

SCHEDULE 17
COMPENSATION ON TERMINATION

Part 1 - Definitions

In each part of this **Schedule 17** (Compensation on Termination) the following expressions (in addition to those specified in **Schedule 1** (Definitions) shall save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

"Adjusted Estimated Fair Value of the Contract"

the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

- (a) where relevant any Post Termination Service Amounts paid to the Contractor (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under Clause 46 (Set Off),

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the Estimated Fair Value of the Contract is calculated;
- (ii) any insurance proceeds and other amounts owing to the Contractor to the extent not included in (i) above; and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and

- (B) the Authority has received such amounts in accordance with this Contract or such amounts are standing to the credit of the Joint Insurance Account;

“Adjusted Highest Compliant Tender Price”

the Highest Compliant Tender Price less the aggregate of:

- (a) any Post Termination Service Amounts paid to the Contractor to date;
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under Clause 46 (Set Off),

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the highest priced Compliant Tender is received;
- (ii) any insurance proceeds and other amounts owing to the Contractor, to the extent not included in (i) above; and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and
- (B) the Authority has received such amounts in accordance with the Contract;

“Agent”

Sumitomo Mitsui Banking Corporation Europe Limited in its capacity as agent for the Senior Lenders under the Senior Financing Agreements;

“Base Case Equity IRR”

██████ being the projected blended real rate of return to the Relevant Persons over the full term of

the Contract (including the non-interest bearing debt advanced to the Contractor under the Subordinated Financing Agreements) having regard to the Distributions made and projected to be made, as set out in cell D9 of the 'Results' tab in the Financial Model (set to the Sponsor Base Case scenario) as at the Restatement Date;

"Base Senior Debt Termination Amount"

subject to Clause 7.4.2 (Changes to Financing Agreements):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Senior Lenders and in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing),
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including any GIB Breakage Costs), payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract, subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account and Distribution account) held by or on behalf of the

Contractor on the Termination Date;

- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have;

“Compensation Date”

either:

- (a) if paragraph 2 (Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default) applies, the earlier of:
 - (i) the date that the New Contract is entered into; and
 - (ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Contractor; or
- (b) if paragraph 3 (No Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default) applies, the date on

which the Adjusted Estimated Fair Value of the Contract has been agreed or determined;

“Compliant Tender”

any tender submitted by a Compliant Tenderer that meets the Qualification Criteria notified under paragraph 2.3 of Part 3 (Compensation on Termination for Contractor Default);

“Compliant Tenderer”

a tenderer who is a Suitable Substitute Contractor;

“Deemed New Contract”

an agreement on the same terms and conditions as this Contract as at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated prior to the Services Commencement Date, then the Planned Services Commencement Date shall be extended by such period as would have been granted to allow a New Contractor to achieve completion of the Works;
- (b) any accrued Default Points and/or warning notices (having such meaning as can be inferred from Clause 67.3.1) or any Final Warning Notice shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial Deductions be cancelled;
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date; and
- (d) in the event that any New Contractor Rectification Works are required (in relation to the Facility that has, at the Termination Date, had an Acceptance Test Certificate issued) to enable the New Contractor to provide the Services to the full specification and standards required by this Contract then provided that the New Contractor complies with the New Contractor

Rectification Plan the Authority shall not exercise its rights to terminate the Contract under Clause 67 (Termination for Contractor Default) by reason of any failure to achieve some or all of the specification and/or standards required by this Contract during the New Contractor Rectification Period solely as a consequence of the New Contractor Rectification Works being required. Such provision shall for the avoidance of doubt not affect the Authority's entitlement to make adjustments and/or Deductions in accordance with Schedule 4 (Payment Mechanism) as a result of failure to achieve the specification and/or standards required by this Contract during the New Contractor Rectification Period;

"Estimated Fair Value of the Contract" the amount determined in accordance with paragraph 3 (No Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default) that a third party would pay to the Authority as the market value of the Deemed New Contract;

"Fair Value" the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing Parties, other than in a forced or liquidation sale;

"Force Majeure Termination Sum" the sum calculated in accordance with paragraph 1.2 of Part 5 (Compensation on Termination for a Force Majeure Event or Uninsurability) of this Schedule 17 (Compensation on Termination) as the same may be adjusted in accordance with paragraphs 1.4 to 1.6 (inclusive) of Part 5 (Compensation on Termination for a Force Majeure Event or Uninsurability) of this Schedule 17;

"GIB Breakage Costs" has the meaning given to it in the Common Terms Agreement;

"Highest Compliant Tender Price" the price offered by the Compliant Tenderer (if any) with the highest tender price and without prejudice to

	the provisions of paragraph 2.10.2 of this Schedule 17, if no Compliant Tenders are received, zero;
"Instalment Dates"	has the meaning given to it in paragraph 4.2.1(a) of Part 7 (General);
"Junior Debt"	all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;
"Liquid Market"	there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts, other forms of PPP or similar contracts for the provision of services (in each case the same as or similar to the Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Contract may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;
"Market Value Availability Deduction Amount"	for any Month or part of a Month, an amount equal to the Deductions that were made to the Monthly Unitary Charge Payment under Schedule 4 (Payment Mechanism) in the Month immediately preceding the Termination Date, less an amount equal to any Non Acceptance Deduction that was made for the Facility where Contract Waste was Not Accepted at the Termination Date but where subsequently Contract Waste is able to be Accepted whether as a result of the Authority incurring Rectification Costs or otherwise;
"Maximum Unitary Charge"	in respect of a Month, the Monthly Unitary Charge Payment payable during that Month before any Deductions are made under Clause 45 (Invoicing and Payment) and Schedule 4 (Payment Mechanism) but allowing for Indexation in accordance with Schedule 4 (Payment Mechanism);
"New Contract"	an agreement on the same terms and conditions as this Contract at the Termination Date, but with the

following amendments:

- (a) if this Contract is terminated prior to the Services Commencement Date, then the Planned Services Commencement Date shall be extended by a period to allow a New Contractor to achieve completion of the Works;
- (b) any accrued Default Points and/or warning notices (having such meaning as can be inferred from Clause 67.3.1) or any Final Warning Notice shall for the purposes of termination only, and without prejudice to the rights of the Authority to make financial Deductions, shall be cancelled;
- (c) the term of such agreement shall be equal to the term from the Termination Date to the Expiry Date;
- (d) the inclusion of a provision confirming that in the event that any New Contractor Rectification Works are required to enable the New Contractor to achieve the full specification and standards required by this Contract then provided the New Contractor complies with the New Contractor Rectification Plan for the New Contractor Rectification Period the Authority shall not exercise its rights to terminate the Contract under Clause 67 (Termination for Contractor Default) by reason of any failure to achieve some or all of the specification and/or standards required by this Contract during the New Contractor Rectification Period solely as a consequence of the New Contractor Rectification Works being required. Such provision shall for the avoidance of doubt not affect the Authority's entitlement to make adjustments and/or Deductions in accordance with Schedule 4 (Payment Mechanism) as a result of failure

to achieve the specification and/or standards required by this Contract during the New Contract Rectification Period; and

- (e) any other amendments which do not adversely affect the Contractor;

“New Contractor “

the person who has entered or who will enter into the New Contract with the Authority;

“Notice Date”

the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the Parties pursuant to paragraph 3 (No Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default);

“Outstanding Principal”

the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Financing Agreements;

“Post Termination Service Amount”

for the purposes of paragraph 2 (Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default), for the whole or any part of a Month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Unitary Charge which would have been payable in that Month under this Contract including any Third Party Income actually received by the Authority less any costs (and depreciation and other charges) incurred in generating such Third Party Income had this Contract not been terminated, less an amount equal to the aggregate of:

- (a) the Market Value Availability Deduction Amount for that Month;
- (b) the Rectification Costs incurred by the Authority in that Month;
- (c) the Authority share of any Third Party Income in that Month; and

- (d) (where relevant) the amount by which the Post Termination Service Amount for the previous Month was less than zero;

“Rectification Costs”

for the purposes of any Termination Date that occurs during the Services Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular Month or part of a Month in providing the Services, including Landfill, pre and post treatment or other disposal costs to the extent necessary;

“Relevant Assumptions”

means the assumptions that:

- (i) the sale of the Contractor is on the basis that there is no default by the Authority; and
- (ii) the sale is on a going concern basis, that no restrictions exist on the transfer of share capital; and
- (iii) no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded; and
- (iv) Third Party Income is assumed to be no higher than the lower of (or where there have been fewer than six (6) Months since the Services Commencement Date, Clause 33.6.1(b) shall apply):
 - (1) the average Third Party Income received by the Contractor on a monthly basis in the twenty four (24) month period immediately prior to the Month in which the Termination Date occurs (or where there have been more than six (6) months but less than twenty four (24) months from the Services Commencement Date the average of such Third Party Income in the months during the Services Period or where the Termination Date is sooner than six (6) months from the Services Commencement Date limb 2 below shall apply); and
 - (2) the amount relating to Third Party Income set out in the original Base Case,

but that otherwise the actual state of affairs of the Contractor and the Project is taken into account;

“Revised Senior Debt subject to Clause 7.4.2 (Changes to Financing

Termination Amount"

Agreements):

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including GIB Breakage Costs), payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination or interest rate hedging arrangements only, as a result of termination of this Contract, subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible; and
- (c) less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below);
 - (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account and Distribution account held by or on behalf of the Contractor) on the Termination Date;
 - (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
 - (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of

prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract;

(iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have; and

(v) all APB Distributions;

“Sub-Contractor Breakage Costs” Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract, but only to the extent that:

(a) the Losses are incurred in connection with the Project and in respect of the provision of Services or completion of Works, including:

(i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Losses being incurred;

(ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;

(iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and

(iv) redundancy payments,

except that where this definition applies following termination of this Contract pursuant to paragraph 3.5 of Schedule 26 (Planning) the Authority's liability to compensate the Contractor for Losses arising under paragraph (a) above shall be no greater than £4.6m;

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms including a liability in respect of loss of profit no greater than 10% of the relevant sub-contract value; and

(c) the Contractor and the relevant Sub-Contractor, Offtake Contractor or Third Party Waste Contractor has each used its reasonable endeavours to mitigate the Losses;

Losses as referred to in this definition may, without prejudice to the generality of the other provisions of this definition, include Losses which relate to the breakage or cancellation of Off-Take Contracts or Third Party Waste Contracts but only to the extent that the terms of such Off-Take or Third Party Waste Contracts are in compliance with Clause 51 of the Contract and such contracts cannot be cancelled without incurring such Losses;

"Sub-Contract Arrangements"

Hedging means any currency transaction arrangement entered into or to be entered into by the Construction Sub-Contractor together with any schedules and confirmations relating thereto;

"Tender Costs"

the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;

"Tender Process"

the process by which the Authority requests tenders from any parties interested in entering into a New

Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider, in accordance with paragraph 2 (Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default);

“Tender Process Monitor”

a third party appointed by the Contractor pursuant to paragraph 2 (Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default);

“Termination Date Discount Rate”

a discount rate expressed as $(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1$ where:

- (a) “real base case project IRR” is the real pre-tax Project IRR as set out in the Base Case;
- (b) “i” is the agreed assumed forecast rate of increase in the Inflation Index set out in the Contract for the remaining term of the Contract;
- (c) “Gilt A” is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Base Case at the Restatement Date; and
- (d) “Gilt B” is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Base Case as on the Termination Date;

“Termination Sum”

any compensation payable by the Authority to the Contractor on an early termination of this Contract under Clauses 66 (Compensation on Termination for Authority Default), 68 (Compensation on Termination for Contractor Default), 70 (Compensation on Termination for Force Majeure), 72 (Compensation on Termination for Corrupt Gifts and Fraud), 74 (Compensation on Voluntary

Termination by the Authority), 74B (Compensation on Termination on an Authority Break Point Date) and 76 (Compensation on Termination for Breach of the Refinancing Provisions) (excluding the Adjusted Highest Compliant Tender Price).

**Part 2 - Compensation following Authority Default or Authority Voluntary Termination
or Authority Break Point Date Termination**

1. Calculation of payment

1.1 On termination of this Contract pursuant to:

1.1.1 Clause 65 (Termination on Authority Default);

1.1.2 Clause 73 (Voluntary Termination by the Authority); or

1.1.3 Clause 74A (Termination on an Authority Break Point Date),

the Authority shall pay the Contractor the "Authority Default Termination Sum" in accordance with paragraph 4 of Part 7 (General) of this Schedule 17 (Compensation on Termination).

1.2 Subject to paragraphs 1.4 to 1.6 below, the Authority Default Termination Sum shall be an amount equal to the aggregate of:

1.2.1 the Base Senior Debt Termination Amount;

1.2.2 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs; and

1.2.3 the aggregate amount for which the share capital of the Contractor and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on the Relevant Assumptions.

1.3 On payment of the amount referred to in paragraph 1.1 above, the Authority shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority in accordance with Clause 80 (Consequences of Termination or Expiry).

1.4 If the aggregate of the amounts referred to in paragraph 1.2.1 and paragraph 1.2.3 is less than the Revised Senior Debt Termination Amount, then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.2 provided always that:

1.4.1 the amount referred to in paragraph 1.2.2 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the

Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and

1.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.

1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under paragraph 11.4 of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

1.6 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under paragraph 11.4 of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this paragraph 1, then the Authority Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

1.7 Upon termination of this Contract under Clause 74A.4 (Termination on an Authority Break Point Date), the Authority shall pay the Contractor, in accordance with Clause 77 (Calculation and Payment of Early Termination Payments), an amount equal to the amount payable under paragraphs 1.1 and 1.2 above, save that in calculating such amount, the amount specified in paragraph 1.2.3 of this Part 2 of this Schedule 17 (Compensation on Termination) shall be substituted by:

1.7.1 in the case of termination on the first Authority Break Point Date, £102,950,045.65;

1.7.2 in the case of termination on the second Authority Break Point Date, £97,566,056.68;

1.7.3 in the case of termination on the third Authority Break Point Date, £83,042,868.22; or

1.7.4 in the case of termination on the fourth Authority Break Point Date, £66,439,454.75.

Part 3 - Compensation on Termination for Contractor Default

The following provisions of this Part 3 (Compensation on Termination for Contractor Default) shall apply on termination of the Contract pursuant to Clause 67 (Termination for Contractor Default) and any compensation payable by the Authority to the Contractor shall be determined accordingly.

1. Retendering election

1.1 If the Authority terminates this Contract pursuant to Clause 67 (Termination for Contractor Default) following the occurrence of a Contractor Default then subject to paragraph 1.2, the Authority shall either:

1.1.1 retender the provision of the Project in accordance with paragraph 2; or

1.1.2 require an expert determination in accordance with paragraph 3.

1.2 The Authority shall be entitled to elect to retender the provision of the Project in accordance with paragraph 2 if:

1.2.1 the Authority notifies the Contractor on or before the date falling 20 Business Days after the Termination Date; and

1.2.2 there is a Liquid Market; and either:

1.2.2.1 the Senior Lenders have not exercised their rights to step-in under paragraph 5 of the Direct Agreement; or

1.2.2.2 the Contractor or the Senior Lenders have not procured the transfer of the Contractor's rights and liabilities under this Contract to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so,

but otherwise the Authority shall not be entitled to re-tender the provision of the Services and paragraph 3 shall apply.

2. Retendering procedure

If the Authority elects to retender the provision of the Project under paragraph 1.1.1, then the following provisions shall apply:

2.1 the objective of the retendering procedure shall be to establish and pay to the Contractor the Adjusted Highest Compliant Tender Price, as a result of the Tender Process;

- 2.2 the Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable;
- 2.3 the Authority shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, but shall act reasonably in setting such requirements and terms;
- 2.4 the Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under Clause 84 (Confidentiality) that is reasonably required as part of the Tender Process;
- 2.5 the Contractor may, at its own cost, appoint a person (the "Tender Process Monitor") to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Senior Lenders on the Authority's compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor will not disclose any Confidential Information to the Contractor or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price;
- 2.6 the Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure;
- 2.7 for all or any part of a Month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Contractor:
- 2.7.1 the Post Termination Service Amount for that Month, on or before the date falling ten Business Days after the end of that Month; and
- 2.7.2 the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling 20 Business Days after the Compensation Date;

- 2.8 if any Post Termination Service Amount is less than zero, then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price;
- 2.9 the Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into;
- 2.10 the Authority shall (acting reasonably) determine the Compliant Tenders and shall either:
- 2.10.1 notify the Contractor of the Adjusted Highest Compliant Tender Price; or
- 2.10.2 where the Termination Date occurred during the period commencing on the Commencement Date and ending on the 10th anniversary of the Services Commencement Date and the Authority has received no Compliant Tenders within the time stipulated for the return of such tenders then the following provisions of this paragraph 2 shall not apply to that termination and the provisions of paragraph 3 shall apply.
- 2.11 if the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure, the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling 20 Business Days after it has been determined under the Dispute Resolution Procedure and the Authority shall pay interest to the Contractor at the Senior Debt Rate on any amount of the Adjusted Highest Compliant Tender Price which has been withheld from the date specified in paragraph 2.12 below until the date specified in this paragraph 2.11. For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in paragraph 2.12, with the disputed amount being dealt with in accordance with this paragraph 2.11;
- 2.12 subject to paragraphs 2.11 and 2.15, the Authority shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling 20 Business Days after the date of the New Contract;
- 2.13 the discharge by the Authority of its payment obligation in paragraphs 2.11 and/or 2.12 above shall be in full and final settlement of all the Contractor's claims and

rights against the Authority for breaches and/or termination of this Contract and the Ancillary Documents whether under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the Termination Date that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price;

- 2.14 subject to paragraphs 2.15 and 2.18, if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two years after the Termination Date then the provisions of this paragraph 2 shall not apply to that termination and the provisions of paragraph 3 shall apply instead;
- 2.15 if the Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment to the Contractor and with effect from the time that the Authority gives notice of that event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of this Contract and any other Ancillary Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price;
- 2.16 if the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority on the date of the New Contract;
- 2.17 the Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under paragraph 3 by notifying the Contractor that this election has been made; and
- 2.18 if the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within 20 Business Days of such notification.

3. No retendering procedure

If either the Authority is not entitled to retender the provision of the Project under paragraph 1, paragraph 2.10.2 or paragraph 2.14 applies or the Authority elects to require an expert determination in accordance with this paragraph 3, then the following procedure shall apply:

- 3.1 subject to paragraph 3.2 below, the Contractor shall not be entitled to receive any Post Termination Service Amount;
- 3.2 if the Authority elects to require an expert determination in accordance with this paragraph 3 after it has elected to follow the procedure under paragraph 2, then the Authority shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 2.7;
- 3.3 in agreeing or determining the Estimated Fair Value of the Contract, the Parties shall be obliged to follow the principles set out below:
- 3.3.1 all forecast amounts (including Third Party Income) shall be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Contract;
- 3.3.2 the total of all future payments of the full Unitary Charge (without Deductions) and Third Party Income forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate save that the Third Party Income forecast shall be no higher than the lower of (i) the average Third Party Income received by the Contractor on a monthly basis in the twenty four (24) months immediately prior to the Termination Date and (ii) the amount relating to Third Party Income set out in the Sponsor Base Case as at the Restatement Date;
- 3.3.3 the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to paragraph 3.3.2, such costs to include (without double counting):
- 3.3.3.1 a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant Sponsor Base Case;
- 3.3.3.2 the costs forecast to be incurred by the Authority in providing the Services to the standards required (including, where necessary and without limitation, Landfill costs, pre and post treatment and other disposal costs);
- 3.3.3.3 all costs (and depreciation and other charges) projected to be required to generate such Third Party Income forecast; and
- 3.3.3.4 any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Authority to complete construction or development work

and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that will deliver the full Unitary Charge and the Third Party Income referred to in paragraph 3.3.2; and

3.3.4 the Sponsor Base Case assumes payment by the Authority of the Readiness Milestone Payment within 10 Business Days of the Readiness Date,

3.4 if the Parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling 20 Business Days after the date on which the Authority elected to require an expert determination in accordance with this paragraph 3, then the Adjusted Estimated Fair Value of the Contract shall be determined in accordance with the Dispute Resolution Procedure;

3.5 subject to paragraph 4.2 of Part 7 (General), the Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling 40 Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this paragraph 3;

3.6 the discharge by the Authority of its obligation in paragraph 3.5 is in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Contract or other Ancillary Document whether in contract, tort, restitution or otherwise, save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract; and

3.7 to the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Contractor to the Authority on the Compensation Date.

4. Transfer of assets on Contractor Default

On termination under Clause 67 (Termination for Contractor Default), the Authority shall have the option to require the Contractor to transfer to the Authority all of its rights, title and interest in and to the Assets (or such part of the Assets as may be required by the Authority) in accordance with Clause 80 (Consequences of Termination or Expiry).

Part 4 - Compensation following corrupt gifts and fraud

1. On termination of this Contract in accordance with Clause 71 (Termination on Corrupt Gifts and Fraud) then the Authority shall pay the Contractor an amount equal to the Revised Senior Debt Termination Amount.
2. Such amount shall be determined and paid in accordance with paragraph 4 of Part 7 (General).
3. If termination occurs in accordance with Clause 71 (Termination on Corrupt Gifts and Fraud) then the Authority may require the Contractor to transfer its rights, title and interest in and to the Assets (or such part of the Assets as may be required by the Authority) to the Authority.

Part 5 - Compensation on Termination for Force Majeure or Uninsurability

1. Amount

1.1 On termination of this Contract pursuant to:

- 1.1.1 Clause 57.3.1(a) or 57.3.1(b);
- 1.1.2 Clause 69 (Termination on Force Majeure);
- 1.1.3 Paragraph 3.5 of Schedule 26 (Planning); or
- 1.1.4 Paragraph 11.1 of Schedule 27 (Approach to Permit Risk)

the Authority shall pay to the Contractor the Force Majeure Termination Sum in accordance with this Part 5 (Compensation on Termination for Force Majeure or Uninsurability).

1.2 Subject to paragraphs 1.4 to 1.6 below and save in respect of the circumstances in paragraphs 1.7 and 1.8 below, the Force Majeure Termination Sum shall be an amount equal to the aggregate of:

- 1.2.1 the Base Senior Debt Termination Amount;
- 1.2.2 the Junior Debt less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;
- 1.2.3 all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other Distributions paid to the Shareholders of the Contractor (save to the extent deducted under paragraph 1.2.2 above); and
- 1.2.4 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs.

1.3 If the amounts referred to in paragraphs 1.2.2 and/or 1.2.3 are less than zero, then, for the purposes of the calculation in paragraph 1 they shall be deemed to be zero.

1.4 If the aggregate of the amounts referred to in paragraphs 1.2.1, 1.2.2 and 1.2.3 is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.4 provided always that:

- 1.4.1 the amount referred to in paragraph 1.2.4 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
- 1.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.
- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under paragraph 11.4.4.1 of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.6 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under paragraph 11.4.4.2 of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Part 5 (Compensation on Termination for Force Majeure or Uninsurability), then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.7 If a Force Majeure Termination occurs as a result of the operation of paragraph 3.5 of Schedule 26 (Planning) or paragraph 11.1 of Schedule 27 (Approach to Permit Risk) then for the purposes of paragraph 1.2 above:
- 1.7.1.1 limb (a) of the definition of Base Senior Debt Termination Amount shall be no higher than £ 14,593,833; and
- 1.7.1.2 limb (b) of the definition of Base Senior Debt Termination Amount shall be uncapped,

provided that for the purposes of this paragraph 1.7.1 the calculation of Base Senior Debt Termination Amount shall not take into account any amounts claimable in respect of Contingent Funding Liabilities;

1.7.2 the amounts under paragraphs 1.2.2 and 1.2.3 (Junior Debt and subscription in equity shall be no higher than £1,000; and

1.7.3 the amounts under paragraph 1.2.4 shall be no higher than £4.6m (excluding the breakage of any Sub-Contract Hedging Arrangements which shall be calculated to reflect the date of Termination),

and paragraph 1.4 shall not apply.

1.8 Where breakage costs are due to be paid by the Contractor under the Hedging Arrangements and/or are due to be paid by the Construction Sub-Contractor under the Sub-Contract Hedging Arrangements such amounts will be added to the Force Majeure Termination Sum.

2. Payment

The Force Majeure Termination Sum payable pursuant to this paragraph 2 of Part 5 (Compensation on Termination for Force Majeure or Uninsurability) shall be paid in accordance with paragraph 4 of Part 7 (General).

3. Transfer of assets

On termination, the Authority shall have the option to require the Contractor to transfer to the Authority or as directed by the Authority all of its right, title and interest in and to the Assets (or such part of the Assets as may be required by the Authority) in accordance with Clause 80 (Consequences of Termination or Expiry).

Part 6 - Compensation following breach of the Refinancing Provisions

1. Calculation of compensation

On termination of this Contract pursuant to Clause 75 (Termination for Breach of Refinancing Provisions) the Authority shall pay to the Contractor an amount equal to the Revised Senior Debt Termination Amount.

2. Payment

Such amount shall be paid in accordance with paragraph 4 of Part 7 (General) of this Schedule 17.

3. Transfer of assets

On termination pursuant to Clause 75 (Termination for Breach of Refinancing Provisions) the Authority shall have the option to require the Contractor to transfer its rights, title in and to the Assets (or such part of the Assets as may be required by the Authority) to the Authority or as directed by the Authority in accordance with Clause 80 (Consequences of Termination or Expiry).

Part 7 - General

1. Gross up of termination payments

If any amount of compensation payable by the Authority under Part 2 (Compensation following Authority Default or Authority Voluntary Termination or Authority Break Point Date Termination), Part 4 (Compensation following Corrupt Gifts and Fraud), Part 5 (Compensation on Termination for Force Majeure and Uninsurability), and Part 6 (Compensation following Breach of the Refinancing Provisions) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances, deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

2. Set off on termination

Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under Part 2 (Compensation following Authority Default or Authority Voluntary Termination or Authority Break Point Date Termination), Part 4 (Compensation following Corrupt Gifts and Fraud), Part 5 (Compensation on Termination for Force Majeure and Uninsurability), and Part 6 (Compensation Following Breach of the Refinancing Provisions) 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 Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount as the case may be at that time.

3. Exclusivity of remedy

Any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Contract or any Ancillary Document. The compensation payable under Part 2 (Compensation following Authority Default or Authority Voluntary Termination or Authority Break Point Date Termination), Part 4 (Compensation following Corrupt Gifts and Fraud), Part 5 (Compensation on Termination for Force Majeure and Uninsurability) and Part 6 (Compensation Following Breach of the Refinancing Provisions) shall be the sole remedy of the Contractor against the Authority in respect of termination of the Contract.

4. Method of payment of compensation on termination

4.1 Termination sum

The Authority shall pay to the Contractor the Termination Sum, together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate on or before the date falling 40 Business Days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with paragraph 4.2 of this Part 7 (General).

4.2 Instalments

The Authority may, other than on an Authority Default or where this Contract terminates in the circumstances set out in Clause 4 (Local Government (Contracts) Act 1997), elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:

4.2.1 in instalments as follows:

- 4.2.1.1** in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Outstanding Principal (where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal) on the dates (the "Instalment Dates") and in the amounts that the Contractor would have been required to pay principal to the Senior Lenders under the terms of the Senior Credit Agreements (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; and
- 4.2.1.2** in respect of the sum remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) shall be paid in equal instalments on the Instalment Dates;
- 4.2.1.3** where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to

the amounts that the Contractor would have been required to pay as principal to the Senior Lenders under the terms of the Senior Credit Agreements (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; or

4.2.1.4 as the Parties may otherwise agree.

4.3 Interest

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

4.4 Payment of outstanding element

If the Authority has elected to pay in accordance with paragraph 4.2 it may (on 20 Business Days' prior written notice to the Contractor) elect to pay the outstanding part of the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date.

4.5 Authority default in payment

If the Authority:

4.5.1 fails to make a payment to the Contractor in accordance with paragraphs 4.1 and/or 4.2 and/or 4.3; or

4.5.2 breaches Clause 81.1 (Restrictions on Transfer of this Contract by the Authority),

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

4.6 Certificate of Agent

The Authority shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at the relevant time. The receipt of the Agent of the Base Senior Debt Termination Amount or the Revised Senior Debt

Termination Amount or elements thereof as relevant shall discharge the Authority's obligations to pay such sums to the Contractor.