" means all damages, losses, liabilities, costs,

Reference	Amendment
	expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgements, proceedings, internal costs or demands;
Definition of "Major Subcontract"	Insert new definition as follows: "Major Subcontract" means a subcontract with any of those subcontractors and consultants identified as "Major Subcontractors" in schedule 7 of the EPC Contract.
Definition of "Material Facility"	Delete "any or each of, as the context requires" and ", the Anaerobic Digestion Plant and the Mixed Waste MRF" from the definition.
Definition of "Material Necessary Consent"	Delete "and shall be deemed to include any Necessary Consent relating to the Anaerobic Digestion Plant the suspension, revocation, variation or delay in granting of which would materially and adversely affect the whole of substantially the whole of the performance by the Third Party Contractor carrying out the Organic Waste Offtake Agreement other than in the case of such Third Party Contractor any such Necessary Consents required from any member of such Third Party Contractor's group and group shall mean the Third Party Contractor, its Associated Companies, its Holding Company and all Wholly Owned Subsidiary Companies of its Holding Company and "Holding Company", "Subsidiary Company" and "Wholly Owned Subsidiary Company" shall have the meaning attributed to them in Sections 736 and 736A of the Companies Act 1985;"
Definition of "Materials Reclamation Facility"	Delete "either a" and replace with "the". Delete "or a Mixed Waste MRF, or each or any of them, as this Contract requires"
Definition of "Maximum Tonnage"	Insert new definition as follows: "Maximum Tonnage" means the maximum tonnage of Contract Waste which may be processed during the period in question as specified in the Base Financial Model;
Definition of "Mixed Waste MRF"	Delete the definition of "Mixed Waste MRF".

Reference	Amendment
Definition of "NAECI"	<p>Insert new definition, as follows:</p> <p>"NAECI" means the National Agreement for the Engineering Construction Industry 2013-2015, as amended from time to time (or any arrangements that may supersede or replace NAECI from time to time);</p>
Definition of "O&M Agreement"	<p>Delete "an agreement in or substantially in the form of Exhibit 3 dated on or about the date of this Contract" and replace with "the agreement".</p> <p>Insert "as may be amended from time to time" at the end of the definition.</p>
Definition of "O&M Contractor"	<p>Delete "of Brook House, Oldham Road, Middleton, Manchester M24 1AY" and replace with "The Marina, Kings Road, Evesham, Worcestershire WR11 3XZ".</p>
Definition of "Onerous Condition"	<p>In sub-paragraph (v) delete "save in respect of the Anaerobic Digestion Plant".</p>
Definition of "Organic Waste Offtake Agreement"	<p>Delete the definition of "Organic Waste Offtake Agreement".</p>
Definition of "Outstanding Work"	<p>Insert new definition as follows:</p> <p>"Outstanding Work" has the meaning given to that term in Clause 50.1F.</p>
Definition of "Partnership"	<p>Insert new definition as follows:</p> <p>"Partnership" means Worcestershire County Council and the County of Herefordshire District Council.</p>
Definition of "Performance Level"	<p>Insert new definition as follows:</p> <p>"Performance Level" means the performance level in respect of the Waste to Energy Plant as set out in Schedule 17, Table 17.2 and 17.3 of the EPC Contract being:</p> <p>(a) [REDACTED] and</p> <p>(b) [REDACTED]</p>
Definition of "Performance"	<p>Insert new definition as follows:</p>

Reference	Amendment
Liquidated Damages"	"Performance Liquidated Damages" means the payments to be made by the EPC Contractor to the Contractor under clause 35 of the EPC Contract;
Definition of "Permitted Third Party"	Delete "including the Independent Engineer,"
Definition of "Planned Completion Date"	Insert new definition as follows: "Planned Completion Date" has the meaning given to it in the Funding Agreement;
Definition of "Planned Take-Over Date"	Insert new definition as follows: "Planned Take-Over Date" means [REDACTED] or such other date as the Parties may agree as adjusted in accordance with Clause 45 (<i>Changes in Law</i>), Clause 52A (<i>Compensation Event</i>), Clause 52B (<i>Supervening Event</i>), Clause 53 (<i>Force Majeure and Relief Events</i>) and Schedule 2 (<i>Variations</i>);
Definition of "Planning Permission"	Delete "and for the purposes of this definition the term "Works" shall include the construction and use of the Anaerobic Digestion Plant"
Definition of "Power Generation Facility"	Delete "and from the Anaerobic Digestion Plant"
Definition of "Pre-funding Account"	Insert new definition as follows: "Pre-funding Account" has the meaning given to it in the Funding Agreement;
Definition of "Presorted MRF"	Delete "a Materials Reclamation Facility" and replace with "the Materials Reclamation Facility". Insert "located on Woodbury Lane, Norton, WR5 2PU" after "Recyclable Materials".
Definition of "Process Waste Residue"	Delete ", the Anaerobic Digestion Plant" from the definition. Delete "Two Line"
Definition of "Project Documents"	Delete ", the EPC Guarantee" and replace with "EPC Contract". Delete "the Organic Waste Offtake Agreement, the

Reference	Amendment
	<p>Thames Councils' Direct Agreement," from the definition.</p> <p>Delete "the British Sugar Agreement".</p> <p>Insert ", the Hartlebury Lease" after "the Property Transfer Agreement".</p> <p>Insert "Councils' Direct Agreement" after "Contract".</p>
Definition of "Project Manager"	<p>Insert new definition as follows:</p> <p>"Project Manager" has the meaning given to that term in the EPC Contract;</p>
Definition of "Property Agreement"	<p>Insert "the Hartlebury Lease and" after "means".</p>
Definition of "Recovery Target Date"	<p>Delete "is the date falling fifty seven Months after the Effective Date as amended in accordance with this Contract" and replace with "means the Take-Over Date of the Waste to Energy Plant".</p>
Definition of "Rejection Notice"	<p>Delete the definition "Rejection Notice".</p>
Definition of "Related Third Party Agreement"	<p>Delete "," and replace with "and".</p> <p>Delete "and the EPC Guarantee".</p>
Definition of "Relevant Discharge Terms"	<p>Delete "which shall apply upon the happening of the events specified in Section 6(2) and Section 6(3) of the Local Government (Contracts) Act 1997 and which are set out in Schedule 13 (Compensation on Termination)" and replace with:</p> <p>"set out in Schedule 18 (Certificates to be Issued under Local Government (Contracts) Act 1997) Part 1 (Relevant Discharge Terms);"</p>
Definition of "Request for Information"	<p>Insert new definition as follows:</p> <p>"Requests for Information" shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);"</p>
Definition of "Required"	<p>Insert new definition as follows:</p>

Reference	Amendment
Standard"	" Required Standard " has the meaning given to that term in Clause 50.1E.
Definition of "Retention Fund Account"	Insert new definition as follows: " Retention Fund Account " has the meaning given to that term in Clause 50.1G.
Definition of "Security Agent"	Insert new definition as follows: " Security Agent " means The Law Debenture Trust Corporation p.l.c of 100 Wood Street, London EC2V 7EX.
Definition of "Supervening Event"	Insert a new definition as follows: " Supervening Event " means a failure by any statutory undertaker, utility company, local authority or other like body (but excluding the Authority as purchaser) to carry out works or provide services, unless such an event arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any of its Sub-Contractors;
Definition of "Service Delivery Plan"	Delete "Annex 3 (Service Delivery Plan)" and replace with "Annex 17 (Service Delivery Plan) to the Variation Agreement."
Definition of "s237 Appropriation"	Insert a new definition as follows: " s237 Appropriation " means the s237 appropriation dated on or about 2007 in respect of the appropriation of the land the subject of the Hartlebury Lease;
Definition of "Take-Over Date"	Insert new definition as follows: " Take-Over Date " has the meaning given to that term in the EPC Contract;
Definition of "Termination Date"	Insert "Clause 5A.3 (Local Government (Contracts) Act 1997)," before "Clause 5.4.3 (<i>Planning Permission and Necessary Consents</i>)".
Definition of "Test Set"	Insert new definition as follows: " Test Set " has the meaning given to it in Paragraph 9.5 of Schedule 12 (<i>Determination of the Impact of Change</i>

Reference	Amendment
	<i>in Composition and Calorific Value of Contract Waste)</i>
Definition of "Thames"	Delete the definition "Thames".
Definition of "Thames Councils' Direct Agreement"	Delete the definition "Thames Councils' Direct Agreement".
Definition of "Thames Waste Agreement"	Delete the definition "Thames Waste Agreement".
Definition of "Third Line"	Delete the definition "Third Line".
Definition of "Third Line Marginal Cost"	Delete the definition "Third Line Marginal Cost".
Definition of "Third Line Notice"	Delete the definition "Third Line Notice".
Definition of "Third Line Tonnage"	Delete the definition "Third Line Tonnage".
Definition of "Third Line Landfilled Tonnage"	Delete the definition "Third Line Landfilled Tonnage".
Definition of "Third Party Contractor"	Delete "British Sugar" and "and/or the Anaerobic Digestion Plant" from the definition.
Definition of "Two Line Maximum Tonnage"	Definition to be amended to "Maximum Tonnage". Delete "the first two lines of" within the definition.
Definition of "Variation Agreement"	Insert new definition as follows: "Variation Agreement" means the variation agreement dated 2014 whereby certain provisions of the Contract relating to, <i>inter alia</i> , the Waste to Energy Plant were amended.
Definition of "Variation Agreement Effective Date"	Insert new definition as follows: "Variation Agreement Effective Date" means the date on which all of the conditions precedent set out in the Variation Agreement have either been fulfilled or, where applicable, have been waived by the relevant party;"
Definition of "Waste Feedstock"	Insert new definition as follows: "Waste Feedstock" has the meaning given to it in

Reference	Amendment
	Paragraph 9.2 of Schedule 12 (<i>Determination of the Impact of Change in Composition and Calorific Value of Contract Waste</i>)
Definition of "Waste Law List"	Insert the following new definition: "Waste Law List" means the list set out in Schedule 32 (<i>Waste Law List</i>).
Definition of "Waste Management Unit"	Delete ", the Anaerobic Digestion Plant" from the definition.
Definition of "Waste to Energy Plant"	Delete "on the site of land to be acquired by the Contractor for such purposes in the administrative area of one or other of the Councils having a nominal design capacity of ten tonnes per hour for each of two lines at a calorific value of ten mega Joules per Kilogramme". Insert "on Plot H, 600 Oak Drive, Hartlebury Trading Estate, and Worcestershire, DY10 4JB "after" by the Building Contractor".
Definition of "Waste to Energy Supplement Increase Notice"	Insert new definition as follows: "Waste to Energy Supplement Increase Notice" has the meaning given to it in Paragraph 10.1 of Schedule 12 (<i>Determination of the Impact of Change in Composition and Calorific Value of Contract Waste</i>).
Definition of "Waste to Energy Supplement Price"	Insert the following new definition: "Waste to Energy Supplement Price" is set out in Table 1 (<i>Base Year Reviewable Items</i>) of Schedule 6 (<i>Annual Contract Price Review</i>) as amended from time to time;
Definition of "Worker"	Insert the following new definition: "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


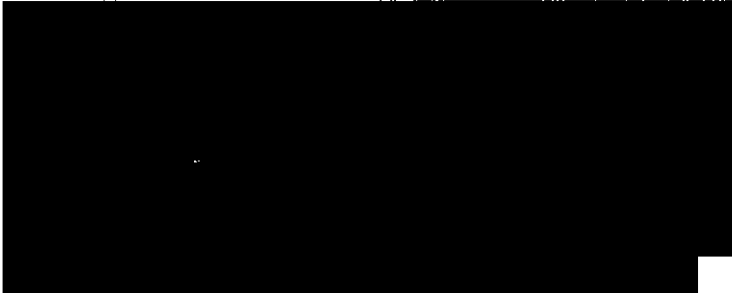
Reference	Amendment
	by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.
Clause 1.6 (Interpretation)	Insert "Without prejudice to Clause 45 (<i>Changes in Law</i>)" before "A reference to any Legal Requirement".
Clause 3.4.1 (Conditions Precedent)	<p>Limb (vi). Delete "the Organic Waste Off-take Agreement" and replace with "Not Used."</p> <p>Limb (vii). Delete "the Thames Councils' Direct Agreement" and replace with "Not Used."</p> <p>Limb (viii). Delete "the British Sugar Agreement" and replace with "Not Used".</p> <p>Limb (xii). Delete "the EPC Guarantee" and replace with "Not Used".</p>
Clause 3.4.4 (Conditions Precedent)	Delete "Agent" and replace with "Funders".
Clause 3.4.8 (Conditions Precedent)	<p>Delete "the Agent".</p> <p>Delete ", the Thames Councils' Direct Agreement".</p>
Clause 3A (Development Costs Payment)	<div style="background-color: black; width: 100%; height: 20px; margin-bottom: 10px;"></div> <div style="background-color: black; width: 100%; height: 80px; margin-bottom: 10px;"></div> <div style="background-color: black; width: 100%; height: 120px;"></div>
Clause 5A (Local Government (Contracts) Act 1997)	<p>Insert a new Clause 5A:</p> <p>"5A.1 Certification Requirements</p>

Reference	Amendment
	<p>The Certification Requirements are intended to be satisfied by the Councils with respect to this Contract as amended by the Variation Agreement and the Council's Direct Agreement before the end of the period relating to each agreement within which the Certification Requirements must be satisfied for the agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.</p> <p>5A.2 Contractor's Consent</p> <p>The Contractor hereby consents to the issue by the Councils of Certificates under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Contract as amended by the Variation Agreement and the Council's Direct Agreement.</p> <p>5A.3 Failure to Issue a Certificate</p> <p>If a Certificate is not issued by the Councils pursuant to Clause 5A.2 (<i>Contractor's Consent</i>) within six (6) weeks of the date of the Variation Agreement then the Contractor shall be entitled by giving notice in writing to the Councils within five (5) Business Days of such date to terminate this Contract, whereupon the Relevant Discharge Terms shall apply.</p> <p>5A.4 Unenforceability of Contract</p> <p>In the event of the making of a determination or order by a court of final jurisdiction on application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997) the result of which is that the Waste Management Service Contract, the Variation Agreement and/or the Councils' Direct Agreement does not have effect or is otherwise unenforceable, then the Relevant Discharge Terms shall apply.</p> <p>5A.5 Relevant Discharge Terms</p> <p>The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are set out in Schedule 18 (Certificates to be issued under Local Government (Contracts) Act 1997 Part 1 (Relevant Discharge Terms)).</p>

Reference	Amendment
Clause 5.2 (Meaning of All Reasonable Endeavours)	Delete "(save in respect of any Planning Permission or Necessary Consent sought by any Third Party Contractor in relation to the Anaerobic Digestion Plant in which case all reasonable endeavours shall mean that the Contractor shall use its reasonable endeavours to enforce promptly all its rights under any relevant contract with such Third Party Contractor being in the case of Thames the obligations under the Thames Waste Agreement in the form of Exhibit 6 and to impose on any such Third Party Contractor other than Thames terms which are not materially less onerous than those applicable under the Thames Waste Agreement that the Contractor shall, subject to the provisions of this Clause 5 (<i>Planning Permission and Necessary Consent</i>)."
Clause 5.4.4 (Non Commencement and Cessation of Proceedings)	Insert "Planned Take-Over Date, Construction Long-Stop Date" after "Full Operational Date".
Clause 5.6.8 (Obligations of the Contractor)	Delete Clause 5.6.8 and replace with "Not Used".
Clause 5.11 (Reimbursement of British Sugar Agreement Non Exercise Fee)	Delete Clause 5.11 and replace with "Not Used".
Clause 6.1 (Action in the Event of Revocation or Suspension of Necessary Consents)	Insert "Clause 52A (<i>Compensation Events</i>), Clause 52B (<i>Supervening Events</i>) and" before "Clause 53.5 (<i>Force Majeure and Relief Events</i>)".
Clause 6.1.3 (Action in the Event of Revocation or Suspension of Necessary Consents)	Insert "Clause 52A (<i>Compensation Events</i>), Clause 52B (<i>Supervening Events</i>) and" before "Clause 53.5 (<i>Force Majeure and Relief Events</i>)".
Clause 13.4 (Assignment, Novation and Subcontracting)	Insert "or the Funding Agreement" after "the Councils' Direct Agreement". Delete "or in the case of the Anaerobic Digestion Plant, to the relevant Third Party Contractor" and replace with "or in the case of the Waste to Energy Plant to the EPC Contractor".
Clause 13.7 (Alienation of leases of the Leased Properties)	Delete "Clause 7 of the Councils' Direct Agreement" and replace with "Clause 4 of the Councils' Direct Agreement".

Reference	Amendment
Clause 13.8 (EPC Contract Major Subcontractors)	<p>Insert the following new Clause 13.8:</p> <p>"13.8 EPC Contract Major Subcontractors</p> <p>The Contractor shall procure, at its own expense, that the EPC Contractor shall provide within 28 days of entering into each Major Subcontract upon receipt of the relevant engrossment, executed deeds of warranty, as required in table 7.1 of schedule 7 of the EPC Contract, in favour of the Councils in substantially the same form as set out in schedule 29 of the EPC Contract, except for the civil sub-contractors warranty which will be entered into in the exact form set out in schedule 29 of the EPC Contract."</p>
Clause 14 (Change in Composition and Calorific Value of Contract Waste)	<p>Insert the following new Clause 14.2:</p> <p>"As at the date of Variation Agreement, the parties acknowledge and agree that the CV Base Value is [REDACTED] mega Joules per Kilogram".</p>
Clause 21.2 (Waste to Energy Plant)	<p>Delete "14 Days" and replace with "28 Days".</p>
Clause 21.5 (Waste to Energy Plant)	<p>Delete Clause 21.5 and replace with:</p> <p>"Upon the request of the Contractor, Worcestershire Council and the Contractor shall act together to grant a lease of and all ancillary rights and easements for a single electricity sub-station to be situated on and over the land demised by the Hartlebury Lease in such position as shall be agreed between Worcestershire Council, the Contractor and the relevant utility provider acting reasonably (and the Contractor shall be a party to such lease if required by Worcestershire Council and/or the relevant utility provider) substantially in the form submitted by Western Power Distribution plc (or any other utility provider) with such further reasonable and proper amendments as shall be required and agreed by Worcestershire Council, the Contractor and the utility provider for a term expiring on or after 22 December 2028. Worcestershire Council agrees to assist the Contractor with the enforcement of the tenant's covenants contained in all ancillary and related matters in connection with such sub-lease from time to time so far as the Contractor is unable to enforce the same</p>


Reference	Amendment
	itself."
Clause 21A (National Agreement for the Engineering Construction Industry)	<p>Insert the following new Clause 21A:</p> <p>21A.1 The parties acknowledge and agree that the Works and/or the site in respect of the Waste to Energy Plant are not and shall not be designated as falling within the scope of NAECI.</p> <p>21A.2 If as a result of an act or omission of the Councils, the Works and/or the site in respect of the Waste to Energy Plant is designated or declared as falling within the scope of NAECI, the Councils shall indemnify and keep the Contractor indemnified at all times from and against all Costs sustained by the Contractor as a consequence.</p>
Clause 23.1.1(i) (Insurance Cover)	Insert "B2(ii) (Delay In Start Up (Advance Loss of Profits), B2(iii) (Third Party Liability)" after "B2(i) (Construction All Risks)".
Clause 23.1.1(ii) (Insurance Cover)	Insert "C2(ii) (Business Interruption Insurance), C2(iii) (Third Party Liability)" after "C2(i) (Property All Risks)".
Clause 24A (Performance Liquidated Damages)	<p>Insert new clause 24A:</p> <p>"24A. Performance Liquidated Damages</p> <p>24A.1 The Contractor shall use reasonable endeavours to enforce all its rights under the EPC Contract with respect to the payment of Performance Liquidated Damages, including recovering any amounts owing by the EPC Contractor.</p> <p>24A.2 The Contractor shall ensure that all payments in respect of Performance Liquidated Damages received by it are paid into the Joint Performance Liquidated Damages Account.</p> <p>24A.3 During the Contract Period, the Contractor shall be entitled to make withdrawals from the Joint Performance Liquidated Damages Account in accordance with the Funding Agreement.</p> <p>24A.4 In the event that the conditions specified in clause 16.15 (<i>Joint Performance Liquidated Damages Account</i>)</p>

Reference	Amendment
	<p>of the Funding Agreement are satisfied:</p> <ul style="list-style-type: none"> (i) the Councils shall promptly countersign a withdrawal notice in respect of a JPLD Permitted Withdrawal and deliver it to the Contractor; and (ii) the Contractor shall countersign and issue that withdrawal notice in respect of JPLD Permitted Withdrawal to the Account Bank.  
Clause 28A (Sole Remedy)	<p>Insert new clause 28A:</p> <p>"In the event of a breach of Clause 28.3 (<i>Representations, Warranties, Covenants and Undertakings of the Contractor</i>) the rights of the Councils under this Contract shall be limited to termination under Clause 46.2.9 (<i>Event of Contractor Default</i>) and/or where applicable Clause 53 (<i>Force Majeure and Relief Events</i>)."</p>
Clause 28.2.4 (Representations, Warranties, Covenants and Undertakings of the Contractor)	<p>Delete "exercised its rights under the British Sugar Agreement to acquire a leasehold interest in the British Sugar Site" and replace with "[Not Used]".</p>

Reference	Amendment
<p>Clause 29A (Service Delivery Plan)</p>	<p>Insert a new clause:</p> <p>"29A Service Delivery Plan</p> <p>29A.1 Without prejudice to the continued application (unless otherwise agreed between the parties) of the Service Delivery Plans in place as at the date of the Variation Agreement, the Contractor and the Superintendent Officer shall within thirty (30) Business Days of the Variation Agreement Effective Date meet in good faith and then use reasonable endeavours to agree the Service Delivery Plans for the following facilities:</p> <ul style="list-style-type: none"> (a) Hill & Moor landfill; (b) Hill & Moor composting; (c) Kington HWS; (d) Kidderminster Bulk Bay; (e) Redditch Bulk Bay; (f) Rotherwas Transfer Station; (g) Leominster Transfer Station; (h) Rotherwas Bulk Bay. <p>29A.2 If and to the extent that any of the Service Delivery Plans are incomplete the Contractor and the Superintendent Officer shall within thirty (30) Business Days of the Variation Agreement Effective Date meet in good faith and then use reasonable endeavours to complete the incomplete Service Delivery Plans."</p>
<p>Clause 29.2 (Detailed Maintenance Plan)</p>	<p>Delete "until the expiry of the Contract Period",</p> <p>Insert "from time to time" between "entitled" and "to" in the eleventh line of the provision and between "be" and "appropriate" in the last line of the provision.</p>
<p>Clause 29.6 (Detailed Maintenance Plan)</p>	<p>Insert "Without prejudice to the carrying out of an inspection of the Waste to Energy Plant pursuant to Clause 50.1A (<i>Waste to Energy Plant</i>) which shall disapply this Clause 29.6 (<i>Detailed Maintenance Plan</i>)," at the start of the provision.</p>

Reference	Amendment
	Delete "On every..." and replace with "on every..."
Clause 29.9 (Detailed Maintenance Plan)	Insert "as soon as reasonably practicable" after "The Contractor will carry out".
Clause 32.1 (Reserve Powers of the Lead Authority)	Delete Clause 32.1 and 32.1.1.
Clause 32.1.2 (i) (Reserve Powers of the Lead Authority)	Delete "and, in the case of the Anaerobic Digestion Plant, to the Contractor and the relevant Third Party Contractor in writing".
Clause 33.2.2 (Information to be supplied by the Contractor to the Lead Authority)	Delete "immediately" in the second line.
Clause 35 (Inspection of Operations)	Delete ", other than the Anaerobic Digestion Plant".
Clause 39.2 (Performance Monitoring)	Insert "Subject to Clause 39.1.2(ii)" before "If the Superintendent Officer disputes".
Clause 39.3.3 (Performance Monitoring)	Delete "Bank Rate" and replace with "Base Rate".
Clause 42 (Payment by the Contractor)	Delete "Bank Rate" and replace with "Base Rate".
Clause 43 (Payment by the Councils)	Delete "Bank Rate" and replace with "Base Rate".
Clause 45.1 (Changes in Law)	Insert "Subject to Clause 45.8" before "If there occurs:"
Clause 45.7 (Changes in Law)	Insert "Subject to Clause 45.8" before "If there occurs after the date hereof:"
Clause 45.8 (Changes in Law)	<p>Insert new clause 45.8:</p> <p>"45.8 Without prejudice to Clause 45.2 to Clause 45.6 (inclusive), Clause 45.1 and Clause 45.7 shall not apply if there occurs:</p> <p>45.8.1 a Discriminatory Change in Legal Requirement; or</p> <p>45.8.2 a Change in Environmental Legal Requirement, that is enacted or brought into force prior to the Take-</p>

Reference	Amendment
	Over Date which gives effect to any document on the Waste Law List, the Contractor shall serve a Change in Legal Requirements Notice on the Superintendent Officer."
Clause 46.2.1 (Event of Contractor Default)	Insert "Clause 52A (<i>Compensation Events</i>), Clause 52B (<i>Supervening Events</i>) and" before "Clause 53 (<i>Force Majeure and Relief Events</i>)"
Clause 46.2.2 (Event of Contractor Default)	Delete "Clause 53.5" and replace with "Clause 53.4".
Clause 46.2.7 (Event of Contractor Default)	Delete "Clause 34(a)" and replace with "Clause 33(a)".
Clause 46.2.9 (Event of Contractor Default)	Insert new clause 46.2.9: "the Take-Over Date for the Waste to Energy Plant has not occurred by the Construction Long-Stop Date."
Clause 46.4 (Event of Contractor Default)	Insert new clause 46.4: "Prior to the Take-Over Date, the Councils agree that prior to determining whether to exercise any right of termination in respect of this Clause 46 (<i>Event of Contractor Default</i>) it shall, acting reasonably and in good faith by reference to the nature of the breach, give all due consideration to taking action other than the termination of this Contract including exercising its other contractual rights and remedies under this Contract (having regard to the nature of such rights and remedies) to deal with the breach or circumstances giving rise to the breach."
Clause 47.2.4 (Event of Council Default and Voluntary Termination by the Councils)	Insert new limb (vi) "the Variation Agreement". Limb (iii). Delete "the Thames Councils' Direct Agreement" and replace with "the O&M Councils' Direct Agreement". Hanging paragraph. Delete both references to the ", Thames Councils' Direct Agreement" and replace with "the O&M Councils' Direct Agreement". Hanging paragraph. Insert "the Variation Agreement" after both references to "this Contract".

Reference	Amendment
Clause 47.2.8 (Event of Council Default and Voluntary Termination by the Councils)	<p>Insert new Clause 47.2.8 as follows:</p> <p>"(i) any breach by the Councils of its obligations under the Property Agreements;</p> <p>(ii) [Not Used]; and/or</p> <p>(ii) </p> <p>which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of six (6) Months".</p>
Clause 48.1.1(i) (Termination Without Default)	Delete "(and for these purposes only the performance by the Third Party Contractor under the Organic Waste Offtake Agreement (in the form of such agreement as at the Effective Date)".
Clause 48.1.1 (ii) (Termination Without Default)	Insert "shall be construed as a Dispute" at the end of the limb.
Clause 48.4.1 (Termination on Non-Reinstatement)	Delete "by the Funders pursuant to the Financing Agreements or"
Clause 48.4.2(i) (Termination on Non-Reinstatement)	Delete "Formula A" and replace with "Formula D".
Clause 48.4.3 (Termination on Non-Reinstatement)	Delete Clause 48.4.3 and replace with "[Not Used]".
Clause 49.3 (Compensation on Termination)	<p>Insert new Clause 49.3:</p> <p>"Except where expressly stated otherwise, the Councils are not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under Schedule 13 (<i>Compensation on Termination</i>) save to the extent that after such an amount has been set off, the termination payment made would be an amount greater than or equal to the Contractor's liabilities under the Financing Agreements".</p>

Reference	Amendment
Clause 49A (Payment at Expiry)	<p data-bbox="667 320 997 360">Insert a new Clause 49A:</p> <p data-bbox="667 387 1417 835">49A.1 Subject to clause 3 of the Councils' Direct Agreement, upon the Expiry Date, the Councils shall pay to the Contractor the amount of £ plus any additional amount due in accordance with Clause 49A.9 (<i>Payment at Expiry</i>) (the sum of the foregoing being the "Bullet Payment") provided that, without prejudice to the operation of Clause 49 (<i>Remedies and Payment on Termination</i>) and Schedule 13 (<i>Compensation on Termination</i>), such Bullet Payment shall not be payable by the Councils on an early termination of this Contract.</p> <p data-bbox="667 862 1417 981">49A.2 The Councils shall make the Bullet Payment in cleared funds on the day of expiry of the Contract Period, unless otherwise agreed in writing by the parties.</p> <p data-bbox="667 1008 893 1048">49A.3 [Not Used]</p> <p data-bbox="667 1075 1417 1193">49A.4 The Councils shall make the Bullet Payment into the account or accounts specified in the Council's Direct Agreement.</p> <p data-bbox="667 1220 1417 1664">49A.5 Subject to the Councils' Direct Agreement, the Councils' obligation to make the Bullet Payment is strict and unconditional. Notwithstanding any provisions to the contrary in this Contract, the Councils shall pay the Bullet Payment free and clear of any set-off, withholding or deduction, and without netting-off or aggregation with any other amount due from the Contractor to the Councils or from the Councils to the Contractor, in each case for any reason, under or in connection with the Contract, for breach of the Contract, in tort (including negligence and misrepresentation), for breach of statutory duty or on any other basis whatsoever.</p> <p data-bbox="667 1691 1417 1809">49A.6 The Councils shall pay the Bullet Payment notwithstanding Clause 49.1.6 (<i>Compensation on Termination</i>).</p> <p data-bbox="667 1836 877 1877">49A.7 [Not Used]</p> <p data-bbox="667 1904 877 1944">49A.8 [Not Used]</p> <p data-bbox="667 1971 1417 2045">49A.9 All payments made by the Councils pursuant to Clause 49A.1 shall be made gross, free of any right of</p>

Reference	Amendment
	<p>counterclaim or set off and without deduction or withholding of any kind other than any deduction or withholding required by law. If the Councils make a deduction or withholding required by law from a payment pursuant to Clause 49A.1, the sum due from the Councils shall be increased to the extent necessary to ensure that, after the making of any deduction or withholding, the Contractor receives a sum equal to the sum it would have received had no deduction or withholding been made.</p>
<p>Clause 50.1A (Waste to Energy Plant)</p>	<p>Insert new Clause 50.1A:</p> <p>50.1A Twenty-four (24) Months and twelve (12) Months prior to the expiry of the Contract Period, the Lead Authority shall procure the carrying out by a suitably qualified independent expert (jointly appointed by the parties) (the "Independent Expert") to inspect the Waste to Energy Plant to assess whether the Waste to Energy Plant has been and is being maintained by the Contractor in accordance with its obligations under Clause 29 (<i>Detailed Maintenance Plan</i>).</p>
<p>Clause 50.1B (Waste to Energy Plant)</p>	<p>Insert new Clause 50.1B:</p> <p>50.1B The Independent Expert shall provide the services under Clause 50.1A independently, fairly and impartially to and as between the Councils and the Contractor. Whilst the Independent Expert may take account of any representations made by the Lead Authority and the Contractor (as appropriate), the Independent Expert shall not be bound to comply with any representations made by either party in connection with any matter in which the Independent Expert is required to exercise its professional judgement.</p>
<p>Clause 50.1C (Waste to Energy Plant)</p>	<p>Insert new Clause 50.1C:</p> <p>50.1C The Lead Authority shall notify the Contractor in writing a minimum of five (5) Business Days in advance of the date it wishes to procure the carrying out of the inspection. The parties shall co-operate to ensure that the Independent Expert shall have access to the Waste to Energy Plant whilst operating and whilst shutdown to the extent reasonably necessary for such Independent Expert to complete his inspection efficiently and effectively. The Contractor shall make available upon</p>

Reference	Amendment
	<p>reasonable notice means of access to the Waste to Energy Plant and its constituent parts, including access by scaffolding (during shutdown only and to the extent that such scaffolding is already erected for maintenance access), provided that in no circumstances shall the Contractor or any of its Sub-Contractors be required to incur additional expenditure in providing such access. The Contractor shall procure that its Sub-Contractors and the Lead Authority shall procure that the Independent Expert each co-operate to allow such access to take place efficiently and effectively. The Lead Authority shall consider in good faith any reasonable request by the Contractor for the inspection to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the inspection on the notified date would materially prejudice the Contractor's ability to provide the Services.</p>
<p>Clause 50.1D (Waste to Energy Plant)</p>	<p>Insert new Clause 50.1D:</p> <p>50.1D Where the Lead Authority procures the carrying out of the inspection, the Councils shall use (and shall procure that the Independent Expert uses) reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The cost of the inspection and any fees or expenses of the Independent Expert shall be borne solely by the Councils.</p>
<p>Clause 50.1E (Waste to Energy Plant)</p>	<p>Insert new Clause 50.1E:</p> <p>50.1E If the inspection shows that the Contractor has not complied with or is not complying with its obligations under Clause 29.4 (<i>Detailed Maintenance Plan</i>) and/or Clause 29.9 (<i>Detailed Maintenance Plan</i>):</p> <p>50.1.E.1 the Independent Expert shall notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Waste to Energy Plant to the standard it would have been if the Contractor had complied with its obligations under Clause 29 (<i>Detailed Maintenance Plan</i>) (the "Required Standard"); and</p> <p>50.1.E.2 the parties shall agree a reasonable period</p>

Reference	Amendment
	within which the Contractor must carry out such rectification and/or maintenance work.
Clause 50.1F (Waste to Energy Plant)	<p>Insert new Clause 50.1F:</p> <p>50.1F The Contractor shall procure such rectification and/or maintenance work notified pursuant to Clause 50.1E (the "Outstanding Work") in order to reach the Required Standard within the agreed period and any costs it incurs in procuring the Outstanding Work shall be at the Contractor's own expense.</p>
Clause 50.1G (Waste to Energy Plant)	<p>Insert new Clause 50.1G:</p> <p>50.1G If the Contractor has been notified under Clause 50.1E that rectification and/or maintenance work is required, twelve (12) Months prior to the expiry of the Contract Period the Lead Authority shall (to the extent that the Outstanding Work has not been carried out in the interim) deduct the costs of that work as quantified by the Independent Expert from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of the Unitary Payment and pay such amount into an interest bearing account (the "Retention Fund Account") until the expiry or termination of the Contract Period.</p>
Clause 50.1H (Waste to Energy Plant)	<p>Insert new Clause 50.1H:</p> <p>50.1H If and to the extent that the Contractor procures the Outstanding Work to the Required Standard within the specified period (as both determined by the Independent Expert), the Lead Authority shall, to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account, reimburse the costs for such Outstanding Work by withdrawing amounts from the Retention Fund Account and paying such amounts to the Contractor. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the costs for such Outstanding Work the Contractor shall bear the balance of such costs.</p>
Clause 50.1I (Waste to Energy Plant)	<p>Insert new Clause 50.1I:</p> <p>50.1I If and to the extent that the Contractor fails, as determined by the Independent Expert, to carry out</p>

Reference	Amendment
	<p>Outstanding Work within the period specified in Clause 50.1E, the Lead Authority shall be entitled to carry out itself, or procure, such Outstanding Work at the Contractor's expense and shall make withdrawals from the Retention Fund Account or, where there is insufficient funds in the Retention Fund Account, make deductions from the Unitary Payment to pay for such Outstanding Work or recover such amounts from the Contractor as a debt payable on demand.</p>
<p>Clause 50.1J (Waste to Energy Plant)</p>	<p>Insert new Clause 50.1J:</p> <p>50.1J If:</p> <p>50.1J.1 the Outstanding Work identified has been carried out to the Independent Expert's satisfaction; and</p> <p>50.1J.2 the Outstanding Work has been paid for by the Contractor or any of its Sub-Contractors,</p> <p>then the Lead Authority shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.</p>
<p>Clause 50.2 (Other Waste Management Units)</p>	<p>Insert "Save in relation to an inspection of the Waste to Energy Plant pursuant to Clause 50.1A (Waste to Energy Plant) which shall disapply this Clause 50.2A (<i>Other Waste Management Units</i>)," at the start of the provision.</p> <p>Delete "Failure..." and replace with "a failure..."</p>
<p>Clause 50.3 (Other Waste Management Units)</p>	<p>Insert new Clause 50.3:</p> <p>50.3 During the period of [REDACTED] Months prior to the Expiry Date or immediately after the date the Lead Authority has given notice to terminate the Contract Period in accordance with the Contract, the Contractor agrees that it will not (and shall procure that none of its Sub-Contractors will) other than in ordinary course of business, without the prior written consent of the Lead Authority (such consent not to be unreasonably withheld or delayed):</p> <p>50.3.1 make any material increase or decrease in the number of Workers engaged in the provision of the Services;</p> <p>50.3.2 make any increase in the remuneration or other</p>

Reference	Amendment
	<p>change in the terms and conditions of the Workers engaged in the provision of the Services; or</p> <p>50.3.3 increase or reduce to any significant degree the proportion of working time spent on the Services by any Worker engaged in the provision of the Services.</p>
<p>Clause 52.5 (Exit Plan)</p>	<p>Delete "At least 12 but no more than 36" and replace with "Twenty-four (24)..."</p> <p>Insert "prior to the expiry of the Contract Period" after "Months" in the first line.</p>
<p>Clause 52.6 (Exit Plan)</p>	<p>Delete " To the extent that the Services will be provided by a party other than the Contractor after the expiry of the Contract Period, the Contractor shall give all reasonable co-operation (at no cost to the Contractor) to such other party and to the Councils in this regard and shall in the last 24 months of the Contract Period provide such other party with all reasonable access to the Waste Management Units and with all information relating to the Services (save for any information which the Contractor reasonably regards as commercially sensitive) as such other party may reasonably require subject to Clause 61 (<i>Confidentiality</i>)".</p> <p>And replace with: "To the extent that the Services will be provided by a party other than the Contractor after the expiry of the Contract Period, the Contractor shall give all reasonable co-operation (at no cost to the Contractor) to such other party and to the Councils in this regard and shall in the last eighteen (18) Months of the Contract Period provide (at reasonable times and on reasonable notice) the Councils and any tendering operators (accompanied by the Councils) with all reasonable access to the Waste Management Units but not so as to interfere with or impede the provision of Services by the Contractor and, subject to Clause 61 (<i>Confidentiality</i>), shall provide to the Lead Authority any information relating to the Services (save for any information which the Contractor reasonably regards as commercially sensitive) that is reasonably required for the purpose of retendering the Services. The Councils shall indemnify the Contractor for all costs reasonably and properly incurred by the Contractor in complying with this Clause 52.6 (<i>Exit Plan</i>)."</p>

Reference	Amendment
<p>Clause 52A (Compensation Events)</p>	<p>Insert new Clause 52A as follows:</p> <p>52A Compensation Events</p> <p>52A.1 Without prejudice to the right of the Contractor to bring any claim for damages in common law against the Councils in the event of any breach by the Councils of this Contract, Clause 53 (<i>Force Majeure and Relief Events</i>) and Clause 52B (<i>Supervening Events</i>), if as a direct result of the occurrence of a Compensation Event:</p> <p>52A.1.1 the Contractor is unable to comply with its obligations under this Contract; and/or</p> <p>52A.1.2 the Contractor incurs costs or loses revenue (including third party income),</p> <p>then, subject to the Contractor complying with its obligations under this Clause 52A (<i>Compensation Events</i>), the Contractor will be entitled to relief from its obligations and/or claim compensation under this Contract.</p> <p>52A.2 Subject to Clause 52A.4, to obtain relief and/or compensation the Contractor must:</p> <p>52A.2.1 as soon as practicable, and in any event within fifteen (15) Business Days after it became aware that the Compensation Event has caused or is likely to cause breach of an obligation under this Contract and/or the Contractor to incur costs or lose revenue (including third party income), give to the Councils a notice of its claim for payment of compensation and/or relief from its obligations under this Contract;</p> <p>52A.2.2 within ten (10) Business Days of receipt by the Councils of the notice referred to in Clause 52A.2.1 above, give full details (to the extent that such details are available) of the Compensation Event and relief from its obligations under this Contract and/or any Estimated Change in Project Costs claimed; and</p> <p>52A.2.3 demonstrate to the reasonable satisfaction of the Councils that:</p> <p>(i) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or breach of the Contractor's obligations under this</p>

Reference	Amendment
	<p>Contract; and</p> <p>(ii) the Estimated Change in Project Costs and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated by the Contractor in accordance with Good Industry Practice.</p> <p>52A.3 In the event that the Contractor has complied with its obligations under Clause 52A.2, then:</p> <p>52A.3.1 in the case of an additional cost being incurred or revenue (including third party income) being lost by the Contractor as a result of expenditure being incurred by the Contractor at any time, the Councils shall compensate the Contractor for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, in the case of Change in Revenue, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated) within twenty (20) Business Days of its receipt of a written demand by the Contractor supported by all relevant information;</p> <p>52A.3.2 in the case of payment of compensation for the Estimated Change in Project Costs and, in the case of Change in Revenue, without double counting, for revenue actually lost that does not result in expenditure being incurred by the Contractor but which reflects a change in the costs and/or without double counting, loss of revenue being incurred by the Contractor, the Councils shall compensate the Contractor in accordance with Clause 52A.3.6 below by an adjustment to the Unitary Payment in accordance with Clause 20 (<i>Variations</i>); and/or</p> <p>52A.3.3 the Councils shall give the Contractor such relief from its obligations under this Contract as is reasonable for such a Compensation Event.</p> <p>52A.4 In the event that information is provided after the dates referred to in Clause 52A.2 above, then the Contractor shall not be entitled to any compensation or relief from its obligations under this Contract in respect of the period for which the information is delayed.</p> <p>52A.5 If the parties cannot agree the extent of any</p>

Reference	Amendment
	<p>compensation or relief from the Contractor's obligations under this Contract or the Councils disagree that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause, either party may refer the matter to the Dispute Resolution Procedure.</p> <p>52A.6 Any payment of compensation referred to in Clause 52A.3.2 shall be calculated in accordance with Clause 20 (<i>Variations</i>).</p> <p>52A.7 In the event that the Contractor has complied with its obligations under Clause 52A.2, the Councils shall not be entitled to exercise its right to terminate this Contract under Clause 46 (<i>Event of Contractor Default</i>).</p>
<p>Clause 52B (Supervening Events)</p>	<p>Insert new Clause 52B as follows:</p> <p>52B Supervening Events</p> <p>52B.1 Occurrence</p> <p>Without prejudice to the right of the Contractor to bring any claim for damages in common law against the Councils in the event of any breach by the Councils of this Contract, Clause 53 (<i>Force Majeure and Relief Events</i>) and Clause 52A (<i>Compensation Events</i>), if and to the extent that a Supervening Event:</p> <p>52B.1.1 is the direct result of a delay in achieving the Construction Completion Date, the Planned Take-Over Date, the Construction Long-Stop Date, the Recovery Target Date, and/or the Full Operational Date;</p> <p>52B.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Contract,</p> <p>then the Contractor shall be entitled to apply for (i) relief from any rights of the Councils arising under Clause 46 (<i>Events of Contractor Default</i>) and (ii) a postponement of the Construction Completion Date, the Planned Take-Over Date, the Construction Long-Stop Date, the Recovery Target Date, and/or the Full Operational Date.</p> <p>52B.2 Relief</p> <p>To obtain relief, the Contractor must:</p>

Reference	Amendment
	<p>52B.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it becomes aware that the Supervening Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Councils a notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Supervening Event, the date of occurrence and its likely duration;</p> <p>52.B.2.2 within five (5) Business Days of receipt by the Councils of the notice referred to in Clause 52B.2.1, give full details of the relief claimed; and</p> <p>52.B.2.3 demonstrate to the reasonable satisfaction of the Councils that:</p> <ul style="list-style-type: none"> (i) the Contractor and the Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure; (ii) the Supervening Event directly caused the delay to Construction Completion Date, the Planned Take-Over Date, the Construction Long-Stop Date, the Recovery Target Date, and/or the Full Operational Date and/or the need for relief from other obligations under this Contract; (iii) time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and (iv) the Contractor is using reasonable endeavours to perform its obligations under this Contract. <p>52B.3 Consequences</p> <p>In the event that the Contractor has complied with its obligations under Clause 52B.2 (<i>Relief</i>) above, then:</p> <p>52B.3.1 the Construction Completion Date, the Planned Take-Over Date, the Construction Long-Stop Date, the Recovery Target Date, and/or the Full Operational Date</p>

Reference	Amendment
	<p>shall be postponed by such time as shall be reasonable for such a Supervening Event, taking into account the likely effect of delay; and/or</p> <p>52B.3.2 the Councils shall not be entitled to exercise its right to terminate this Contract under Clause 46 (<i>Events of Contractor Default</i>).</p> <p>52B.4 Deductions</p> <p>Nothing in Clause 52B.3 (<i>Consequences</i>) shall affect any entitlement to make adjustments and/or deductions under Schedule 4 (<i>Payment Mechanism</i>) during the period in which the Supervening Event is subsisting provided that any such adjustments and/or deductions under Schedule 4 (<i>Payment Mechanism</i>) as a result of such Supervening Event shall not be taken into account under Clause 46 (<i>Events of Contractor Default</i>).</p> <p>52B.5 Information</p> <p>In the event that information required by Clause 52B.2 (<i>Relief</i>) is provided after the dates referred to in that Clause, then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.</p> <p>52B.6 Notice</p> <p>The Contractor shall notify the Councils if at any time it receives or becomes aware of any further information relating to the Supervening Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.</p> <p>52B.7 Disputes</p> <p>If the Parties cannot agree the extent of the relief required, or the Councils disagrees that a Supervening Event has occurred or that the Contractor is entitled to any extension to the Construction Completion Date, the Planned Take-Over Date, the Construction Long-Stop Date, the Recovery Target Date, and/or the Full Operational Date, the Parties shall resolve such issues in accordance with the Dispute Resolution Procedure.</p>

Reference	Amendment
Clause 53.3 (Force Majeure and Relief Events)	<p>Delete:</p> <p>"by Thames of the whole or substantially the whole of the Thames Waste Agreement (in the form of such agreement as at the Effective Date) or in the case of any Third Party Contractor (other than Thames) under the Anaerobic Waste Off-Take Agreement a failure to perform the whole or substantially the whole of such agreement provided that such Third Party Contractor's obligations thereunder shall not be materially less onerous than those of Thames under such Thames Waste Agreement"</p> <p>and replace with:</p> <p>"by the EPC Contractor of the whole or substantially the whole of the EPC Contract."</p>
Clause 53.1.10 (Force Majeure and Relief Events)	<p>Insert "Planned Take-Over Date, Construction Long-Stop Date," before "Full Operational Date".</p>
Clause 56.1 (Step-in Rights)	<p>Delete "Paragraph 39" and replace with "Paragraph 33".</p>
Clause 56.2.1 (Step-in Rights)	<p>Delete Clause 56.2.1 and replace with the following:</p> <p>"without thereby avoiding this Contract or releasing the Contractor from any pre-existing liabilities thereunder, to suspend performance by the Contractor of such part of the Services to be performed by it under this Contract as relate to the Default Notice until such time as the Contractor has demonstrated to the reasonable satisfaction of the Lead Authority that it is capable of performing and will perform its obligations under this Contract in respect of such Services and either the relevant Council has cured the default or the Contractor has cured the default;"</p>
Clause 56.5 (Step-in Rights)	<p>Delete Clause 56.5 and replace with the following:</p> <p>"Promptly following the rectification of the event giving rise to the issue of the Default Notice referred to in Clause 56.1 (<i>Step-in Rights</i>), a Council which has exercised its Step-in Rights in relation to such Default Notice shall give notice in writing to the Contractor stating that it intends to vacate any Waste Management Unit occupied by it or on its behalf pursuant to Clause 56.2 (<i>Step-in Rights</i>) and that the Contractor should</p>

Reference	Amendment
	<p>resume performance of its obligations under this Contract in respect of such Waste Management Unit (the "Step-Out Notice"), whereupon the Council shall promptly vacate or procure that any Sub-Contractor appointed by it for the purpose of Clause 56.2 (<i>Step-in Rights</i>) promptly vacates any Waste Management Unit occupied by it and shall leave, or procure that, such Waste Management Unit is left in a secure and reasonably tidy condition so as to enable the Contractor to comply with its obligations under this Contract without undue delay or disturbance. Any notice delivered by the Council under this Clause 56.5 (<i>Step-in Rights</i>) shall specify the date from which the Contractor is to resume performance of its obligations as aforesaid (the "Step-Out Date") which date shall, unless the Contractor upon receipt of the Step-Out Notice has notified an earlier date to the Council, be no earlier than 7 Days after the receipt by the Contractor of the Council's Step-Out Notice."</p>
<p>Clause 60 (Freedom of Information)</p>	<p>Insert a new Clause 60, as follows:</p> <p>60.1 The Contractor acknowledges that the Councils are subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 60.2 to 60.7 (inclusive) below.</p> <p>60.2 Where the Councils receive a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Councils does not hold itself the Councils shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:</p> <p>60.2.1 provide the Councils with a copy of all such Information in the form that the Councils require as soon as practicable and in any event within ten (10) Business Days (or such other period as the Councils acting reasonably may specify) of the Councils' request; and</p> <p>60.2.2 provide all necessary assistance as reasonably requested by the Councils in connection with any such</p>

Reference	Amendment
	<p>Information, to enable the Councils to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.</p> <p>60.3 Following notification under Clause 60.2, and up until such time as the Contractor has provided the Councils with all the Information specified in Clause 60.2.1, the Contractor may make representations to the Councils as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Councils shall be responsible for determining in their absolute discretion:</p> <p>60.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and</p> <p>60.3.2 whether Information is to be disclosed in response to a Request for Information; and</p> <p>in no event shall the Contractor respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Councils.</p> <p>60.4 The Contractor shall ensure that all Information held on behalf of the Councils is retained for disclosure for at least twelve (12) years (from the date it is acquired) and shall permit the Councils to inspect such Information as requested from time to time.</p> <p>60.5 The Contractor shall transfer to the Councils any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Business Days of receiving it.</p> <p>60.6 The Contractor acknowledges that any lists provided by the Contractor listing or outlining Confidential Information, are of indicative value only and that the Councils may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Regulations.</p>

Reference	Amendment
	<p>60.7 In the event of a request from the Councils pursuant to Clause 60.2.2, the Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request inform the Councils of the Contractor's estimated costs of complying with the request and the Councils shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent that the Councils are themselves entitled to reimbursement of such costs in accordance with the Councils own FOIA policy from time to time. Where such costs (either on their own or in conjunction with the Councils' own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Councils shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and, if so, the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Councils shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such proper and reasonable costs as the Contractor incurs in excess of the Appropriate Limit up to and including the estimated cost (without double counting) of complying with the request.</p> <p>60.7A Any variation to the FOIA and/or the Environmental Regulations shall be deemed to constitute a Council Change pursuant to Schedule 2 (<i>Variations</i>).</p> <p>60.8 The Contractor acknowledges that (notwithstanding the provisions of Clause 61 (<i>Confidentiality</i>)) the Councils may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:</p> <p>60.8.1 in certain circumstances without consulting the Contractor;</p> <p>60.8.2 following consultation with the Contractor and</p>

Reference	Amendment
	having taken their views into account, Provided always that where Clause 60.8.1 applies the Councils shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.
Clause 61.1.8 (Confidentiality)	Delete "Public Private Partnership Programme Limited and".
Clause 61.5.2 (Confidentiality)	Insert ")" after "6 (<i>Annual Contract Price Review</i>)" in the third line of the provision and insert "re-procurement of this Contract or the" between "the" and "supply" in the sixth line of the provision.
Clause 64A. (Non-Contract Waste)	Insert a new Clause 64A as follows: 64A. NON-CONTRACT WASTE From the Take-Over Date for the Waste to Energy Plant, the Contractor shall be entitled to accept, handle and process Non-Contract Waste at the Waste to Energy Plant.
Clause 65 (The Third Line)	Delete Clause 65.
Clause 66.1(ii) (Council Material Breach)	Delete "Clauses 46.2.1 to 46.2.8" and replace with "Clauses 47.2.1 to 47.2.8".
Schedule 1 (Dispute Resolution Procedure), Paragraph 6 (Appointment by Third Party)	Delete "Rule 7 of the ORSA Rules" and replace with "the process set out in the TeCSA Adjudication Rules".
Schedule 3 (Provisions Relating to the Works and Additional Works), Paragraph 3.1 (CDM Regulations)	Delete "paragraph 3.1" and replace with: "In accordance with The Construction (Design and Management) Regulations 2007 (the " CDM Regulations ") the Councils and the Contractor hereby elect that the Contractor shall be and shall be treated as the only "client" in respect of the Works pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Works, seek in any way to withdraw, terminate or derogate from such election."
Schedule 3 (Provisions Relating to the Works and Additional Works), Paragraph 3.2 (CDM Regulations)	Delete paragraph 3.2 and replace with: "The Contractor shall observe, perform and discharge

Reference	Amendment
Regulations)	and/or shall procure the observance, performance and discharge of all of its obligations under the CDM Regulations in connection with the Works (including, for the avoidance of doubt, its obligations as the only "client" in respect of the Works pursuant to Paragraph 3.1 (<i>CDM Regulations</i>) of Schedule 3 (<i>Provisions Relating to the Works and Additional Works</i>))."
Schedule 3 (Provisions Relating to the Works and Additional Works), Paragraph 3.3 (CDM Regulations)	Delete "Paragraph 3.3" and replace with: "Notwithstanding the election made under Paragraph 3.1 (<i>CDM Regulations</i>) of Schedule 3 (<i>Provisions Relating to the Works and Additional Works</i>), the Councils shall observe and continue to observe their duties under the CDM Regulations which, pursuant to Regulation 8 of the CDM Regulations, remain with the Councils."
Schedule 3 (Provisions Relating to the Works and Additional Works), Paragraph 3.4 (CDM Regulations)	Delete paragraph 3.4.
Schedule 4 (Payment Mechanism)	Schedule 4 (<i>Payment Mechanism</i>) shall be amended and restated in the form set out in Annex 9 (<i>Payment Mechanism</i>) to the Variation Agreement.
Schedule 5 (Definition and Calculation of Recycling and Recovery Rates), Section B.1 (Recycling Target)	Delete "the first Contract Year following the Recovery Target Date" and replace with "the Variation Agreement Effective Date". Delete "26.5%" and replace with "35.78%".
Schedule 5 (Definition and Calculation of Recycling and Recovery Rates), Section D.1 (Recycling Target)	Delete "the first Contract Year following the Recovery Target Date" and replace with "the Variation Agreement Effective Date". Delete "52.5%" and replace with "65.63%".
Schedule 6 (Annual Contract Price Review), Section A (Annual Contract Price Review), Paragraph 1 (Application)	Limb (x). "Clause 5.11 (Reimbursement of British Sugar Agreement Non Exercise Fee)," to be deleted.
Schedule 6 (Annual Contract Price Review), Table 1: Base Year Reviewable Items	Table 1 (<i>Base Year Reviewable Items</i>) of Schedule 6 (<i>Annual Contract Price Review</i>) shall be amended and restated in the form set out in Annex 25 (<i>Base Year</i>

Reference	Amendment
	<i>Reviewable Items</i>) to the Variation Agreement.
Schedule 7 (Terms of Reference for Feasibility Study Waste to Energy Plant)	Delete Schedule 7 (<i>Terms of Reference for Feasibility Study Waste to Energy Plant</i>) and replace with "Not Used".
Schedule 8 (Annual Environmental Report Contents Summary Guideline for Production), Paragraph 2.1 (Contents of Annual Environmental Report)	Delete "the Mixed Waste MRF" Delete "the Anaerobic Digestion Plant".
Schedule 8 (Annual Environmental Report Contents Summary Guideline for Production), Paragraph 2.8	Delete paragraph 2.8.
Schedule 9 (Insurances), Paragraph B. (Construction Period Insurances) 2 (Covers) (Coverage)	Delete "insurable" and replace with "insured by a prudent owner and operator of similar assets".
Schedule 9 (Insurances), Paragraph B. (Construction Period Insurances) 2 (Covers)	Delete paragraph (iv) (Professional Indemnity Insurance) and replace with "Not Used".
Schedule 9 (Insurances), Paragraph C. (Operational Period Insurances) 2 (Covers) (Coverage)	Delete "insurable" and replace with "insured by a prudent owner and operator of similar assets".
Schedule 10 (Completion, Commissioning and Performance Tests), Paragraph 8 (Anaerobic Digestion Plant)	Delete paragraph 8.
Schedule 11 (Project Plan)	Schedule 11 (<i>Project Plan</i>) shall be amended and restated in the form set out in Annex 10 (<i>Project Plan</i>) to the Variation Agreement.
Schedule 12 (Determination of the impact of change in Composition and Calorific Value of Contract Waste)	Schedule 12 (<i>Determination of the impact of change in Composition and Calorific Value of Contract Waste</i>) shall be amended and restated in the form set out in Annex 19 (<i>Determination of the impact of change in Composition and Calorific Value of Contract Waste</i>) to

Reference	Amendment
	the Variation Agreement.
Schedule 13 (Compensation on Termination)	Schedule 13 (<i>Compensation on Termination</i>) shall be amended and restated in the form set out in Annex 11 (<i>Compensation on Termination</i>) to the Variation Agreement.
Schedule 16 (Environmental Deed)	Schedule 16 (<i>Environmental Deed</i>) shall be amended and restated in the form set out in Annex 23 (<i>Environmental Deed</i>) to the Variation Agreement.
Schedule 17 (Property Transfer Agreement)	Schedule 17 (<i>Property Transfer Agreement</i>) shall be amended and restated in the form set out in Annex 20 (<i>Property Transfer Agreement</i>) to the Variation Agreement.
Schedule 18 (Certificates to be issued under the Local Government (Contracts) Act 1997), Part 1 (Relevant Discharge Terms)	<p>Insert the following new Part 1 (Relevant Discharge Terms):</p> <p>Part 1 – Discharge Terms</p> <ol style="list-style-type: none"> 1. The sums referred to in Paragraph 2.1 shall be the relevant discharge terms in relation to this Contract as amended by Variation Agreement and the Councils Direct Agreement for the purposes of Section 6 of the Local Government (Contracts) Act 1997. 2. In the event of the making of a determination or court order by a court on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997), the result of which is that that either the Waste Management Service Contract, the Variation Agreement and/or the Councils' Direct Agreement does not have effect or is otherwise unenforceable, then: <ol style="list-style-type: none"> 2.1 The Contractor shall be entitled to be paid by the Councils the sum which is equivalent of the: <ol style="list-style-type: none"> 2.1.1 Formula A (Event of Council Default) where the Councils have initiated proceedings that resulted in the determination or court order referred to in Paragraph 2 or otherwise; 2.1.2 Formula C (Event of No Fault Termination);

Reference	Amendment
	3. The Councils shall pay to the Contractor the sums referred to in Paragraph 2 above, including any interest which accrues and is payable by the Contractor under the Financing Agreements from the Termination Date to the Transfer Date within forty (40) Business Days of determination or order of the court referred to in Paragraph 2 above and the provisions of Paragraphs 5 to 7 of Schedule 13 (<i>Compensation on Termination</i>) shall apply.
Schedule 18 (Certificates to be issued under the Local Government (Contracts) Act 1997)	Schedule 18 (<i>Certificates to be issued under the Local Government (Contracts) Act 1997</i>) shall be supplemented with revised forms of Certificates in the form set out in Annex 2 (<i>Certificates to be issued under the Local Government (Contracts) Act 1997</i>) to the Variation Agreement.
Schedule 20 (Councils' Direct Agreement)	Schedule 20 (<i>Councils' Direct Agreement</i>) shall be deleted and replaced with a revised Councils' Direct Agreement in the form set out in Annex 12 (<i>Councils' Direct Agreement</i>) to the Variation Agreement.
Schedule 22 (Guarantee)	Schedule 22 (<i>Guarantee</i>) shall be deleted and replaced with a new Guarantee in the form set out in Annex 13 (<i>Guarantee</i>) to the Variation Agreement.
Schedule 23 (List of information to be supplied by the Contractor in performance of the Services)	Schedule 23 (<i>List of information to be supplied by the Contractor in performance of the Services</i>) shall be deleted and replaced with a new list of information to be supplied by the Contractor in performance of the Services as set out in Annex 26 (<i>List of information to be supplied by the Contractor in performance of the Services</i>) to the Variation Agreement.
Schedule 24 (Thames Councils' Direct Agreement)	Delete Schedule 24 (<i>Thames Councils' Direct Agreement</i>) and replace with "NOT USED"
Schedule 25 (EPC Councils' Direct Agreement)	Schedule 25 (<i>EPC Councils' Direct Agreement</i>) shall be deleted and replaced with a new EPC Councils' Direct Agreement in the form set out in Annex 14 (<i>EPC Councils' Direct Agreement</i>) to the Variation Agreement.
Schedule 29 (Release of Hill & Moor Indemnity)	Schedule 29 (Release of Hill & Moor Indemnity) shall be deleted and replaced with "NOT USED".
Schedule 31 (Commercially	Insert a new Schedule 31 (<i>Commercially Sensitive</i>

Reference	Amendment
Sensitive Information)	<i>Information)</i> in a form set out in Annex 24 (<i>Commercially Sensitive Information</i>) to the Variation Agreement.
Schedule 32 (Waste Law List)	Annex 15 (<i>Waste Law List</i>) of the Variation Agreement shall be inserted as a new Schedule 32 (<i>Waste Law List</i>) to the Contract.
Annex 1 (UP Assessment Pro-Forma)	Insert "In the event of any inconsistency between this proforma and Schedule 4 (<i>Payment Mechanism</i>), Schedule 4 (<i>Payment Mechanism</i>) shall take precedence." under the sub-heading "Components of the monthly Unitary Payment".
Annex 2 (Base Financial Model)	Annex 2 (<i>Base Financial Model</i>) of the Waste Management Service Contract shall be deleted and replaced with a revised Base Financial Model in the form set out in an initialled CD to Annex 16 (<i>Financial Model</i>) to the Variation Agreement.
Annex 3 (Service Delivery Plan)	Annex 3 (<i>Service Delivery Plan</i>) of the Waste Management Service Contract shall be deleted and replaced with Service Delivery Plans in the form set out in Annex 17 (<i>Service Delivery Plan</i>) to the Variation Agreement.
Exhibit 1 (EPC Guarantee)	Exhibit 1 (<i>EPC Guarantee</i>) shall be deleted and replaced with "NOT USED".
Exhibit 2 (CMA)	Exhibit 2 (<i>CMA</i>) shall be deleted and replaced with an amended and restated CMA in the form set out in Annex 22 (<i>CMA</i>) to the Variation Agreement.
Exhibit 3 (O&M Agreement)	Exhibit 3 (<i>O&M Agreement</i>) shall be deleted and replaced with an amended and restated O&M Agreement in the form set out in Annex 18 (<i>O&M Agreement</i>) to the Variation Agreement.
Exhibit 6 (Thames Waste Agreement)	Exhibit 6 (<i>Thames Waste Agreement</i>) shall be deleted and replaced with "NOT USED".