## 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"** [redacted] 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 [redacted] 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

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| | 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 |

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| | 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