SCHEDULE 6

OUTSTANDING PLANNING PERMISSION AND PPC PERMITS
PART A

DEFINITIONS

1. DEFINITIONS

In this Schedule 6, unless the context otherwise requires:

"CBL RTS" means the RTS to be designed, built and operated at Connon Bridge (Liskeard) HWRC/RTS site;

"CBLRTS Actual Planning Costs" means in the seeking of a Satisfactory CBL RTS Planning Permission all amounts reasonably and prudently spent or contracted to be spent in the proper and diligent conduct of CBL RTS Proceedings provided that such amounts are not in respect of the internal costs of:

(a) the Contractor, Hold Co or any Contractor Party;

(b) an Affiliate of the Contractor or of Hold Co; or

(c) a Senior Lender;

"CBL RTS Planning Longstop Date" means 30 April 2007;

"CBL RTS Planning Application" means a Planning Application in relation to the CBL RTS Works;

"CBL RTS Planning Application Target Date" means 1 December 2006;

"CBL RTS Planning Target Date" means 31 March 2007;

"CBL RTS Planning Permission" means a Planning Permission in relation to the CBL RTS Works;

"CBL RTS Proceedings" means Proceedings in relation to a CBL RTS Planning Application;

"CBL RTS UPP Notice" has the meaning given to it in paragraph 8.3(Unsatisfactory CBL RTS Planning Permission) in Part D of Schedule 6;

"CBL RTS Works" means all Works relating to the CBL RTS, as more particularly described in the Works Delivery Plan;

"Challenge" a challenge which could result in the quashing or modification of the relevant decision of any Relevant Authority;

"Challenge Period" means the expiry of the latest of:
(a) if a Satisfactory Planning Permission is granted by the Planning Authority or by the Secretary of State (including one granted after a reconsideration following a Challenge), the period of three months from the date on which that Planning Permission was granted without a Challenge having been instituted;

(b) if, following the grant of a Satisfactory Planning Permission, a Challenge is brought, the date on which that Planning Permission is finally upheld following the exhaustion of the Challenge which occurs on the withdrawal of the Challenge or when the time for appealing against the decision of any court has expired without any appeal having been lodged;

(c) if a Satisfactory PPC Permit is granted by the Environment Agency, the Planning Inspectorate or the Secretary of State (including one granted after a reconsideration following a Challenge), the period of three months from the date on which that PPC Permit was granted without a Challenge having been instituted; or

(d) if, following the grant of a Satisfactory PPC Permit, a Challenge is brought, the date on which that PPC Permit is finally upheld following the exhaustion of the Challenge which occurs on the withdrawal of the Challenge or when the time for appealing against the decision of any court has expired without any appeal having been lodged.

"Deemed Refusal" means:

(a) in respect of a Planning Application, any failure to determine the Planning Application by the Planning Authority within the statutory period, as extended with the agreement of the Contractor, as approved by the Authority (such approval not to be unreasonably withheld or delayed) which would entitle the Contractor to appeal against the deemed refusal of that Planning Application or any other period which the Contractor and the Planning Authority may agree shall constitute the period for determination of the Planning Application for the purposes of any appeal by the Contractor;

(b) in respect of a PPC Application, any failure to determine the PPC Application by the Environment Agency within the statutory period, as extended with the agreement of the Contractor, as approved by the Authority (such approval not to be unreasonably withheld or delayed) which would entitle the Contractor to appeal against the deemed refusal of that PPC Application or any other period which the Contractor and the Environment Agency may agree shall constitute the period for determination of the PPC Application for the purposes of any appeal by the Contractor;

"Design Data and Methodology" means, in relation to the CBL RTS Works, the Helston Works, the Launceston (Bangors) Works, the New CBL Works and the RWTP Works, the design of the relevant Works and the means by which Works and Services will be performed at the CBL RTS,
Helston HWRC, the Launceston (Bangors) site, the RWTP and Connon Bridge (Liskeard) Landfill Site, all as specified in the Works Delivery Plan and the Service Delivery Plan;

"Draft Revised Project Plan" means a draft revised project plan proposed by the Contractor pursuant to and in accordance with paragraph 3.12 (Draft Revised Project Plan) in Part B of Schedule 6;

"Hedging Arrangements" means the fixed/floating interest rate swap agreements and Euro/Sterling forward exchange contracts entered into by the Contractor at the date of this Contract to hedge the Contractor's exposure to interest rate movements and to Euro currency risk on the Euro price element of the Construction Subcontract for the RWTP, respectively;

"Helston Actual Planning Costs" means in the seeking of a Satisfactory Helston Planning Permission all amounts reasonably and prudently spent or contracted to be spent in the proper and diligent conduct of Helston Proceedings provided that such amounts are not in respect of the internal costs of:

(a) the Contractor, Hold Co or any Contractor Party;
(b) an Affiliate of the Contractor or of Hold Co; or
(c) a Senior Lender;

"Helston HWRC" means the HWRC to be refurbished and operated at the Helston (Gays Hill) site;

"Helston Planning Longstop Date" means 30 June 2007;

"Helston Planning Application" means a Planning Application in relation to the Helston Works;

"Helston Planning Target Date" means 1 November 2006;

"Helston Planning Permission" means a Planning Permission in relation to the Helston Works;

"Helston Proceedings" means Proceedings in relation to a Helston Planning Application;

"Helston UPP Notice" has the meaning given to it in paragraph 10.3 (Unsatisfactory Helston Planning Permission) in Part D of Schedule 6;

"Helston Works" means all Works relating to a HWRC at the Helston (Gays Hill) site, as more particularly described in the Works Delivery Plan;

"Launceston (Bangors) Actual Planning Costs" means in the seeking of a Satisfactory Launceston (Bangors) Planning Permission all amounts reasonably and prudently spent or contracted to be spent in the proper and diligent conduct of Launceston (Bangors) Proceedings provided that such amounts are not in respect of the internal costs of:
(a) the Contractor, Hold Co or any Contractor Party;

(b) an Affiliate of the Contractor or of Hold Co; or

(c) a Senior Lender;

"Launceston (Bangors) Planning Longstop Date" means 30 June 2007;

"Launceston (Bangors) Planning Application" means a Planning Application in relation to the Launceston (Bangors) Works;

"Launceston (Bangors) Planning Target Date" means 1 November 2006;

"Launceston (Bangors) Planning Permission" means a Planning Permission in relation to the Launceston (Bangors) Works;

"Launceston (Bangors) Proceedings" means Proceedings in relation to a Launceston (Bangors) Planning Application;

"Launceston (Bangors) UPP Notice" has the meaning given to it in paragraph 12.3( Unsatisfactory Launceston (Bangors) Planning Permission) in Part D of Schedule 6;

"Launceston (Bangors) Works" means all Works relating to an RTS and HWRC at the Launceston (Bangors) site, as more particularly described in the Works Delivery Plan;

"Leading Counsel" means Counsel experienced in town and country planning matters and practising at the town and country planning bar who:

(a) shall be agreed upon by the Parties or, in default of agreement shall be of 15 years' call and identified by the Chairman of the Planning and Environmental Bar Association or his deputy; and

(b) accepts instructions to provide an opinion pursuant to:

(i) paragraph 2 (RWTP Planning Permission and RWTP PPC Permit) in Part B of Schedule 6;

(ii) paragraph 4 (New CBL Planning Permission and New CBL PPC Permit) in Part C of Schedule 6;

(iii) paragraph 7 (CBL RTS Works) in Part D of Schedule 6;

(iv) paragraph 9 (Helston Works) in Part E of Schedule 6; or

(v) paragraph 11 (Launceston (Bangors) Works) in Part F of Schedule 6;
"New CBL Actual Planning and PPC Costs" means in the seeking of a Satisfactory New CBL Planning Permission and a Satisfactory New CBL PPC Permit all amounts reasonably and prudently spent or contracted to be spent in the proper and diligent conduct of New CBL Proceedings provided that such amounts are not in respect of the internal costs of:

(a) the Contractor, Hold Co or any Contractor Party;

(b) an Affiliate of the Contractor or of Hold Co; or

(c) a Senior Lender;

"New CBL Extension" means an extension of the operational life of the Connon Bridge (Liskeard) Landfill Site from 2014 to 2036.

"New CBL Planning and PPC Longstop Date" means 1 January 2013;

"New CBL Planning and PPC Target Date" means 31 December 2009;

"New CBL Planning Application" means a Planning Application in relation to the CBL Works and the CBL RTS being a permanent structure;

"New CBL Planning Application Target Date" means 31 December 2007;

"New CBL Planning Permission" means a Planning Permission in relation to the New CBL Works and the New CBL Extension;

"New CBL PPC Application" means a PPC Application in relation to the New CBL Works and the New CBL Extension;

"New CBL PPC Application Target Date" means 31 December 2007;

"New CBL PPC Permit" means an amended PPC Permit in relation to the CBL Works and the CBL Extension;

"New CBL Proceedings" means Proceedings in relation to a New CBL Planning Application and/or the New CBL PPC Application;

"New CBL UPP Notice" has the meaning given to it in paragraph 5.3("Unsatisfactory New CBL Planning Permission") in Part C of Schedule 6;

"New CBL Works" means all Works relating to changes to the size, profile and pre-settlement contours of the Connon Bridge (Liskeard) Landfill Site, all as more particularly described in the Works Delivery Plan;

"Off-Site Expenditure" means any costs or expenses, relating to land outside the relevant Site in order to comply with or fulfil any requirement or obligation or condition of any PPC Permit,
Planning Permission, associated planning agreement or agreement with any highway authority having a value in excess of:

(a) in relation to the RWTP Planning Permission and RWTP PPC Permit, £50,000 in aggregate;

(b) in relation to the New CBL Works Planning Permission and New CBL PPC Permit, £50,000 in aggregate;

(c) in relation to the CBL RTS Planning Permission, £50,000 in aggregate;

(d) in relation to the Helston Planning Permission, £50,000 in aggregate;

(e) in relation to the Launceston (Bangors) Planning Permission, £50,000, in aggregate;

"Planning Act" means the Town and Country Planning Act 1990;

"Planning Application" means a planning application submitted or to be submitted by or on behalf of the Contractor and/or any Subcontractor pursuant to this Schedule 6 to the appropriate Planning Authority in respect of the undertaking of the Works and/or performance of the Service at the relevant Site (including any amendment to the application) pursuant to the Planning Act;

"Planning Authority" means the relevant authority for the purposes of the Planning Act;

"Planning Permission" means detailed planning permission granted pursuant to any Planning Application being in every case granted by the Planning Authority, the Secretary of State or an inspector appointed by him for that purpose.

"PPC Application" means any application submitted or to be submitted by or on behalf of the Contractor and/or any Subcontractor pursuant to Schedule 6 to the Environment Agency for a new or amended PPC Permit in respect of the undertaking of the Works in relation to a Site and/or performance of the Service at the relevant Site (including any amendment to the application) pursuant to the Environmental Protection Act 1990, Pollution Prevention and Control Act 1999 and the Pollution Prevention and Control (England and Wales) Regulations 2000;

"PPC Permit" means a permit granted pursuant to the Environmental Protection Act 1990, Pollution Prevention and Control Act 1999 and the Pollution Prevention and Control (England and Wales) Regulations 2000;

"Proceedings" means:

(a) in relation to a Planning Application any of the following:

(i) a calling in or determination by the Secretary of State or any inspector appointed by him of the Planning Application under Section 77 of the Planning Act;
(ii) an appeal against refusal (including Deemed Refusal) of any Planning Application;

(iii) an application seeking to remove or modify any conditions imposed by the Planning Permission;

(iv) an appeal against refusal including Deemed Refusal of any application seeking to remove or modify any conditions imposed by the Planning Permission; and

(v) an application to the Court pursuant to Section 288 of the Planning Act in respect of the Planning Application;

(b) in relation to a PPC Application any of the following:

(i) an appeal against refusal (including Deemed Refusal) on any PPC Application;

(ii) an appeal against the conditions attached to the PPC Permit granted pursuant to the PPC Application;

(iii) an application seeking to vary any conditions contained in the PPC Permit;

(iv) an appeal against refusal (including Deemed Refusal) of an application seeking to vary conditions imposed in the PPC Permit;

"Relevant Authority" means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person, of the government of the United Kingdom or of the European Union;

"Revised Project" means the Project as varied by the Revised Project Plan;

"Revised Project Plan" means a Draft Revised Project Plan agreed by the Contractor and the Authority in accordance with paragraph 3.19 (Outstanding Planning Permission and PPC Permits) in Part B of Schedule 6;

"Revised Project Plan Costs" means the adjustment to the Annual Unitary Charge calculated in accordance with the provisions of Schedule 24 (Financial Adjustments) in respect of the delivery of the Revised Project in accordance with the Revised Project Plan;

"RWTP Actual Planning and PPC Costs" means in the seeking of a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit all amounts reasonably and prudently spent or contracted to be spent in the proper and diligent conduct of RWTP Proceedings provided that such amounts are not in respect of the internal costs of:

(a) the Contractor, Hold Co or any Contractor Party;

(b) an Affiliate of the Contractor or of Hold Co; or
(c) a Senior Lender;

"RWTP Actual Price" means the price in the Construction Subcontract for the RWTP £96,200,000 inflated from 31 October 2005 to the RWTP Works Access Date in accordance with the indexation provisions under the Construction Subcontract for the RWTP;

"RWTP Appeal Contingency Stage" means:

(a) in relation to the RWTP Planning Permission, all stages of the application process (including any public inquiries held) in pursuing a Satisfactory RWTP Planning Permission up to and including:

(i) a calling in or determination by the Secretary of State or any inspector appointed by him of the RWTP Planning Application under Section 77 of the Planning Act; or

(ii) an appeal against refusal (including Deemed Refusal) of any RWTP Planning Application and (if required) a subsequent calling in or determination by the Secretary of State or any inspector appointed by him of the RWTP Planning Application under Section 77 of the Planning Act; or

(iii) an application seeking to remove or modify any conditions imposed by the RWTP Planning Permission (provided that the Contractor shall ensure that all conditions that need to be removed or modified are made the subject of a single application) and (if required) an appeal against refusal of such application and (if required) a subsequent calling in or determination by the Secretary of State or any inspector appointed by him of the RWTP Planning Application under Section 77 of the Planning Act; but excluding an application to the court pursuant to Section 288 of the Planning Act or in relation to any judicial review claim against the Planning Authority;

(b) in relation to the RWTP PPC Permit all stages of the application process in pursuing a Satisfactory RWTP PPC Permit up to and including one of each of the following categories of proceedings

(i) an appeal to the Secretary of State under section 27 of the Pollution Prevention and Control (England and Wales) Regulations 2000 against refusal (including Deemed Refusal) on any RWTP PPC Application;

(ii) an appeal against the conditions attached to the RWTP PPC Permit granted pursuant to the RWTP PPC Application (provided that the Contractor shall ensure that all conditions that need to be removed or modified are made the subject of a single appeal);
(iii) an application seeking to vary any conditions contained in the RWTP PPC Permit (provided that the Contractor shall ensure that all conditions that need to be varied are made the subject of a single application);

(iv) an appeal to the Secretary of State under section 27 of the Pollution Prevention and Control (England and Wales) Regulations 2000 against refusal (including Deemed Refusal) of an application seeking to vary conditions imposed in the RWTP PPC Permit;

but excluding an application to the court in relation to any judicial review claim against the Environment Agency in relation to the RWTPPPC Application;

"RWTP Awarded Costs" has the meaning given in paragraph 2.14 (Costs Awarded in RWTP Proceedings) in Part B of this Schedule 6;

"RWTP Excess Costs" means in the seeking of a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit all amounts reasonably and prudently spent or contracted to be spent beyond the RWTP Appeal Contingency Stage in the proper and diligent conduct of RWTP Proceedings provided that such amounts are not in respect of the internal costs of:

(a) the Contractor, Hold Co or any Contractor Party;

(b) an Affiliate of the Contractor or of Hold Co; or

(c) a Senior Lender;

and have been approved by the Authority in writing;

"RWTP Modelled Planning and PPC Costs" means the amount set out in the Financial Model in relation to obtaining a Satisfactory RWTP Planning Permission and Satisfactory RWTP PPC Permit up to and including the RWTP Appeal Contingency Stage, being £1,000,000;

"RWTP Modelled Price" means the price of the Construction Subcontract for the RWTP assumed in the Base Case(s), being £96,200,000 inflated at 3.059% from 31 October 2005 to the RWTP Works Start Date;

"RWTP Planning and PPC Longstop Date" means 30 March 2010;

"RWTP Planning and PPC Target Date" means 1 June 2008;

"RWTP Planning Application" means a Planning Application in relation to the RWTP;

"RWTP Planning Application Target Date" means 1 June 2007;

"RWTP Planning Permission" means a Planning Permission in relation to the RWTP;

"RWTP PPC Application" means a PPC Application in relation to the RWTP;
"RWTP PPC Application Target Date" means 1 June 2007;

"RWTP PPC Permit" means a PPC Permit in relation to the RWTP;

"RWTP Price Decrease" means the amount (if any) by which the RWTP Actual Price is less than the RWTP Modelled Price;

"RWTP Price Increase" means the amount (if any) by which the RWTP Actual Price exceeds the RWTP Modelled Price;

"RWTP Proceedings" means Proceedings in relation to a RWTP Planning Application and/or the RWTP PPC Application;

"RWTP Site" means the St Dennis (Parkandillick) site identified as such in Part 1 of Schedule 5 (Authority Sites);

"RWTP UPP Notice" has the meaning given to it in paragraph 3.3 (Unsatisfactory RWTP Planning Permission or PPC Permit) in Part B of Schedule 6;

"RWTP Works" means all Works relating to the RWTP, as more particularly described in the Authority Works Requirements and the Works Delivery Plan;

"RWTP Works Start Date" means the last to occur of:

(a) the date on which either:

(1) a Satisfactory RWTP Planning Permission and a Satisfactory PPC Permit has been obtained and all relevant Challenge Periods have expired; or

(2) the date on which the Authority directs the Contractor under paragraph 3.29 (Challenge Period) in Part B of this Schedule 6 to proceed to implement a Satisfactory RWTP Planning Permission and Satisfactory RWTP PPC Permit without allowing the Challenge Period in respect of the Satisfactory RWTP Planning Permission and/or the Satisfactory RWTP PPC Permit to elapse); and

(b) the RWTP Access Date;

"Satisfactory CBL RTS Planning Permission" means a CBL RTS Planning Permission, together with any associated planning agreement or agreement with any Relevant Authority which is a permission for the description of the development which is the subject of the CBL RTS Planning Application and does not impose on the Contractor by way of condition or other obligation any of the following requirements:

(a) a requirement to obtain the agreement of a third party in respect of land outside the Connon Bridge (Liskeard) HWRC/RTS site other than:
(i) statutory undertakers in respect of the Specified Utilities; and

(ii) a highway authority;

(b) a requirement that will cause the Contractor to incur Off-Site Expenditure other than in relation to the connection of the Specified Utilities;

(c) a requirement which would if implemented:

(i) prevent the carrying out of the CBL RTS Works and/or the use and occupation of the CBL RTS unless and until conditions have been complied with which cannot be satisfied without the agreement of the Planning Authority or any other third party (in circumstances where the Contractor has used All Reasonable Endeavours (as defined in paragraph 7.4) to obtain such agreement but such agreement is not obtained) other than conditions usually attached to such Planning Permissions and which can be satisfied by the Contractor in the ordinary course of carrying out the CBL RTS Works;

(ii) require the payment of any sums of money to any third party landowner or occupier;

(iii) prevent the Contractor from complying with any of its obligations under this Contract or would result in the Contractor being in breach of this Contract;

(iv) unreasonably restrict the routes which servicing vehicles or delivery vehicles use to reach the CBL RTS;

(v) require that any Contract Waste will be delivered otherwise than by road going vehicles alone;

(vi) cause the Contractor to be in breach of any Necessary Consent;

(vii) require the transfer or dedication of land to any third party (except for the local highway authority) unless such transfer or dedication does not adversely affect the carrying out of Works or Services at the site;

(viii) restrict the number of waste carrying vehicles inward movements to the CBL RTS to less than the minimum inward movements of 90 waste carrying vehicles per day;

(ix) restrict the hours of delivery of Contract Waste to the CBL RTS or the hours of operation of the CBL RTS otherwise than as set out in the Authority Service Requirements;
(x) restrict the hours during which CBL RTS Works can be undertaken to less than 10 hours per day (Monday to Friday) and 4 hours on Saturday and such restriction, without the Contractor incurring material additional expenditure, would be reasonably likely to prevent the Contractor from completing the CBL RTS Works by the Planned Operational Commencement Date for the CBL RTS;

(xi) impose limitations on noise levels emanating from the CBL RTS during its operation that are lower than those contained in the current PPC Permit or Planning Permission for the Connon Bridge (Liskeard) Landfill site;

(xii) limit the life of the Planning Permission granted so that it expires on or prior to 31st October, 2010,

provided that any condition, obligation or requirement described in (b) or (c) (i), (iii), (iv), (vi), (viii), (ix) and (xi) above shall not be taken into account for the purposes of determining whether it is a Satisfactory Planning Permission if, as at the date of this Contract, an experienced waste contractor in consultation with a planning consultant experienced in making Planning Applications in relation to works and services of the scope, nature and complexity as the relevant Works and Services and with knowledge of the relevant Authority Site and exercising reasonable skill, care and diligence would have anticipated that such condition, obligation or requirement would be imposed;

"Satisfactory Helston Planning Permission" means a Helston Planning Permission, together with any associated planning agreement or agreement with any Relevant Authority which is a permission for the description of the development which is the subject of the Helston Planning Application and does not impose on the Contractor by way of condition or other obligation any of the following requirements:

(a) a requirement to obtain the agreement of a third party in respect of land outside the Helston (Gays Hill) site other than:

(i) statutory undertakers in respect of the Specified Utilities; and

(ii) a highway authority;

(b) a requirement that will cause the Contractor to incur Off-Site Expenditure other than in relation to the connection of the Specified Utilities;

(c) a requirement which would if implemented:

(i) prevent the carrying out of the Helston Works and/or the use and occupation of the Helston (Gays Hill) site unless and until conditions have been complied with which cannot be satisfied without the agreement of the Planning Authority or any other third party (in circumstances where the Contractor has used All Reasonable
Endeavours (as defined in paragraph 9.4) to obtain such agreement but such agreement is not obtained) other than conditions usually attached to such Planning Permissions and which can be satisfied by the Contractor in the ordinary course of carrying out the Helston Works;

(ii) require the payment of any sums of money to any third party landowner or occupier;

(iii) prevent the Contractor from complying with any of its obligations under this Contract or would result in the Contractor being in breach of this Contract;

(iv) unreasonably restrict the routes which servicing vehicles use to reach the Helston HWRC;

(v) require that any Contract Waste will be delivered otherwise than by road going vehicles alone;

(vi) cause the Contractor to be in breach of any Necessary Consent;

(vii) require the transfer or dedication of land to any third party (except for the local highway authority) unless such transfer or dedication does not adversely affect the carrying out of Works or Services at the site;

(viii) [not used]

(ix) restrict the hours of operation of the Helston HWRC otherwise than as set out in the Authority Service Requirements;

(x) [not used];

(xi) impose limitations on noise levels emanating from the Helston HWRC during its operation that are lower than those contained in the current PPC Permit or Planning Permission for the Helston (Gays Hill) site;

(xii) limit the life of the Planning Permission granted so that it expires on or prior to the Expiry Date,

provided that any condition, obligation or requirement described in (b) or (c) (i), (iii), (iv), (vi), and (viii) to (xi) above shall not be taken into account for the purposes of determining whether it is a Satisfactory Planning Permission if, as at the date of this Contract, an experienced waste contractor in consultation with a planning consultant experienced in making Planning Applications in relation to works and services of the scope, nature and complexity as the relevant Works and Services and with knowledge of the relevant Authority Site and exercising reasonable skill, care and diligence would have anticipated that such condition, obligation or requirement would be imposed;
"Satisfactory Launceston (Bangors) Planning Permission" means a Launceston (Bangors) Planning Permission, together with any associated planning agreement or agreement with any Relevant Authority which is a permission for the description of the development which is the subject of the Launceston (Bangors) Planning Application and does not impose on the Contractor by way of condition or other obligation any of the following requirements:

(a) a requirement to obtain the agreement of a third party in respect of land outside the Launceston (Bangors) site other than:

(i) statutory undertakers in respect of the Specified Utilities; and

(ii) a highway authority;

(b) a requirement that will cause the Contractor to incur Off-Site Expenditure other than in relation to the connection of the Specified Utilities;

(c) a requirement which would if implemented:

(i) prevent the carrying out of the Launceston (Bangors) Works and/or the use and occupation of the Launceston (Bangors) site unless and until conditions have been complied with which cannot be satisfied without the agreement of the Planning Authority or any other third party (in circumstances where the Contractor has used All Reasonable Endeavours (as defined in paragraph 11.4) to obtain such agreement but such agreement is not obtained) other than conditions usually attached to such Planning Permissions and which can be satisfied by the Contractor in the ordinary course of carrying out the Launceston (Bangors) Works;

(ii) require the payment of any sums of money to any third party landowner or occupier;

(iii) prevent the Contractor from complying with any of its obligations under this Contract or would result in the Contractor being in breach of this Contract;

(iv) unreasonably restrict the routes which servicing vehicles or delivery vehicles use to reach the Launceston (Bangors) site;

(v) require that any Contract Waste will be delivered otherwise than by road going vehicles alone;

(vi) cause the Contractor to be in breach of any Necessary Consent;

(vii) require the transfer or dedication of land to any third party (except for the local highway authority) unless such transfer or dedication does not adversely affect the carrying out of Works or Services at the site;
(viii) [Not used];

(ix) restrict the hours of delivery of Contract Waste to the Launceston (Bangors) site or the hours of operation of the Launceston (Bangors) site other than as set out in the Authority Service Requirements;

(x) [not used];

(xi) impose limitations on noise levels emanating from the Launceston (Bangors) site during its operation that are lower than those contained in the current PPC Permit or Planning Permission for the Launceston (Bangors) Site;

(xii) limit the life of the Planning Permission granted so that it expires on or prior to 31 December 2012,

provided that any condition, obligation or requirement described in (b) or (c) (i), (iii), (iv), (vi), and (viii) to (xi) above shall not be taken into account for the purposes of determining whether it is a Satisfactory Planning Permission if, as at the date of this Contract, an experienced waste contractor in consultation with a planning consultant experienced in making Planning Applications in relation to works and services of the scope, nature and complexity as the relevant Works and Services and with knowledge of the relevant Authority Site and exercising reasonable skill, care and diligence would have anticipated that such condition, obligation or requirement would be imposed;

"Satisfactory New CBL Planning Permission" means a New CBL Planning Permission, together with any associated planning agreement or agreement with any Relevant Authority which is a permission for the description of the development and the extension which is the subject of the New CBL Planning Application and does not impose on the Contractor by way of condition or other obligation any of the following requirements:

(a) a requirement to obtain the agreement of a third party (other than the Environmental Agency in relation to the New CBL PPC) in respect of land outside the Connon Bridge (Liskeard) Landfill Site other than:

   (i) statutory undertakers in respect of the Specified Utilities; and

   (ii) a highway authority;

(b) a requirement that will cause the Contractor to incur Off-Site Expenditure other than in relation to the connection of the Specified Utilities;

(c) a requirement which if implemented would:

   (i) prevent the carrying out of the New CBL Works and/or the use and occupation of the Connon Bridge (Liskeard) Landfill Site unless and until conditions have been
complied with which cannot be satisfied without the agreement of the Planning Authority or any other third party (in circumstances where the Contractor has used All Reasonable Endeavours (as defined in paragraph 4.4) to obtain such agreement but such agreement is not obtained) other than conditions usually attached to such Planning Permissions and which can be satisfied by the Contractor in the ordinary course of carrying out the New CBL Works;

(ii) require the payment of any sums of money to any third party;

(iii) prevent the Contractor from complying with any of its obligations under this Contract or would result in the Contractor being in breach of this Contract;

(iv) unreasonably restrict the routes which servicing vehicles or delivery vehicles use to reach the Connon Bridge (Liskeard) Landfill Site;

(v) require that any Contract Waste will be delivered otherwise than by road going vehicles alone;

(vi) cause the Contractor to be in breach of any Necessary Consent;

(vii) impose limitations on noise levels emanating from the Connon Bridge (Liskeard) Landfill Site during its operation which are lower than those contained in the current PPC Permit or Planning Permission;

(viii) require the transfer or dedication of land to any third party unless such transfer or dedication does not adversely affect the carrying out of Works or Services at the site;

(ix) restrict the number of waste carrying vehicles inwards movements the Connon Bridge (Liskeard) Landfill Site to less than the minimum inward movements of 125 waste carrying vehicles per day;

(x) restrict the hours during which New CBL Works can be undertaken at the Connon Bridge (Liskeard) Landfill Site to less than 10 hours per day (Monday to Friday) and 4 hours on Saturday and such restriction, without the Contractor incurring material additional expenditure, would be reasonably likely to adversely affect the carrying out of Works and Services at the site;

(xi) restrict the hours of delivery of Contract Waste to the Connon Bridge (Liskeard) Landfill Site or the hours of operation of the Connon Bridge (Liskeard) Landfill Site otherwise than as set out in the Authority Service Requirements;

(xii) prevents waste originating in Cornwall which is similar in type to Contract Waste being landfilled at the Connon Bridge (Liskeard) Landfill Site; or
(xiii) limit the life of the Planning Permission granted so that it expires on or prior to the Expiry Date,

provided that any condition, obligation or requirement described in (b) or (c) (i), (iii), (iv), (vi), (vii), (ix), or (xi) above shall not be taken into account for the purposes of determining whether it is a Satisfactory Planning Permission if, as at the date of this Contract, an experienced waste contractor in consultation with a planning consultant experienced in making Planning Applications in relation to works and services of the scope, nature and complexity as the relevant Works and Services and with knowledge of the relevant Authority Site and exercising reasonable skill, care and diligence would have anticipated that such condition, obligation or requirement would be imposed;

"Satisfactory New CBL PPC Permit" means a New CBL PPC Permit that is consistent with the New CBL Extension and enables the Contractor to undertake the New CBL Works and to deliver the relevant part of the Service at the Connon Bridge (Liskeard) Landfill Siteand does not impose on the Contractor by way of condition or other obligation any of the following requirements:

(a) a requirement to obtain the agreement of a third party (other than the Planning Authority in relation to the New CBL Planning Permission) in respect of land outside the Connon Bridge (Liskeard) Landfill Site other than:

(i) statutory undertakers in respect of any Specified Utilities; and

(ii) a highway authority;

(b) a requirement that will cause the Contractor to incur Off-Site Expenditure other than in relation to the connection of the Specified Utilities;

(c) a requirement which if implemented would:

(i) prevent the carrying out of the New CBL Works and/or the use and occupation of the Connon Bridge (Liskeard) Landfill Site unless and until conditions have been complied with which cannot be satisfied without the agreement of the Environment Agency or any other third party (in circumstances where the Contractor has used All Reasonable Endeavours (as defined in paragraph 4.4) to obtain such agreement but such agreement is not obtained) other than conditions usually attached to such PPC Permits and which can be satisfied by the Contractor in the ordinary course of carrying out the New CBL Works;

(ii) require the payment of any sums of money to any third party landowner or occupier;

(iii) prevent the Contractor from complying with any of its obligations under this Contract or would result in the Contractor being in breach of this Contract;
(iv) unreasonably restrict the routes which servicing vehicles or delivery vehicles use to reach the Connon Bridge (Liskeard) Landfill Site;

(v) cause the Contractor to be in breach of any Necessary Consent;

(vi) impose limitations on noise levels emanating from the Connon Bridge (Liskeard) Landfill Site during its operation that are lower than those contained in the current PPC Permit or Planning Permission;

(vii) restrict the number of waste carrying vehicles inward movements to the Connon Bridge (Liskeard) Landfill Site to less than the minimum inward movements of 125 waste carrying vehicles per day;

(viii) restrict the hours of delivery of Contract Waste to the Connon Bridge (Liskeard) Landfill Site or the hours of operation of the Connon Bridge (Liskeard) Landfill Site otherwise than as set out in the Authority Service Requirements; or

(ix) prevent waste originating in Cornwall which is similar in type to Contract Waste being landfilled at the Connon Bridge (Liskeard) Landfill Site,

provided that any condition, obligation or requirement described in (b) or (c) (i), or (iii) to (viii) above shall not be taken into account for the purposes of determining whether it is a Satisfactory PPC Permit if, as at the date of this Contract, an experienced waste contractor in consultation with planning consultant experienced in making PPC Applications in relation to works and services of the scope, nature and complexity as the relevant Works and Services and with knowledge of the relevant Authority Site and exercising reasonable skill, care and diligence would have anticipated that such condition, obligation or requirement would be imposed;

"Satisfactory Planning Permission" means a Satisfactory CBL RTS Planning Permission, a Satisfactory Helston Planning Permission, a Satisfactory Launceston (Bangors) Planning Permission, a Satisfactory New CBL Planning Permission or a Satisfactory RWTP Planning Permission;

"Satisfactory PPC Permit" means a Satisfactory New CBL PPC Permit or a Satisfactory RWTP PPC Permit;

"Satisfactory RWTP Planning Permission" means a RWTP Planning Permission, together with any associated planning agreement or agreement with any Relevant Authority which is a permission for the description of the development which is the subject of the RWTP Planning Application and does not impose on the Contractor by way of condition or other obligation any of the following requirements:
(a) a requirement to obtain the agreement of a third party other than the Environmental Agency in relation to the New RWTP PPC in respect of land outside the RWTP Site other than:

(i) statutory undertakers in respect of any Specified Utilities or the connection of the RWTP to the grid; and

(ii) a highway authority;

(b) a requirement that will cause the Contractor to incur Off-Site Expenditure other than in relation to the connection of the Specified Utilities and connection of the RWTP to the grid;

(c) a requirement which if implemented would:

(i) prevent the carrying out of the RWTP Works and/or the use and occupation of the RWTP Site unless and until conditions have been complied with which cannot be satisfied without the agreement of the Planning Authority or any other third party (in circumstances where the Contractor has used All Reasonable Endeavours (as defined in paragraph 2.4) to obtain such agreement but such agreement is not obtained) other than conditions usually attached to such Planning Permissions and which can be satisfied by the Contractor in the ordinary course of carrying out the RWTP Works;

(ii) require the payment of any sums of money to any third party landowner or occupier;

(iii) prevent the Contractor from complying with any of its obligations under this Contract or would result in the Contractor being in breach of this Contract;

(iv) unreasonably restrict the routes which servicing vehicles or delivery vehicles use to reach the RWTP Site;

(v) require that any Contract Waste will be delivered otherwise than by road going vehicles alone;

(vi) cause the Contractor to be in breach of any Necessary Consent;

(vii) imposes a restriction on noise levels emanating from the RWTP Site of greater than 50 dbA at 150 m during operation and 85dbA at 150 m during works (or equivalent noise levels at the receptors nominated by the Planning Authority taking into account the relevant distances) from the perimetre of the RWTP Site;
(viii) require the transfer or dedication of land to any third party (except for the local highway authority) unless such transfer or dedication does not adversely affect the carrying out of Works or Services at the site;

(ix) restrict the number of waste carrying vehicles inward movements to the RWTP Site to less than the minimum inward movements of 150 waste carrying vehicles per day;

(x) restrict the hours of delivery of Contract Waste to the RWTP or the hours of operation of the RWTP otherwise than as set out in the Authority Service Requirements and the Service Delivery Plan (respectively);

(xi) restrict the hours during which RWTP Works can be undertaken at the RWTP Site to less than 10 hours per day (Monday to Friday) and 4 hours on Saturday and such restriction, without the Contractor incurring material additional expenditure, would be reasonably likely prevent the Contractor from completing the RWTP Works by the Planned Operational Commencement Date for the RWTP;

(xii) prevent waste originating in Cornwall which is similar in type to Contract Waste being processed at the RWTP; or

(xiii) limit the life of the Planning Permission granted so that it expires on or prior to the Expiry Date,

provided that any condition, obligation or requirement described in (b) or (c) (i), (iii), (iv), (vi), (viii), (ix), or (x) above shall not be taken into account for the purposes of determining whether it is a Satisfactory Planning Permission if, as at the date of this Contract, an experienced waste contractor in consultation with a planning consultant experienced in making Planning Applications in relation to works and services of the scope, nature and complexity as the relevant Works and Services and with knowledge of the relevant Authority Site and exercising reasonable skill, care and diligence would have anticipated that such condition, obligation or requirement would be imposed;

"Satisfactory RWTP PPC Permit" means a RWTP PPC Permit that is consistent with and enables the Contractor to enable it to undertake the RWTP Works and to deliver the relevant part of the Service at the RWTP and does not impose on the Contractor by way of condition or other obligation any of the following requirements:

(a) a requirement to obtain the agreement of a third party other than the Planning Authority in relation to the RWTP Planning Permission in respect of land outside the RWTP Site other than:
(i) statutory undertakers in respect of any Specified Utilities or connection of the RWTP to the grid; and

(ii) a highway authority;

(b) a requirement which will cause the Contractor to incur Off-Site Expenditure other than in relation to the connection of the Specified Utilities and connection of the RWTP to the grid;

(c) a requirement which if implemented would:

(i) prevent the carrying out of the RWTP Works and/or the use and occupation of the RWTP Site unless and until conditions have been complied with which cannot be satisfied without the agreement of the Environment Agency or any other third party (in circumstances where the Contractor has used All Reasonable Endeavours (as defined in paragraph 2.4) to obtain such agreement but such agreement is not obtained) other than conditions usually attached to such PPC Permits and which can be satisfied by the Contractor in the ordinary course of carrying out the RWTP Works;

(ii) require the payment of any sums of money to any third party landowner or occupier;

(iii) prevent the Contractor from complying with any of its obligations under this Contract or would result in the Contractor being in breach of this Contract;

(iv) unreasonably restrict the routes which servicing vehicles or delivery vehicles use to reach the RWTP;

(v) cause the Contractor to be in breach of any Necessary Consent;

(vi) imposes a restriction on noise levels emanating from the RWTP Site of greater than 50 dbA at 150 metres, during operation and 85dbA at 150m during works (or equivalent noise level at the receptors nominated by the Relevant Authority taking into account the relevant distances) from the perimetre of the RWTP Site;

(vii) restrict the number of waste carrying vehicles inward movements to the RWTP Site to less than the minimum inward movements of 150 waste carrying vehicles per day;

(viii) restrict the hours of delivery of Contract Waste to the RWTP or the hours of operation of the RWTP otherwise than as set out in the Authority Service Requirements and the Service Delivery Plan (respectively); or
(ix) prevent waste originating in Cornwall which is similar in type to Contract Waste being processed at the RWTP,

provided that any condition, obligation or requirement described in (b) or (c) (i), or (iii) to (viii) above shall not be taken into account for the purposes of determining whether it is a Satisfactory PPC Permit if, as at the date of this Contract, an experienced waste contractor in consultation with a planning consultant experienced in making PPC Applications in relation to works and services of the scope, nature and complexity as the Works and Services and with knowledge of the relevant Authority Site and exercising reasonable skill, care and diligence would have anticipated that such condition, obligation or requirement would be imposed;

"Unsatisfactory CBL RTS Planning Permission" means a CBL RTS Planning Permission which is not a Satisfactory CBL RTS Planning Permission;

"Unsatisfactory Helston Planning Permission" means a Helston Planning Permission which is not a Satisfactory Helston Planning Permission;

"Unsatisfactory Launceston (Bangors) Planning Permission" means a Launceston (Bangors) Planning Permission which is not a Satisfactory Launceston (Bangors) Planning Permission;

"Unsatisfactory New CBL Planning Permission" means a New CBL Planning Permission which is not a Satisfactory New CBL Planning Permission;

"Unsatisfactory New CBL PPC Permit" means a New CBL PPC Permit which is not a Satisfactory New CBL PPC Permit;

"Unsatisfactory RWTP Planning Permission" means a RWTP Planning Permission which is not a Satisfactory RWTP Planning Permission;

"Unsatisfactory RWTP PPC Permit" means a RWTP PPC Permit which is not a Satisfactory RWTP PPC Permit;
PART B
Residual Waste Treatment Plant

2A ACKNOWLEDGEMENT

The Authority and the Contractor acknowledge that as at the Amendment Date a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit have been obtained.

2. RWTP PLANNING PERMISSION AND RWTP PPC PERMIT

Contractor to obtain RWTP Planning Permission and RWTP PPC Permit

2.1 The Contractor shall (subject to the provisions of this paragraph 2):

(a) use All Reasonable Endeavours to obtain a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit to enable it to undertake the RWTP Works and to deliver the relevant part of the Service at the Residual Waste Treatment Plant;

(b) in pursuing the RWTP Planning Permission and the RWTP PPC Permit, use reasonable endeavours to:

(i) lodge the RWTP Planning Application by the RWTP Planning Application Target Date;

(ii) lodge the RWTP PPC Application by the RWTP PPC Application Target Date; and

(iii) obtain a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit by the RWTP Planning and PPC Target Date; and

(c) implement the Satisfactory RWTP Planning Permission and the Satisfactory RWTP PPC Permit:

(i) in accordance with the terms of the Contract; and

(ii) within the period of their validity and in accordance with their terms.

2.2 The Contractor shall:

(a) subject to paragraphs 2.11 to 2.14, bear the costs of making a RWTP Planning Application and a RWTP PPC Application and of obtaining, implementing and complying with the provisions and conditions of a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit;

(b) within five (5) Business Days of the end of each Contract Month, provide to the Authority a written summary of:
(i) the steps taken by the Contractor in that Contract Month in compliance with its obligations under paragraph 2.1; and

(ii) those steps which it anticipates taking in the following Contract Month in order to comply with its obligations under paragraph 2.1.

2.3 Without limiting the Contractor’s obligations under paragraphs 2.1 and 2.2 the Authority may within ten (10) Business Days after receipt of the summary referred to in paragraph 2.2(b):

(a) notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under paragraph 2.1 and the Contractor shall give due consideration to any such suggestions of the Authority; and

(b) notify the Contractor if any steps taken or proposed to be taken by the Contractor as referred to in the summary do not in the Authority’s opinion constitute All Reasonable Endeavours to obtain a Satisfactory RWTP Planning Permission or a Satisfactory RWTP PPC Permit.

Meaning of All Reasonable Endeavours

2.4 For the purposes of this Part B, “All Reasonable Endeavours” means that, having regard to the RWTP Site and the RWTP Planning Application Target Date, RWTP PPC Application Target Date and the RWTP Planning and PPC Target Date, the Contractor shall:

(a) in relation to the making of any RWTP Planning Application and any RWTP PPC Application and seeking to obtain a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit, incur such expenditure and do all other things reasonably necessary (including the commencement and prosecution or defence of RWTP Proceedings in accordance with and subject to the provisions hereof) and in doing so shall exercise all proper care and skill to secure or procure the grant of a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit; and

(b) subject to paragraph 2.11 (Costs up to and including RWTP Appeal Contingency Stage), meet the costs of any RWTP Proceedings such costs to include the cost of instructing Leading Counsel (including for the purposes of deciding whether to initiate or pursue RWTP Proceedings) and securing the services of any expert witnesses, considered necessary for the purpose of such RWTP Proceedings; and
(c) provide as soon as reasonably practicable to the Authority any draft instructions (including enclosures) that are proposed to be given to Leading Counsel (for the Authority's approval in accordance with paragraph 2.5(RWTP Proceedings)) and opinions received from Leading Counsel relating to such RWTP Proceedings in respect of any RWTP Planning Permission or RWTP PPC Permit sought. The Authority's Representative shall be entitled to attend any conference with Leading Counsel and the Contractor shall use all reasonable endeavours when arranging such conference to agree a convenient time for attendance by the Authority's Representative.

RWTP Proceedings

2.5 If the relevant Planning Authority (in the case of the RWTP Planning Application) or the Environment Agency (in the case of the RWTP PPC Application):

(a) resolves to or is minded to grant a RWTP Planning Permission and the RWTP Planning Application is called-in by the Secretary of State under section 77 of the Planning Act; or

(b) refuses to grant a RWTP Planning Permission (including any refusal on any re-determination of a RWTP Planning Application following the quashing of a decision to grant such RWTP Planning Permission) or refuses to grant a RWTP PPC Permit or there is a Deemed Refusal; or

(c) grants a RWTP Planning Permission which is not a Satisfactory RWTP Planning Permission or grants a RWTP PPC Permit which is not a Satisfactory RWTP PPC Permit in circumstances where the Authority and the Contractor agree (or are unable to agree and it is determined pursuant to clause 102(Dispute Resolution)) that RWTP Proceedings may secure a Satisfactory RWTP Planning Permission of Satisfactory RWTP PPC Permit (as the case may be);

the Contractor shall, unless the parties agree (acting reasonably) that they do not require the opinion of Leading Counsel to determine the merits of pursuing any RWTP Proceedings, take the opinion of Leading Counsel as to the merits of pursuing any RWTP Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably. For the avoidance of doubt, Leading Counsel shall be instructed by the Contractor and the Authority.

2.6 If Leading Counsel advises the Contractor pursuant to paragraphs 2.5, 2.7 or 2.8(b) that there is a reasonable prospect of success in pursuing any RWTP Proceedings in order to obtain a Satisfactory RWTP Planning Permission or a Satisfactory RWTP PPC Permit (as the case may be) or if the parties agree that the Contractor shall pursue RWTP Proceedings without referring the matter to Leading Counsel, the Contractor shall obtain
the prior written consent of the Authority to institute such RWTP Proceedings, which the Authority shall not unreasonably withhold or delay and if such approval is granted the Contractor shall pursue or defend the RWTP Proceedings until determination of such RWTP Proceedings unless subsequently in accordance with paragraph 2.8 the Authority directs that such RWTP Proceedings shall cease to be pursued. Where the proposed RWTP Proceedings is an application or appeal to remove or modify any condition imposed by the RWTP Planning Permission or RWTP PPC Permit (as the case may be) the Contractor shall ensure that all conditions that need to be removed or modified are made the subject of a single application or appeal (as the case may be).

2.7 At any reasonable time after the commencement of any RWTP Proceedings, the Authority may (acting reasonably) require the Contractor to take (or the Contractor may take (subject to obtaining the Authority's prior written consent (acting reasonably))) the opinion of Leading Counsel as to the merits of continuing to pursue such RWTP Proceedings and to make such opinion available to the Authority and in each case the identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably.

2.8 In the event that Leading Counsel advises under paragraph 2.6 or subsequently under paragraph 2.7 or 2.8(b) that there is no reasonable prospect of success, the Authority shall, by serving written notice on the Contractor on or before a date forty (40) Business Days from the receipt by the Authority of the advice of Leading Counsel either:

(a) direct that the Contractor shall not pursue or shall cease to pursue the relevant RWTP Proceedings;

(b) require the Contractor to take the opinion of an alternative Leading Counsel in accordance with paragraph 2.7 provided that the Authority shall not be entitled to require the Contractor to take the opinion of more than one alternative Leading Counsel pursuant to this subparagraph (b) in relation to the merits of continuing to pursue the same RWTP Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably; or

(c) direct that the Contractor institutes or continues the relevant RWTP Proceedings, and such a direction shall be treated as an approval to those RWTP Proceedings given pursuant to paragraph 2.6 and shall act reasonably in consultation with the Contractor before determining which option to select.

2.9 If the Authority:
(a) does not give approval to any RWTP Proceedings; or

(b) directs that the Contractor should cease to pursue any RWTP Proceedings,

the Contractor shall be entitled to institute or continue to pursue such RWTP Proceedings (subject to service of prior written notice of its intention to do so upon the Authority within twenty (20) Business Days of receipt of the Authority’s notice under paragraph 2.8 and the Contractor shall bear all the costs of instituting or continuing to pursue such RWTP Proceedings which it incurs from the point at which the Authority serves notice pursuant to paragraph 2.8 and in such case paragraphs 2.11 (Costs up to and including RWTP Appeal Contingency Stage) and 2.14 (Costs Awarded in RWTP Proceedings) shall not apply to those costs.

The Contractor shall be entitled, in its absolute discretion, to cease to pursue any RWTP Proceedings which it institutes or continues pursuant to paragraph 2.9 (approval being withheld or a direction having been given to the contrary) and in respect of which it has undertaken to bear the costs pursuant to paragraph 2.9.

Costs up to and Including RWTP Appeal Contingency Stage

The Contractor shall bear all costs of making a RWTP Planning Application and a RWTP PPC Application and of obtaining a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit (including for the avoidance of doubt the costs of obtaining any Leading Counsel’s opinion under paragraphs 2.5 to 2.10) up to and including the RWTP Appeal Contingency Stage. The Contractor shall notify the Authority that the RWTP Appeal Contingency Stage has finished within five (5) Business Days of the final determination of the last RWTP Proceeding comprising the RWTP Appeal Contingency Stage. Subject to the Contractor complying with its payment obligations (if any) under paragraphs 2.9 and 2.15 (RWTP Actual Planning and PPC Costs under budget), the Authority shall indemnify the Contractor for nine-tenths of all RWTP Excess Costs provided that:

(a) the Contractor shall within twenty (20) Business Days of the notification of the end of the RWTP Appeal Contingency Stage provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such further RWTP Proceedings that the Contractor considers are necessary and appropriate to obtain a Satisfactory RWTP Planning Permission or a Satisfactory RWTP PPC Permit (as the case may be) including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate or employ any additional or alternative
legal or professional advisers without the further approval of the Authority (such approval not to be unreasonably withheld or delayed); and

(b) the Contractor shall use all reasonable endeavours to ensure that at all times the costs of all RWTP Proceedings beyond the RWTP Appeal Contingency Stage are kept to the minimum prudent and reasonable.

RWTP Excess Costs beyond the RWTP Appeal Contingency Stage

2.12 Where the Authority is required to indemnify the Contractor pursuant to paragraph 2.11 (Costs up to and including RWTP Appeal Contingency Stage) for RWTP Excess Costs the Authority shall reimburse the Contractor such RWTP Excess Costs together with any reasonable and proper financing costs through any one of the following means, the choice of such means to be in the Authority's absolute discretion:

(a) by way of an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Financial Adjustments) for all or some part of the remainder of the Service Period;

(b) by way of a lump sum payment made in one or more instalments together with an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Financial Adjustments);

(c) by way of a lump sum payment made in one or more instalments in respect of the whole amount; or

(d) by way of set-off in accordance with clause 66 (Set-off).

2.13 Should the Authority specify the means by which any such RWTP Excess Costs are to be paid, and so requests in writing, the Contractor shall provide such breakdown of costs as is reasonably practicable for each of the specified methods of payment.

Costs awarded in RWTP Proceedings

2.14 Where the Authority is required to indemnify the Contractor for RWTP Excess Costs in pursuant to paragraph 2.11, any costs awarded to the Contractor in those RWTP Proceedings ("RWTP Awarded Costs") shall be paid as follows:

(a) if the Contractor's RWTP Actual Planning and PPC Costs up to and including the RWTP Appeal Contingency Stage are more than its RWTP Modelled Planning and PPC Costs (the difference being "RWTP ACS Excess Costs"), then the RWTP Awarded Costs shall be paid in the following priority:

(i) first, to the Contractor up to an amount equal to the RWTP ACS Excess Costs;
(ii) second, to the Authority up to an amount equal to the RWTP Modelled Planning and PPC Costs; and

(iii) thereafter any additional RWTP Awarded Costs shall be divided 90:10 between the Authority and the Contractor respectively; or

(b) if the Contractor's RWTP Actual Planning and PPC Costs up to and including the RWTP Appeal Contingency Stage are less than or equal to its RWTP Modelled Planning and PPC Costs, then the RWTP Awarded Costs shall be paid in the following priority:

(i) first, to the Authority up to an amount equal to the RWTP Modelled Planning and PPC Costs; and

(ii) thereafter any additional RWTP Awarded Costs shall be divided 90:10 between the Authority and the Contractor respectively,

in each case, by way of a lump sum payment within twenty (20) Business Days of the Contractor receiving the RWTP Awarded Costs.

**RWTP Actual Planning and PPC Costs under budget**

2.15 If the RWTP Actual Planning and PPC Costs up to and including the RWTP Appeal Contingency Stage are less than the RWTP Modelled Planning and PPC Costs, the Contractor shall pay to the Authority an amount equal to the difference between the RWTP Modelled Planning Costs and the RWTP Actual Planning and PPC Costs within twenty (20) Business Days of:

(a) the date of obtaining a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit, where obtained within the RWTP Appeal Contingency Stage; or

(b) the date on which the Contractor provides a notice to the Authority under paragraph 2.11 confirming that the RWTP Appeal Contingency Stage has finished.

2.16 The Contractor is responsible for meeting any RWTP Actual Planning and PPC Costs up to and including the RWTP Appeal Contingency Stage in excess of the RWTP Modelled Planning and PPC Costs.

3. **SATISFACTORY RWTP PLANNING PERMISSION AND SATISFACTORY RWTP PPC PERMIT**

3.1 Where the Contractor obtains:
(a) a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit; or

(b) an Unsatisfactory RWTP Planning Permission or an Unsatisfactory RWTP PPC Permit in respect of which an Authority Change Notice has been agreed and implemented to enable the Contractor either to comply with the Unsatisfactory RWTP Planning Permission or the Unsatisfactory RWTP PPC Permit (as the case may be) without being in breach of this Contract and which:

(i) renders compliance with the relevant part of the Unsatisfactory RWTP Planning Permission or the Unsatisfactory RWTP PPC Permit (as the case may be) unnecessary; and/or

(ii) renders the Unsatisfactory RWTP Planning Permission a Satisfactory RWTP Planning Permission or, where relevant, renders the Unsatisfactory RWTP PPC Permit a Satisfactory RWTP PPC Permit,

it shall, subject to paragraphs 3.22 and 3.23 (Challenge Period) after the RWTP Works Start Date (provided such date is prior to the RWTP Planning and PPC Long Stop Date), proceed to implement the Satisfactory RWTP Planning Permission and Satisfactory RWTP PPC Permit.

3.2 As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of a RWTP Planning Permission or RWTP PPC Permit the Contractor shall notify the Authority in writing whether or not the Contractor considers:

(a) the RWTP Planning Permission is a Satisfactory RWTP Planning Permission or is an Unsatisfactory RWTP Planning Permission; or

(b) the RWTP PPC Permit is a Satisfactory RWTP PPC Permit or is an Unsatisfactory RWTP PPC Permit.

Unsatisfactory RWTP Planning Permission and PPC Permit

3.3 If the Contractor considers that the RWTP Planning Permission is an Unsatisfactory RWTP Planning Permission or that the RWTP PPC Permit is an Unsatisfactory RWTP PPC Permit it shall provide, within ten (10) Business Days of the notice given to the Authority pursuant to paragraph 3.2:

(a) full details of the grounds for such opinion; and

(b) an indication of what action could be taken (if any) by the Contractor or the Authority to enable the Contractor to comply with the RWTP Planning Permission
or RWTP PPC Permit (as the case may be) without being in breach of this Contract which would:

(i) in the case of the RWTP Planning Permission, render it a Satisfactory RWTP Planning Permission or render compliance with the relevant part of such Unsatisfactory RWTP Planning Permission unnecessary; or

(ii) in the case of the RWTP PPC Permit, render it a Satisfactory RWTP PPC Permit or render compliance with the relevant part of such Unsatisfactory RWTP PPC Permit unnecessary,

including without limitation:

(1) RWTP Proceedings; or

(2) the issue of an Authority Change Notice to vary the Works and/or Services.

(the "RWTP UPP Notice")

3.4 If the Contractor fails to provide the RWTP UPP Notice within twenty five (25) Business Days after issue of the RWTP Planning Permission or the RWTP PPC Permit, the RWTP Planning Permission or the RWTP PPC Permit (as the case may be) shall be deemed to be a Satisfactory RWTP Planning Permission or Satisfactory RWTP PPC Permit (as applicable).

3.5 If:

(a) the Contractor notifies the Authority that the RWTP Planning Permission is a Satisfactory RWTP Planning Permission and that the RWTP PPC Permit is a Satisfactory RWTP PPC Permit; or

(b) the RWTP Planning Permission is deemed to be a Satisfactory RWTP Planning Permission and the RWTP PPC Permit is deemed to be a Satisfactory RWTP PPC Permit in accordance paragraph 3.4,

then the provisions of paragraph 3.1 shall apply accordingly.

3.6 If the Contractor notifies the Authority that the RWTP Planning Permission is an Unsatisfactory RWTP Planning Permission or that the RWTP PPC Permit is an Unsatisfactory RWTP PPC Permit in accordance with paragraphs 3.2 and 3.3 the Authority shall, within forty (40) Business Days of receipt of the RWTP UPP Notice given pursuant to paragraph 3.3 notify the Contractor in writing whether or not the Authority accepts that the RWTP Planning Permission is an Unsatisfactory RWTP Planning Permission or the RWTP PPC Permit is an Unsatisfactory RWTP PPC Permit (as the

LIB01/F6JDWL/2591474.12 Hogan Lovells
case may be) and whether the Authority accepts the action indicated by the Contractor in the RWTP UPP Notice and in particular whether the Authority accepts that RWTP Proceedings will be likely to secure a Satisfactory RWTP Planning Permission or a Satisfactory RWTP PPC Permit (as the case may be) having regard to the grounds given by the Contractor in the RWTP UPP Notice.

3.7 If the Authority does not accept or does not notify the Contractor (in which case the Authority shall be deemed not to have accepted), within the time set out in paragraph 3.6 that the RWTP Planning Permission is an Unsatisfactory RWTP Planning Permission or that the RWTP PPC Permit is an Unsatisfactory RWTP PPC Permit the matter may be referred at the instance of either Party for determination by an expert under clause 102 (Dispute Resolution) as to whether:

(a) the RWTP Planning Permission is a Satisfactory RWTP Planning Permission or an Unsatisfactory RWTP Planning Permission; or

(b) the RWTP PPC Permit is a Satisfactory RWTP PPC Permit or an Unsatisfactory RWTP PPC Permit.

3.8 If the Authority accepts in accordance with paragraph 3.6 or it is determined pursuant to clause 102 (Dispute Resolution) that the RWTP Planning Permission is an Unsatisfactory RWTP Planning Permission or that the RWTP PPC Permit is an Unsatisfactory RWTP PPC Permit and the Parties agree or it is determined that RWTP Proceedings will not be likely to secure a Satisfactory RWTP Planning Permission or a Satisfactory RWTP PPC Permit (as the case may be) the Authority may:

(a) subject to this paragraph 3.8(a) within thirty (30) Business Days after it is accepted by the Authority pursuant to paragraph 3.6 or it is determined that a RWTP Planning Permission is an Unsatisfactory RWTP Planning Permission or that a RWTP PPC Permit is an Unsatisfactory RWTP PPC Permit in accordance with paragraph 2.7, issue an Authority Change Notice in respect of the Works or Services or other actions required to enable the Contractor to comply with the terms of the:

(i) relevant RWTP Planning Permission without being in breach of this Contract and which render it a Satisfactory RWTP Planning Permission or render compliance with the relevant part of such Unsatisfactory RWTP Planning Permission unnecessary; and/or

(ii) relevant RWTP PPC Permit without being in breach of this Contract and which render it a Satisfactory RWTP PPC Permit or render compliance with the relevant part of such Unsatisfactory PPC Permit unnecessary; or
(b) require the Contractor to prepare a Revised Project Plan in which case the provisions of paragraphs 3.12 to 3.18 (Draft Revised Project Plan) shall apply and the provisions of paragraphs 3.1 to 3.10 (Satisfactory RWTP Planning Permission and Satisfactory RWTP PPC Permit) shall cease to apply; or

(c) notify the Contractor that the provisions of clause 83.1 (Termination for RWTP Planning or PPC Failure) shall apply.

3.9 If the Authority:

(a) does not issue the Authority Change Notice within the time set out in paragraph 3.8(a); or

(b) does not notify the Contractor pursuant to paragraph 3.8(c); or

(c) withdraws or is deemed to have withdrawn the Authority Change Notice issued pursuant to paragraph 3.8(a) in accordance with clause 70 (Authority Changes) respectively,

then the Contractor shall prepare a Revised Project Plan in which case the provisions of paragraphs 3.12 to 3.18 (Draft Revised Project Plan) shall apply and the provisions of paragraphs 3.1 to 3.10 (Satisfactory RWTP Planning Permission and Satisfactory RWTP PPC Permit) shall cease to apply.

3.10 If:

(a) the Authority accepts; or

(b) it is determined pursuant to clause 102 (Dispute Resolution),

that a RWTP Planning Permission is an Unsatisfactory RWTP Planning Permission or that a RWTP PPC Permit is an Unsatisfactory RWTP PPC Permit; and

(c) the Parties agree; or

(d) if the Parties are unable to agree and either Party wishes,

to have determined whether RWTP Proceedings may secure a Satisfactory RWTP Planning Permission or Satisfactory RWTP PPC Permit (as the case may be), the Parties shall seek the opinion of Leading Counsel pursuant to paragraph 2.5 (RWTP Proceedings) and the provisions of paragraphs 2.5 to 2.10 (RWTP Proceedings) shall apply. If RWTP Proceedings are not instituted or if instituted are withdrawn or determined leaving in place an Unsatisfactory RWTP Planning Permission or Unsatisfactory RWTP PPC Permit the Authority may either issue an Authority Change Notice or require the Contractor to prepare a Revised Project Plan in accordance with the provisions of paragraph 3.8.
Failure to obtain Satisfactory RWTP Planning Permission or Satisfactory RWTP PPC Permit

3.11 At the earlier of:

(a) the date when the Parties reasonably conclude or it is determined in accordance with clause 102 (Dispute Resolution) that it will not be possible to achieve the RWTP Works Start Date by the RWTP Planning and PPC Long Stop Date; and

(b) the RWTP Planning and PPC Long Stop Date where at such date the RWTP Works Start Date has not been achieved; and

(c) unless the Parties agree otherwise, the date at which Leading Counsel advises under paragraphs 2.5 to 2.10 (RWTP Proceedings) that there is no reasonable prospect of success in pursuing or continuing to pursue any RWTP Proceedings and obtaining a Satisfactory RWTP Planning Permission or a Satisfactory RWTP PPC Permit, save where the Authority directs or the Contractor chooses to initiate or continue to pursue those RWTP Proceedings under paragraphs 2.5 to 2.10 (RWTP Proceedings) in which case paragraphs 3.11(a), 3.11(b) or 3.11(d) shall apply; and

(d) unless the Parties agree otherwise, the date at which all RWTP Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory RWTP Planning Permission or a Satisfactory RWTP PPC Permit has not been obtained,

then provided that:

(e) the Contractor has complied with its obligation under paragraph 2.1 to use All Reasonable Endeavours to obtain a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit; or

(f) the Contractor has failed to comply with its obligation under paragraph 2.1 to use All Reasonable Endeavours to obtain a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit and either:

(i) the Authority has, pursuant to paragraph 2.3(b), notified the Contractor of any such failure and the Contractor has remedied the failure; or

(ii) the Authority has failed to notify the Contractor of any such failure pursuant to paragraph 2.3(b),
the Authority shall be obliged by notice in writing within twenty (20) Business Days of the relevant event referred to in paragraphs (a) to (d) above (or such longer period as may be agreed by the parties acting reasonably) advise the Contractor:

(g) that the Authority wishes to terminate the Contract under clause 83.1 (Termination for RWTP Planning or PPC Failure); or

(h) that it wishes the Contractor to propose a Revised Project Plan pursuant to paragraphs 3.12 to 3.18 (Revised Project Plan) and paragraphs 3.12 to 3.18 (Revised Project Plan) shall apply and the actions it requires the Contractor to take in relation to the Hedging Arrangements pursuant to paragraph 3.24 (Hedging Arrangements).

Draft Revised Project Plan

3.12 If pursuant to paragraph 3.8, 3.9, 3.10 or 3.11 the Contractor is requested to propose a Revised Project Plan then the Contractor shall produce, in accordance with the provisions of paragraphs 3.12 to 3.18 (Draft Revised Project Plan), a Draft Revised Project Plan in consultation with the Authority as soon as reasonably practicable and in any event by 30 May 2012.

Notwithstanding anything to the contrary in this Agreement, the Draft Revised Project Plan delivered by the Contractor to the Authority is intended to form the basis of discussions between the Authority and the Contractor. It will not constitute an offer by the Contractor and, as such, is not capable of acceptance by the Authority.

3.13 In preparing the Draft Revised Project Plan the Contractor shall act in good faith and comply with Good Industry Practice with the objective of ensuring that it obtains best value for money for the Authority (taking into account all relevant circumstances including the requirement that the Contractor should be no worse off as a result of the implementation of the Revised Project Plan) when procuring any works, services, supplies, materials or equipment required in relation to the Revised Project.

3.14 The Draft Revised Project Plan shall set out on an open book basis:

(a) the proposed technical solution(s) for the Revised Project;

(b) project plans for the Revised Project covering the same or similar issues as the Works Delivery Plans and the Service Delivery Plan insofar as such issues are relevant to the Revised Project;

(c) the proposed length of time and programme for the obtaining any Necessary Consents;
(d) the Contractor's opinion regarding the likelihood of being able to obtain the relevant Necessary Consents;

(e) the interest(s) in land required for the Revised Project;

(f) the Revised Project Plan Costs;

(g) the Contractor's opinion as to the changes in the risk profile required as a result of the Revised Project;

(h) details of the relief required by the Contractor from its obligations under the Contract;

(i) amendments required to the Contract and any Project Documents or Ancillary Documents;

(j) any impact of the Revised Project on the provision of the Works and Services other than those which are the subject of the Revised Project Plan;

(k) proposed acceptance tests for certification of completeness for any required works;

(l) any impact on any Works Commencement Longstop Date and any Planned Operational Commencement Dates;

(m) outline works delivery plans and/or service delivery plan or any amendments to the existing Works Delivery Plan and/or Service Delivery Plan as the case may be;

(n) details of insurance arrangements required to cover any risks associated with the Revised Project;

(o) the Contractor's opinion as to the compliance with Law of the Revised Project contemplated by Draft Revised Project Plan;

(p) how the Contractor intends to finance the Revised Project and/or refinance and/or terminate any existing Finance Agreements, having regard to the acceptability of the Draft Revised Project Plan to the Senior Lenders;

(q) details of any Project Documents or Ancillary Documents that will need to be terminated and any consequent termination or unwind costs or liabilities that the Contractor will incur;

(r) details of how the Contractor will manage the Hedging Arrangements (whether by way of amendment or termination) and likely associated costs or receipts, and
details of any further interest or currency hedging necessary for the Revised Project;

(s) details of how the Contractor will dispose of the Contract Waste during the implementation of the Revised Project Plan and the costs of such disposal shall be included in the Revised Project Plan Costs; and

(t) the Contractor's considered opinion of the implications for the Authority's statutory landfill diversion and recycling targets.

3.15 The Contractor and the Authority shall, from the date of receipt of the Draft Revised Project Plan, discuss and seek to agree each and every element of the Draft Revised Project Plan including:

(a) the provision of evidence that the Contractor has used wherever practicable competitive quotes to oblige its subcontractors to minimise any increase in costs and maximise any reduction in costs;

(b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time have been taken account of by the Contractor; and

(c) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Revised Project Plan, has been taken into account in the amount which in its opinion has resulted or is required under paragraph 3.14(f);

3.16 In any discussions which take place pursuant to paragraph 3.15 the Authority may:

(a) suggest modifications to the Draft Revised Project Plan provided that the Contractor shall not be obliged to take account of any such suggested modifications; or

(b) require the Contractor to seek and evaluate competitive tenders for the relevant capital works.

3.17 If the Contractor either accepts any modifications suggested by the Authority or there are any amendments to the Draft Revised Project Plan following any competitive tenders for the relevant capital works in each case as arise pursuant to paragraph 3.15 then the Contractor shall, as soon as reasonably practicable following either the acceptance by the Contractor of any modifications or following the completion of any competitive tender, notify the Authority of any consequential changes to the Draft Revised Project Plan.
3.18

(a) The Authority and the Contractor shall seek to agree the Draft Revised Project Plan and agree and execute such legal documentation to give effect to the Revised Project Plan (including the amendments to the Annual Unitary Charge to reflect the Revised Project Plan Costs in accordance with Schedule 24 (Financial Adjustments)) by 31 December 2012.

(b) If the Authority and the Contractor fail to agree the Draft Revised Project Plan and/or fail to agree and execute such legal documentation to give effect to the Revised Project Plan (including the amendments to the Annual Unitary Charge to reflect the Revised Project Plan Costs in accordance with Schedule 24 (Financial Adjustments)) on or before 31 March 2013 (or such later date as is agreed by the Authority and the Contractor), then the Authority shall be deemed to have rejected the Revised Project Plan and the provisions of clause 83.1 (Termination for RWTP Planning or PPC Failure) shall apply.

Implementation of the Revised Project Plan

3.19 In the event that the Authority and the Contractor agree the Draft Revised Project Plan and agree and execute such legal documentation necessary to give effect to the Revised Project Plan (in each case in accordance with paragraph 3.18(a) above), the Contractor shall implement the provisions of the Revised Project Plan in accordance with its terms.

Delays

3.20 Provided:

(a) the Contractor has used All Reasonable Endeavours to obtain a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit; or

(b) the Contractor has failed to use All Reasonable Endeavours to obtain a Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit and either:

(i) the Authority has, pursuant to paragraph 3.3(b), notified the Contractor of any such failure and the Contractor has remedied the failure; or

(ii) the Authority has failed to notify the Contractor of any such failure pursuant to paragraph 3.3(b),

then if the RWTP Works Start Date is achieved after the RWTP Planning and PPC Target Date:
(c) the Planned Operational Commencement Date for the RWTP will be extended by a period equal to the period from the RWTP Planning and PPC Target Date to the RWTP Works Start Date;

(d) the provisions of paragraph 5.1 of Part A of Schedule 23 (Payment Mechanism) will continue to apply until the earlier of:

(i) Operational Commencement Date for the RWTP; and

(ii) the revised Planned Operational Commencement Date for the RWTP determined in accordance with paragraph 3.20(a).

3.21 Notwithstanding paragraph 3.20, the Contractor shall continue to comply with its obligations to use All Reasonable Endeavours to obtain the Satisfactory RWTP Planning Permission and the Satisfactory RWTP PPC Permit (unless those obligations shall cease to apply in accordance with paragraphs 3.12 to 3.18 (Draft Revised Project Plan) or clause 83.1 (Termination for RWTP Planning or PPC Failure) and the Contractor shall notify the Authority within ten (10) Business Days of obtaining such Satisfactory RWTP Planning Permission or Satisfactory RWTP PPC Permit.

**RWTP Works Start Date**

3.22 The parties shall (acting reasonably):

(a) keep each other updated on progress towards achieving the RWTP Works Start Date; and

(b) seek to agree the date ("Anticipated RWTP Works Start Date") on which they anticipate achieving the RWTP Works Access Date at least two (2) months prior to such anticipated date.

3.23 The Contractor shall within five (5) Business Days of the parties agreeing the Anticipated RWTP Works Access Date under paragraph 3.22(b) notify the Authority of:

(a) the RWTP Modelled Price; and

(b) its best estimate of what would be the RWTP Actual Price ("Estimated RWTP Price") and any RWTP Price Increase ("Estimated RWTP Price Increase") or RWTP Price Decrease (as the case may be), in each case on the assumption that the RWTP Works Access Date is achieved on the Anticipated RWTP Works Start Date. Any dispute shall be resolved in accordance with clause 102 (Dispute Resolution Procedure).

3.24 If the Estimated RWTP Price Increase is greater than £25,000,000 the Contractor shall use its reasonable endeavours to obtain funding for the whole of the Estimated RWTP
Price Increase, on terms reasonably satisfactory to it, the Senior Lenders and the
Authority.

3.25 The Contractor shall notify the Authority within twenty (20) Business Days of the date
providing notice under paragraph 3.23 (or such longer period as may be agreed by the
Parties (acting reasonably)) whether or not it has been able to obtain funding for the
whole of the Estimated RWTP Price Increase and if it has obtained funding, details of the
funding and the impact on the Annual Unitary Charge.

**Failure to Obtain Funding for Estimated RWTP Price Increase**

3.26 If the Contractor has used its reasonable endeavours to obtain funding for the whole of
the Estimated RWTP Price Increase, but notifies the Authority under paragraph 3.25 that
it has been unable to obtain such funding then if the Authority issues a notice under
paragraph 3.28(e)(i) the Contractor shall have no obligation to implement the Satisfactory
RWTP Planning Permission and Satisfactory RWTP PPC Permit, unless the Authority has
agreed to fund that part of the RWTP Price Increase in excess of £25,000,000 on the
basis provided in paragraph 3.27 (Method of Payment of Authority Contribution) below.

**Method of Payment of Authority Contribution**

3.27 Where the Authority agrees to fund that part of the RWTP Price Increase in excess of
£25,000,000 pursuant to paragraph 3.26 (Failure to Obtain Funding for RWTP Price
Increase), then if paragraph 3.28(d) applies or if the Authority issues a notice pursuant to
paragraph 3.28(e)(i), the Authority shall contribute its funding after the £25,000,000
committed funding has been utilised and in such manner as agreed by the parties acting
reasonably.

**Adjustments to the Annual Unitary Charge**

3.28 Provided:

(a) the Contractor has used All Reasonable Endeavours to obtain a Satisfactory
    RWTP Planning Permission and a Satisfactory RWTP PPC Permit; or

(b) the Contractor has failed to use All Reasonable Endeavours to obtain a
    Satisfactory RWTP Planning Permission and a Satisfactory RWTP PPC Permit
    and either:

   (i) the Authority has, pursuant to paragraph 3.3(b), notified the Contractor of
       any such failure and the Contractor has remedied the failure; or

   (ii) the Authority has failed to notify the Contractor of any such failure
        pursuant to paragraph 3.3(b),
then paragraphs (c) to (g) shall apply:

(c) the Contractor shall not more than five (5) Business Days prior to the Anticipated RWTP Works Access Date as agreed under paragraph 3.22 (or as subsequently updated with the agreement of the parties) notify the Authority of:

(i) the RWTP Modelled Price; and

(ii) its best and final estimate of what would be the RWTP Actual Price ("FinalEstimated RWTP Price") and any RWTP Price Increase ("FinalEstimated RWTP Price Increase") or RWTP Price Decrease ("Final Estimated RWTP Price Decrease") (as the case may be), in each case on the assumption that the RWTP Works Access Date is achieved on the Anticipated RWTP Works Start Date. Any dispute shall be resolved in accordance with clause 102 (Dispute Resolution Procedure).

(d) if there is:

(i) a Final Estimated RWTP Price Decrease; or

(ii) a Final Estimated RWTP Price Increase of less than £13,000,000,

the Contractor shall proceed to implement the Satisfactory RWTP Planning Permission and Satisfactory RWTP PPC Permit;

(e) if there is a Final Estimated RWTP Price Increase that is greater than £13,000,000 the Authority shall be obliged by notice in writing within twenty (20) Business Days of receipt of the notice under paragraph 3.28(c) or such longer period as may be agreed by the parties acting reasonably, advise the Contractor:

(i) that the Contractor is required, subject to paragraph 3.23, to implement the Satisfactory RWTP Planning Permission and Satisfactory RWTP PPC Permit; or

(ii) that the Authority wishes to terminate the Contract under clause 83.1 (Termination for RWTP Planning or PPC Failure); or

(iii) that it wishes the Contractor to propose a Revised Project Plan pursuant to paragraphs 3.12 to 3.18 (Draft Revised Project Plan) and paragraphs 3.12 to 3.18 (Draft Revised Project Plan) shall apply and the actions it requires the Contractor to take in relation to the Hedging Arrangements pursuant to paragraph 3.31 (Hedging Arrangements);
(f) if paragraph 3.28(d) applies or if the Authority notifies the Contractor under paragraph 3.28(e)(i) that the Contractor is required to implement the Satisfactory RWTP Planning Permission and Satisfactory RWTP PPC Permit, then subject to paragraph 3.26:

(i) the Annual Unitary Charge shall be adjusted in accordance with Schedule 24 (Financial Adjustments) for the remainder of the Service Period commencing on the Operational Commencement Date for the RWTP to reflect the RWTP Price Increase or the RWTP Price Decrease (as the case may be) as at the RWTP Works Start Date; and

(ii) if the RWTP Works Start Date occurs after RWTP Planning and PPC Target Date but before RWTP Planning and PPC Long Stop Date, paragraph 3.5 of Part A of Schedule 23 (Payment Mechanism) shall apply, and any payments to the Contractor under Part A of Schedule 23 (Payment Mechanism) shall be made (and where necessary reconciled) accordingly.

**Challenge Period**

3.29 Where following the RWTP Access Date, the Authority directs the Contractor to proceed to implement a Satisfactory RWTP Planning Permission or Satisfactory RWTP PPC Permit without allowing the Challenge Period in respect of the Satisfactory RWTP PPC Permit to elapse and a challenge is instituted within the Challenge Period the Authority shall indemnify and keep indemnified the Contractor for all costs, losses, expenses and liabilities reasonably and properly incurred up to the point at which such challenge is finally determined and the Contractor shall mitigate such costs, losses, expenses and liabilities provided that any indemnification of any costs, losses, expenses or liabilities shall be calculated on the basis that the Contractor should be left in no better or no worse position than it would have been in had such costs, losses, expenses or liabilities not arisen. If a challenge is successful the provisions of paragraphs 3.11 to 3.19 shall apply.

**Hedging Arrangements**

3.30 The Contractor shall, from time to time at the request of the Authority and on the occurrence of the events specified in paragraph 3.11(a) to (d), notify the Authority in writing of the marked to market value of the Hedging Arrangements and anticipated unwind costs or receipts that it projects would be incurred or received (as applicable) on termination of the Hedging Arrangements.

3.31 In the event that the Authority wishes the Contractor to develop a Revised Project Plan then the Authority shall also notify the Contractor of the measures it wishes the Contractor to take in relation to the Hedging Arrangements during the development of the Revised
Project Plan, including extension, variation or termination, and all costs incurred by or and receipts payable to the Contractor as a consequence of the implementation of such instructions shall be for the account of the Authority. In the event that the Contractor does not receive any such instructions from the Authority by the date on which the Contractor would otherwise incur a liability under a Hedging Arrangement the Contractor shall be entitled to terminate the relevant Hedging Arrangement and all costs incurred by or and receipts payable to the Contractor as a consequence of the termination of the Hedging Arrangement shall be for the account of the Authority.

3.32 Prior to the RWTP Planning and PPC Longstop Date the Contractor shall not terminate any Hedging Arrangement without the prior written consent of the Authority.

**Euro currency exchange**

3.33 If a currency exchange date occurs under the Euro/Sterling Hedging Arrangement prior to the RWTP Works Start Date and the RWTP Planning and PPC Longstop Date, the parties acknowledge that the Contractor shall exercise the relevant currency exchange and place the resulting Euro funds into the Euro Construction Account (as defined in the Common Terms Agreement).
CBL EXTENSION AND WORKS

4. NEW CBL PLANNING PERMISSION AND NEW CBL PPC PERMIT

Contractor to obtain New CBL Planning Permission and New CBL PPC Permit

4.1 The Contractor shall:

(a) use All Reasonable Endeavours to obtain a Satisfactory New CBL Planning Permission and a Satisfactory New CBL PPC Permit to enable it to obtain the New CBL Extension, undertake the New CBL Works and to deliver the relevant part of the Service at the Connon Bridge (Liskeard) Landfill Site;

(b) in pursuing the New CBL Planning Permission and the New CBL PPC Permit, use reasonable endeavours to:

(i) lodge the New CBL Planning Application by the New CBL Planning Application Target Date

(ii) lodge the New CBL PPC Application by the New CBL PPC Application Target Date; and

(iii) obtain a Satisfactory New CBL Planning Permission and Satisfactory New CBL PPC Permit by the New CBL Planning and PPC Target Date; and

(c) implement the Satisfactory New CBL Planning Permission and the Satisfactory New CBL PPC Permit:

(i) in accordance with the terms of the Contract; and

(ii) within the period of their validity and in accordance with their terms.

4.2 The Contractor shall:

(a) subject to paragraphs 4.11 to 4.15 bear the costs of making a New CBL Planning Application and a New CBL PPC Application and of obtaining, implementing and complying with the provisions and conditions of the Satisfactory New CBL Planning Permission and the Satisfactory New CBL PPC Permit;

(b) within five (5) Business Days of the end of each Contract Month, provide to the Authority a written summary of:

(i) the steps taken by the Contractor in that Contract Month in compliance with its obligations under paragraphs 4.1; and
(ii) those steps which it anticipates taking in the following Contract Month in order to comply with its obligations under paragraphs 4.1.

4.3 Without limiting the Contractor's obligations under paragraphs 4.1 and 4.2, the Authority may within ten (10) Business Days after receipt of the summary referred to in paragraph 4.2(b):

(a) notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under paragraph 4.1 and the Contractor shall give due consideration to any such suggestions of the Authority; and

(b) notify the Contractor if any steps taken or proposed to be taken by the Contractor as referred to in the summary do not in the Authority's opinion constitute All Reasonable Endeavours to obtain a Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit.

Meaning of All Reasonable Endeavours

4.4 For the purposes of this Part C, "All Reasonable Endeavours" means that, having regard to the CBL Site and the New CBL Planning Application Target Date, the New CBL PPC Application Target Date and the New CBL Planning and PPC Target Date, the Contractor shall:

(a) in relation to the making of any New CBL Planning Application and any New CBL PPC Application and seeking to obtain a Satisfactory New CBL Planning Permission and a Satisfactory New CBL PPC Permit, incur such expenditure and do all other things reasonably necessary (including the commencement and prosecution or defence of New CBL Proceedings in accordance with and subject to the provisions hereof) and in doing so shall exercise all proper care and skill to secure or procure the grant of Satisfactory New CBL Planning Permission and Satisfactory New CBL PPC Permit; and

(b) subject to paragraph 4.11 (New CBL Actual Planning and PPC Costs), meet the costs of any New CBL Proceedings such costs to include the cost of instructing Leading Counsel (including for the purposes of deciding whether to initiate or pursue New CBL Proceedings) and securing the services of any expert witnesses, considered necessary for the purpose of such New CBL Proceedings; and

(c) provide as soon as reasonably practicable to the Authority any draft instructions (including enclosures) that are proposed to be given to Leading Counsel and opinions received from Leading Counsel (for the Authority's approval in accordance with paragraph 1.5) relating to such New CBL Proceedings in respect
of any New CBL Planning Permission or New CBL PPC Permit sought. The Authority's Representative shall be entitled to attend any conference with Leading Counsel and the Contractor shall use all reasonable endeavours when arranging such conference to agree a convenient time for attendance by the Authority's Representative.

**New CBL Proceedings**

4.5 If the relevant Planning Authority (in the case of the New CBL Planning Application) or the Environment Agency (in the case of the New CBL PPC Application):

(a) resolves to or is minded to grant a New CBL Planning Permission and that New CBL Planning Application is called-in by the Secretary of State under section 77 of the Planning Act; or

(b) refuses to grant a New CBL Planning Permission (including any refusal on any re-determination of a New CBL Planning Application following the quashing of a decision to grant such New CBL Planning Permission) or refuses to grant a New CBL PPC Permit or there is a Deemed Refusal; or

(c) grants a New CBL Planning Permission which is not a Satisfactory New CBL Planning Permission or grants a New CBL PPC Permit which is not a Satisfactory New CBL PPC Permit in circumstances where the Authority and the Contractor agree (or are unable to agree and it is determined pursuant to clause 72 (Dispute Resolution)) that New CBL Proceedings may secure a Satisfactory New CBL Planning Permission of Satisfactory New CBL PPC Permit (as the case may be);

the Contractor shall, unless the parties agree (acting reasonably) that they do not require the opinion of Leading Counsel to determine the merits of pursuing any New CBL Proceedings, take the opinion of Leading Counsel as to the merits of pursuing any New CBL Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably. For the avoidance of doubt, Leading Counsel shall be instructed by the Contractor and the Authority.

4.6 If Leading Counsel advises the Contractor pursuant to paragraphs 4.5, 4.7 or 4.8(b) that there is a reasonable prospect of success in pursuing any New CBL Proceedings in order to obtain a Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit (as the case may be) or if the parties agree that the Contractor shall pursue New CBL Proceedings without referring the matter to Leading Counsel, the Contractor shall obtain the prior written consent of the Authority to institute such New CBL Proceedings, which the Authority shall not unreasonably withhold or delay and if such approval is granted the Contractor shall pursue or defend the New CBL Proceedings until determination of such New CBL Proceedings unless subsequently in accordance with
paragraph 4.9 the Authority directs that such New CBL Proceedings shall cease to be pursued.

4.7 At any reasonable time after the commencement of any New CBL Proceedings in relation to any New CBL Planning Permission or New CBL PPC Permit, the Authority may (acting reasonably) require the Contractor to take (or the Contractor may take (subject to obtaining the Authority's prior written consent (acting reasonably)) the opinion of Leading Counsel as to the merits of continuing to pursue such New CBL Proceedings and to make such opinion available to the Authority and in each case the identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably.

4.8 In the event that Leading Counsel advises under paragraph 4.6 or subsequently under paragraph 4.7 or 4.8(b) that there is no reasonable prospect of success, the Authority shall, by serving written notice on the Contractor on or before a date twenty (20) Business Days from the receipt by the Authority of the advice of Leading Counsel either:

(a) direct that the Contractor shall not pursue or shall cease to pursue the relevant New CBL Proceedings;

(b) require the Contractor to take the opinion of an alternative Leading Counsel in accordance with paragraph 4.7 provided that a) the Authority shall not be entitled to require the Contractor to take the opinion of more than one alternative Leading Counsel pursuant to this subparagraph (b) in relation to the merits of continuing to pursue the same New CBL Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably; or

(c) direct that the Contractor institutes or continues the relevant New CBL Proceedings, and such a direction shall be treated as an approval to those New CBL Proceedings given pursuant to paragraph 4.6, and shall act reasonably in consultation with the Contractor before determining which option to select.

4.9 If the Authority (acting reasonably in all cases):

(a) does not give approval to any New CBL Proceedings; or

(b) directs that the Contractor should cease to pursue any New CBL Proceedings,

the Contractor shall be entitled to institute or continue to pursue such New CBL Proceedings (subject to service of prior written notice of its intention to do so upon the Authority within twenty (20) Business Days of receipt of the Authority's notice under
paragraph 4.8) and the Contractor shall bear all the costs of instituting or continuing to pursue such New CBL Proceedings which it incurs from the point at which the Authority serves notice pursuant to paragraph 4.8 and in such case paragraphs 4.11 (New CBL Actual Planning and PPC Costs) and 4.15 (Costs Awarded in New CBL Proceedings) shall not apply to those costs.

4.10 The Contractor shall be entitled, in its absolute discretion, to cease to pursue any New CBL Proceedings which it institutes or continues pursuant to paragraph 4.9 (approval being withheld or a direction having been given to the contrary) and in respect of which it has undertaken to bear the costs pursuant to paragraph 4.9.

New CBL Actual Planning and PPC Costs

4.11 The Contractor and the Authority shall bear the New CBL Actual Planning and PPC Costs (including for the avoidance of doubt the costs of obtaining any Leading Counsel's opinion under paragraphs 4.5 to 4.10) in the proportions noted below:

<table>
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<tr>
<th>New CBL Actual Planning and PPC Costs</th>
<th>Authority's share</th>
<th>Contractor's share</th>
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<tbody>
<tr>
<td>£0-£100,000</td>
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<tr>
<td>Above £200,000</td>
<td>90%</td>
<td>10%</td>
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</table>

4.12 The Authority shall pay its share of the New CBL Actual Planning and PPC Costs to the Contractor provided that:

(a) the Contractor shall, prior to commencing any New CBL Proceedings, provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such New CBL Proceedings that the Contractor considers are necessary and appropriate to obtain a Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit (as the case may be) including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate or employ any additional or alternative legal or professional advisers without the further approval of the Authority; and
(b) the Contractor shall use all reasonable endeavours to ensure that at all times the costs of all New CBL Proceedings are kept to the minimum prudent and reasonable.

4.13 Subject to the Contractor complying with its obligations under paragraph 4.12 the Authority shall pay its share of the New CBL Actual Planning and PPC Costs to the Contractor through any one of the following means, the choice of such means to be in the Authority’s absolute discretion:

(a) by way of an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Financial Adjustments) for all or some part of the remainder of the Service Period;

(b) by way of a lump sum payment made in one or more instalment together with an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Financial Adjustments);

(c) by way of a lump sum payment made in one or more instalment in respect of the whole amount; or

(d) by way of set-off in accordance with clause 66 (Set-off).

4.14 Should the Authority specify the means by which its share of the New CBL Actual Planning and PPC Costs are to be paid, and so requests in writing, the Contractor shall provide such breakdown of costs as is reasonably practicable for each of the specified methods of payment.

Costs awarded in New CBL Proceedings

4.15 Any costs that are awarded to the Contractor in New CBL Proceedings ("New CBL Awarded Costs") shall be paid as follows:

<table>
<thead>
<tr>
<th>New CBL Awarded Costs</th>
<th>Authority’s share</th>
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</table>

5. **Satisfactory New CBL Planning Permission and Satisfactory New CBL PPC Permit**

Satisfactory New CBL Planning Permission and Satisfactory New CBL PPC Permit

5.1 Where, by the New CBL Planning and PPC Long Stop Date the Contractor obtains:
(a) a Satisfactory New CBL Planning Permission and a Satisfactory New CBL PPC Permit; or

(b) an Unsatisfactory New CBL Planning Permission or an Unsatisfactory New CBL PPC Permit in respect of which an Authority Change Notice has been agreed and implemented to enable the Contractor either to comply with the Unsatisfactory New CBL Planning Permission or the Unsatisfactory New CBL PPC Permit (as the case may be) without being in breach of this Contract and which:

(i) renders compliance with the relevant part of the Unsatisfactory New CBL Planning Permission or the Unsatisfactory New CBL PPC Permit (as the case may be) unnecessary; or

(ii) renders the Unsatisfactory New CBL Planning Permission a Satisfactory New CBL Planning Permission or, where relevant, renders the Unsatisfactory New CBL PPC Permit a Satisfactory New CBL PPC Permit,

and, in each case the Challenge Period has expired, the Contractor shall proceed to implement the Satisfactory New CBL Planning Permission and Satisfactory New CBL PPC Permit. Subject to paragraph 5.11 (Challenge Period), the Authority may by written notice require the Contractor to so proceed without allowing the relevant Challenge Period to expire.

5.2 As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of a New CBL Planning Permission or New CBL PPC Permit the Contractor shall provide to the Authority a copy of the New CBL Planning Permission or New CBL PPC Permit (as the case may be) and shall notify the Authority in writing whether or not the Contractor considers:

(a) the New CBL Planning Permission is a Satisfactory New CBL Planning Permission or is an Unsatisfactory New CBL Planning Permission; or

(b) the New CBL PPC Permit is a Satisfactory New CBL PPC Permit or is an Unsatisfactory New CBL PPC Permit.

Unsatisfactory New CBL Planning Permission and Unsatisfactory New CBL PPC Permit

5.3 If the Contractor considers that the New CBL Planning Permission is an Unsatisfactory New CBL Planning Permission or that the New CBL PPC Permit is an Unsatisfactory New CBL PPC Permit it shall provide within ten (10) Business Days of the notice given pursuant to paragraph 5.2 to the Authority:

(a) full details of the grounds for such opinion; and
(b) an indication of what action could be taken (if any) by the Contractor or the Authority to enable the Contractor to comply with the New CBL Planning Permission or New CBL PPC Permit (as the case may be) without being in breach of this Contract which would:

(i) in the case of the New CBL Planning Permission, render it a Satisfactory New CBL Planning Permission or render compliance with the relevant part of such Unsatisfactory New CBL Planning Permission unnecessary; or

(ii) in the case of the New CBL PPC Permit, render it a Satisfactory New CBL PPC Permit or render compliance with the relevant part of such Unsatisfactory New CBL PPC Permit unnecessary,

including without limitation:

(1) New CBL Proceedings; or

(2) the issue of an Authority Change Notice to vary the CBL Works and/or Services.

(\textit{the "New CBL UPP Notice"})

5.4 If the Contractor fails to provide the New CBL UPP Notice within twenty five (25) Business Days after issue of the New CBL Planning Permission or the New CBL PPC Permit, the New CBL Planning Permission or the New CBL PPC Permit (as the case may be) shall be deemed to be a Satisfactory New CBL Planning Permission or Satisfactory New CBL PPC Permit (as applicable).

5.5 If:

(a) the Contractor notifies the Authority that the New CBL Planning Permission is a Satisfactory New CBL Planning Permission and that the New CBL PPC Permit is a Satisfactory New CBL PPC Permit; or

(b) such a New CBL Planning Permission is deemed to be a Satisfactory New CBL Planning Permission and such New CBL PPC Permit is deemed to be a Satisfactory New CBL PPC Permit in accordance paragraph 5.4,

then the provisions of paragraph 5.1 shall apply accordingly.

5.6 If the Contractor notifies the Authority that the New CBL Planning Permission is an Unsatisfactory New CBL Planning Permission or that the New CBL PPC Permit is an Unsatisfactory New CBL PPC Permit in accordance with paragraph 5.3 the Authority shall, within forty (40) Business Days of receipt of the New CBL UPP Notice, notify the Contractor in writing whether or not the Authority accepts that the New CBL Planning
Permission is an Unsatisfactory New CBL Planning Permission or the New CBL PPC Permit is an Unsatisfactory New CBL PPC Permit (as the case may be) and whether the Authority accepts the action indicated by the Contractor in the New CBL UPP Notice.

5.7 If the Authority does not accept or does not notify the Contractor (in which case the Authority shall be deemed not to have accepted), within the time set out in paragraph 5.6 that the New CBL Planning Permission is an Unsatisfactory New CBL Planning Permission or that the New CBL PPC Permit is an Unsatisfactory New CBL PPC Permit the matter may be referred at the instance of either Party for determination by an expert under clause 102 (Dispute Resolution) as to whether:

(a) the New CBL Planning Permission is a Satisfactory New CBL Planning Permission or an Unsatisfactory New CBL Planning Permission; or

(b) the New CBL PPC Permit is a Satisfactory New CBL PPC Permit or an Unsatisfactory New CBL PPC Permit.

5.8 If the Authority accepts in accordance with paragraph 5.6 or it is determined pursuant to clause 102 (Dispute Resolution) that the New CBL Planning Permission is an Unsatisfactory New CBL Planning Permission or that the New CBL PPC Permit is an Unsatisfactory New CBL PPC Permit and the Parties agree or it is determined that New CBL Proceedings will not be likely to secure a Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit (as the case may be) the Authority may subject to this paragraph 5.8 within thirty (30) Business Days after it is accepted by the Authority pursuant to paragraph 5.6 or it is determined that a New CBL Planning Permission is an Unsatisfactory New CBL Planning Permission or that a New CBL PPC Permit is an Unsatisfactory New CBL PPC Permit in accordance with paragraph 5.7, issue an Authority Change Notice in respect of the Works or Services or other actions required to enable the Contractor to comply with the terms of the:

(a) New CBL Planning Permission without being in breach of this Contract and which renders it a Satisfactory New CBL Planning Permission or renders compliance with the relevant part of such Unsatisfactory New CBL Planning Permission unnecessary; and/or

(b) New CBL PPC Permit without being in breach of this Contract and which renders it a Satisfactory New CBL PPC Permit or renders compliance with the relevant part of such Unnecessary PPC Permit unnecessary.

5.8A New CBL Planning and PPC Long Stop Date

(a) The obligations of the Contractor under this Part C of Schedule 6 (including those set out in paragraphs 4.1 and 4.2) shall continue to apply notwithstanding the
occurrence of the New CBL Planning and PPC Long Stop Date. On and from the
New CBL Planning and PPC Target Date, the obligation in paragraph 4.1(b)(iii)
shall be to obtain a Satisfactory New CBL Planning Permission and Satisfactory
New CBL PPC Permit as soon as reasonably practicable thereafter. The Authority
and the Contractor acknowledge and agree that the Planning Authority is currently
considering granting a New CBL Planning Permission that will expire at the end of
December, 2018 and that any limitation of the duration of the New CBL Planning
Permission to a date prior to the Expiry Date will constitute an Unsatisfactory New
CBL Planning Permission.

(b) On and from the New CBL Planning and PPC Long Stop Date, in determining the
New CBL Actual Planning and PPC Costs and New CBL Awarded Costs for the
purposes of paragraphs 4.11 and 4.15, the references to £100,000 shall be
replaced by £250,000 and the references to £200,000 shall be replaced by
£500,000.

(c) If, after the Amendment Date, the Contractor fails to use All Reasonable
Endeavours to remedy a failure notified by the Authority in accordance with
paragraph 4.3(b) within a reasonable time or at all, the Contractor shall not be
entitled to claim a Qualifying Change in Law treatment in respect of any delay to
the extent caused by such failure.

(d) The Contractor shall use all reasonable endeavours to minimise the capital
expenditure and lifecycle costs incurred in operating and developing the Connon
Bridge (Liskeard) landfill Site.

(e) The Contractor is authorised and directed to sign an undertaking in a form
approved by the Authority and required by the Planning Authority requiring the
Contractor to agree not to seek any further extension of the New CBL Planning
Permission beyond December, 2018 and is directed not to take New CBL
Proceedings in relation to any New CBL Planning Permission that is an
Unsatisfactory New CBL Planning Permission solely as a result of the early expiry
date;

(f) Subject to the provision of this Part C, including this paragraph 5.8A, the expiry of
the New CBL Planning Permission prior to the Expiry Date shall be a deemed
Qualifying Change in Law, provided that the following overriding principles shall
apply to the Contractor’s entitlement to compensation in relation to such
Qualifying Change in Law:

(i) provided that the New CBL Planning Permission does not expire before
31st December, 2018, the Contractor shall not be entitled to claim from the
Authority any costs relating to the restoration and handback of the Connon Bridge (Liskeard) Landfill Site in accordance with the requirements of Schedule 36 (Restoration and Handback of Existing Landfill Sites) of the Project Agreement;

(ii) the Estimated Change in Project Costs shall reflect:

(1) the costs of Landfilling or other disposal of Residual Waste that is not Processed by way of Energy Recovery through the RWTP after the expiry of the New CBL Planning Permission to the extent that the relevant tonnages of Residual Waste do not constitute Defaulting Tonnages and provided further that the Contractor shall use all reasonable endeavours to minimise the overall cost of such disposal to the Authority;

(2) the removal of all costs relating to Connon Bridge (Liskeard) Landfill Site from the date of expiry of the New CBL Planning Permission, including all capital expenditure and other maintenance or lifecycle amounts, howsoever described; and

(3) no amounts of lost third party revenue shall be included in the calculation;

(iii) all internal and external costs incurred by the Contractor before and after the New CBL Planning and PPC Long Stop Date in carrying out its obligations under this Part C shall be disregarded for the purposes of calculating the consequences of applying clause 73 (Qualifying Change in Law) to the failure to obtain a Satisfactory New CBL Planning Permission and Satisfactory New CBL PPC Permit by the New CBL Planning and PPC Long Stop Date and the provisions of Clause 73 shall be deemed amended accordingly in relation to this matter.

(g) In the event of any inconsistency between this paragraph 5.8A and any other provision of the Contract, this paragraph shall apply.

(h) The Authority irrevocable waives any rights it may have against the Contractor in relation to any breach by the Contractor of paragraph 4.1 of this Part C that may have occurred prior to the Amendment Date and confirms that the provisions of this Clause 5.8A constitute settlement in full in relation to any such breach.

**Failure to obtain Satisfactory New CBL Planning Permission or Satisfactory New CBL PPC Permit**
5.9 At the earlier of:

(a) the date when the Parties reasonably conclude or it is determined in accordance with clause 102 (Dispute Resolution) that it will not be possible to obtain a Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit by the New CBL Planning and PPC Long Stop Date; and

(b) the New CBL Planning and PPC Long Stop Date (where at such date the Contractor has failed to obtain the Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit or the Contractor has obtained a Satisfactory New CBL Planning Permission but the relevant Challenge Period has not expired (unless the Authority has exercised its rights under paragraph 5.11)); and

(c) unless the Parties agree otherwise, the date at which Leading Counsel advises under paragraph 4.5 (New CBL Proceedings) that there is no reasonable prospect of success in pursuing or continuing to pursue any New CBL Proceedings and obtaining a Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit, save where the Authority directs or the Contractor chooses to initiate or continue to pursue those New CBL Proceedings under paragraphs 4.5 to 4.10 (New CBL Proceedings) in which case paragraphs 5.9(a), 5.9(b) or 5.9(d) shall apply; and

(d) unless the Parties agree otherwise, the date at which New CBL Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit has not been obtained; and

(e) where the Authority has exercised its rights under paragraph 5.11 and the Satisfactory New CBL Planning Permission is successfully challenged, then provided that:

(f) the Contractor has complied with its obligation under paragraph 5.1 to use All Reasonable Endeavours to obtain a Satisfactory New CBL Planning Permission and a Satisfactory New CBL PPC Permit; or

(g) the Contractor has failed to comply with its obligation under paragraph 5.1 to use All Reasonable Endeavours to obtain a Satisfactory New CBL Planning Permission and a Satisfactory New CBL PPC Permit and either:

(i) the Authority has, pursuant to paragraph 4.3(b), notified the Contractor of any such failure and the Contractor has remedied the failure; or
(ii) the Authority has failed to notify the Contractor of any such failure pursuant to paragraph 4.3(b),

then such failure to obtain a Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.

5.10 If:

(a) the Authority accepts; or

(b) it is determined pursuant to clause 102 (Dispute Resolution),

that a New CBL Planning Permission is an Unsatisfactory New CBL Planning Permission or that a New CBL PPC Permit is an Unsatisfactory New CBL PPC Permit; and

(c) the Parties agree; or

(d) if the Parties are unable to agree and either Party wishes,

to have determined whether New CBL Proceedings may secure a Satisfactory New CBL Planning Permission or Satisfactory New CBL PPC Permit (as the case may be), the Parties shall seek the opinion of Leading Counsel pursuant to paragraph 4.5 (New CBL Proceedings) and the provisions of paragraphs 4.5 to 4.10 (New CBL Proceedings) shall apply. If New CBL Proceedings are not instituted or if instituted are withdrawn or determined leaving in place an Unsatisfactory New CBL Planning Permission or Unsatisfactory New CBL PPC Permit then such failure to obtain a Satisfactory New CBL Planning Permission or a Satisfactory New CBL PPC Permit shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.

Challenge Period

5.11 Where the Authority directs the Contractor to proceed to implement a Satisfactory New CBL Planning Permission or Satisfactory New CBL PPC Permit without allowing the Challenge Period to elapse in respect of any relevant decision pursuant to paragraphs 5.1 to 5.10 Satisfactory New CBL Planning Permission and Satisfactory New CBL PPC Permit) and a challenge is instituted within the Challenge Period the Authority shall indemnify and keep indemnified the Contractor for all costs, losses, expenses and liabilities reasonably and properly incurred up to the point at which such challenge is finally determined and the Contractor shall mitigate such costs, losses, expenses and liabilities provided that any indemnification of any costs, losses, expenses or liabilities shall be calculated on the basis that the Contractor should be left in no better or no worse
position than it would have been in had such costs, losses, expenses or liabilities not arisen. If a challenge is successful the provisions of paragraph 5.9 shall apply.

6. **NOT USED**
7A ACKNOWLEDGEMENT

The Authority and the Contractor acknowledge that as at the Amendment Date a Satisfactory CBL RTS Planning Permission has been obtained.

CBL RTS WORKS

7. CBL RTS PLANNING PERMISSION

Contractor to obtain CBLRTS Planning Permission

7.1 The Contractor shall:

(a) use All Reasonable Endeavours to obtain a Satisfactory CBL RTS Planning Permission to enable it to undertake the CBL RTS Works and to deliver the relevant part of the Service at the CBL RTS;

(b) in pursuing the CBL RTS Planning Permission, use reasonable endeavours to:

(i) lodge the CBL RTS Planning Application by the CBL RTS Planning Application Target Date;

(ii) obtain a Satisfactory CBL RTS Planning Permission by the CBL Planning and PPC Target Date; and

(c) implement the Satisfactory CBL RTS Planning Permission:

(i) in accordance with the terms of the Contract; and

(ii) within the period of its validity and in accordance with its terms.

7.2 The Contractor shall:

(a) subject to paragraphs 7.11 to 7.15 bear the costs of making a CBL RTS Planning Application and of obtaining, implementing and complying with the provisions and conditions of the Satisfactory CBL RTS Planning Permission;

(b) within five (5) Business Days of the end of each Contract Month, provide to the Authority a written summary of:

(i) the steps taken by the Contractor in that Contract Month in compliance with its obligations under paragraphs 7.1; and
(ii) those steps which it anticipates taking in the following Contract Month in order to comply with its obligations under paragraphs 7.1.

7.3 Without limiting the Contractor's obligations under paragraphs 7.1 and 7.2 the Authority may within ten (10) Business Days after receipt of the summary referred to in paragraph 7.2(b):

(a) notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under paragraph 7.1 and the Contractor shall give due consideration to any such suggestions of the Authority; and

(b) notify the Contractor if any steps taken or proposed to be taken by the Contractor as referred to in the summary do not in the Authority's opinion constitute All Reasonable Endeavours to obtain a Satisfactory CBL RTS Planning Permission.

7.3A The Contractor shall, as soon as reasonably practicable after attempting to register the CBL RTS Planning Application, notify the Authority whether or not the Relevant Authority has registered the CBL RTS Planning Application. If the Relevant Authority refuses to register the CBL RTS Planning Application, then provided the Contractor has complied with its obligation to use All Reasonable Endeavours in relation to submitting the CBL RTS Planning Application, the Authority may direct the Contractor to Challenge any such decision and the Authority shall reimburse the Contractor's third party costs in undertaking such a Challenge.

Meaning of All Reasonable Endeavours

7.4 For the purposes of this Part C, "All Reasonable Endeavours" means that, having regard to the CBL Site and the CBL RTS Planning Application Target Date and the CBL RTS Planning Target Date the Contractor shall:

(a) in relation to the making of any CBL RTS Planning Application and seeking to obtain a Satisfactory CBL RTS Planning Permission, incur such expenditure and do all other things reasonably necessary (including the commencement and prosecution or defence of CBL RTS Proceedings in accordance with and subject to the provisions hereof) and in doing so shall exercise all proper care and skill to secure or procure the grant of Satisfactory CBL RTS Planning Permission; and

(b) subject to paragraph 7.11 (CBL Actual RTS Planning Costs), meet the costs of any CBL RTS Proceedings such costs to include the cost of instructing Leading Counsel (including for the purposes of deciding whether to initiate or pursue CBL RTS Proceedings) and securing the services of any expert witnesses, considered necessary for the purpose of such CBL RTS Proceedings; and

(c) provide as soon as reasonably practicable to the Authority any draft instructions (including enclosures) that are proposed to be given to Leading Counsel and
opinions received from Leading Counsel (for the Authority's approval in accordance with paragraph 7.5) relating to such CBL RTS Proceedings in respect of any CBL RTS Planning Permission. The Authority's Representative shall be entitled to attend any conference with Leading Counsel and the Contractor shall use all reasonable endeavours when arranging such conference to agree a convenient time for attendance by the Authority's Representative.

CBL RTS Proceedings

7.5 If the relevant Planning Authority:

(a) resolves to or is minded to grant a CBL RTS Planning Permission and that CBL RTS Planning Application is called-in by the Secretary of State under section 77 of the Planning Act; or

(b) refuses to grant a CBL RTS Planning Permission (including any refusal on any re-determination of a CBL RTS Planning Application following the quashing of a decision to grant such CBL RTS Planning Permission) or there is a Deemed Refusal; or

(c) grants a CBL RTS Planning Permission which is not a Satisfactory CBL RTS Planning Permission in circumstances where the Authority and the Contractor agree (or are unable to agree and it is determined pursuant to clause 102(Dispute Resolution)) that CBL RTS Proceedings may secure a Satisfactory CBL RTS Planning Permission;

the Contractor shall, unless the parties agree (acting reasonably) that they do not require the opinion of Leading Counsel to determine the merits of pursuing any CBL RTS Proceedings, take the opinion of Leading Counsel as to the merits of pursuing any CBL RTS Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably. For the avoidance of doubt, Leading Counsel shall be instructed by the Contractor and the Authority.

7.6 If Leading Counsel advises the Contractor pursuant to paragraphs 7.5, 7.7 or 7.8(b) that there is a reasonable prospect of success in pursuing any CBL RTS Proceedings in order to obtain a Satisfactory CBL RTS Planning Permission or if the parties agree that the Contractor shall pursue CBL RTS Proceedings without referring the matter to Leading Counsel, the Contractor shall obtain the prior written consent of the Authority to institute such CBL RTS Proceedings, which the Authority shall not unreasonably withhold or delay and if such approval is granted the Contractor shall pursue or defend the CBL RTS Proceedings until determination of such CBL RTS Proceedings unless subsequently in accordance with paragraph 7.9 the Authority directs that such CBL RTS Proceedings shall cease to be pursued.
7.7 At any reasonable time after the commencement of any CBL RTS Proceedings in relation to any CBL RTS Planning Permission, the Authority may (acting reasonably) require the Contractor to take (or the Contractor may take (subject to obtaining the Authority's prior written consent (acting reasonably)) the opinion of Leading Counsel as to the merits of continuing to pursue such CBL RTS Proceedings and to make such opinion available to the Authority and in each case the identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably.

7.8 In the event that Leading Counsel advises under paragraph 7.6 or subsequently under paragraph 7.7 or 7.8(b) that there is no reasonable prospect of success, the Authority shall, by serving written notice on the Contractor on or before a date twenty (20) Business Days from the receipt by the Authority of the advice of Leading Counsel either:

(a) direct that the Contractor shall not pursue or shall cease to pursue the relevant CBL RTS Proceedings;

(b) require the Contractor to take the opinion of an alternative Leading Counsel in accordance with paragraph 7.7 provided that the Authority shall not be entitled to require the Contractor to take the opinion of more than one alternative Leading Counsel pursuant to this subparagraph (b) in relation to the merits of continuing to pursue the same CBL RTS Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably; or

(c) direct that the Contractor institutes or continues the relevant CBL RTS Proceedings, and such a direction shall be treated as an approval to those CBL RTS Proceedings given pursuant to paragraph 7.6, and shall act reasonably in consultation with the Contractor before determining which option to select.

7.9 If the Authority (acting reasonably in all cases):

(a) does not give approval to any CBL RTS Proceedings; or

(b) directs that the Contractor should cease to pursue any CBL RTS Proceedings,

the Contractor shall be entitled to institute or continue to pursue such CBL RTS Proceedings (subject to service of prior written notice of its intention to do so upon the Authority within twenty (20) Business Days of receipt of the Authority's notice under paragraph 7.8) and the Contractor shall bear all the costs of instituting or continuing to pursue such CBL RTS Proceedings which it incurs from the point at which the Authority serves notice pursuant to paragraph 7.8 and in such case paragraphs 7.11 (CBL RTS
7.10 The Contractor shall be entitled, in its absolute discretion, to cease to pursue any CBL RTS Proceedings which it institutes or continues pursuant to paragraph 7.9 (approval being withheld or a direction having been given to the contrary) and in respect of which it has undertaken to bear the costs pursuant to paragraph 7.9.

CBL RTS Actual Planning Costs

7.11 The Contractor and the Authority shall bear the CBL RTS Actual Planning Costs (including for the avoidance of doubt the costs of obtaining any Leading Counsel's opinion under paragraphs 7.5 to 7.10) in the proportions noted below:

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<td>90%</td>
<td>10%</td>
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7.12 The Authority shall pay its share of the CBL Actual RTS Planning Costs to the Contractor provided that:

(a) the Contractor shall, prior to commencing any CBL RTS Proceedings, provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such CBL RTS Proceedings that the Contractor considers are necessary and appropriate to obtain a Satisfactory New CBL Planning Permission including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate or employ any additional or alternative legal or professional advisers without the further approval of the Authority; and

(b) the Contractor shall use all reasonable endeavours to ensure that at all times the costs of all CBL RTS Proceedings are kept to the minimum prudent and reasonable.

7.13 Subject to the Contractor complying with its obligations under paragraph 7.12 the Authority shall pay its share of the CBL Actual RTS Planning Costs to the Contractor through any one of the following means, the choice of such means to be in the Authority's absolute discretion:
(a) by way of an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Financial Adjustments) for all or some part of the remainder of the Service Period;

(b) by way of a lump sum payment made in one or more instalment together with an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Financial Adjustments);

(c) by way of a lump sum payment made in one or more instalment in respect of the whole amount; or

(d) by way of set-off in accordance with clause 66 (Set-off).

7.14 Should the Authority specify the means by which its share of any such CBL Actual RTS Planning Costs are to be paid, and so requests in writing, the Contractor shall provide such breakdown of costs as is reasonably practicable for each of the specified methods of payment.

Costs awarded in CBL RTS Proceedings

7.15 Any costs that are awarded to the Contractor in CBL RTS Proceedings ("CBL RTS Awarded Costs") shall be paid as follows:

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8. SATISFACTORY CBL RTS PLANNING PERMISSION

Satisfactory CBL RTS Planning Permission

8.1 Where, by the CBL RTS Planning Long Stop Date the Contractor obtains:

(a) a Satisfactory CBL RTS Planning Permission; or

(b) an Unsatisfactory CBL RTS Planning Permission in respect of which an Authority Change Notice has been agreed and implemented to enable the Contractor to comply with the Unsatisfactory CBL RTS Planning Permission without being in breach of this Contract and which:

(i) renders compliance with the relevant part of the Unsatisfactory CBL RTS Planning Permission unnecessary; or

(ii) renders the Unsatisfactory CBL RTS Planning Permission a Satisfactory CBL RTS Planning Permission,
and, in each case the Challenge Period has expired, the Contractor shall implement the Satisfactory CBL RTS Planning Permission. Subject to paragraph 8.11 (Challenge Period), the Authority may by written notice require the Contractor to so proceed without allowing the relevant Challenge Period to expire.

8.2 As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of a CBL RTS Planning Permission the Contractor shall provide to the Authority a copy of the CBL RTS Planning Permission and shall notify the Authority in writing whether or not the Contractor considersthe CBL RTS Planning Permission is a Satisfactory CBL RTS Planning Permission;

**Unsatisfactory CBL RTS Planning Permission**

8.3 If the Contractor considers that the CBL RTS Planning Permission is an Unsatisfactory CBL RTS Planning Permission it shall provide within ten (10) Business Days of the notice given pursuant to paragraph 8.2 to the Authority:

(a) full details of the grounds for such opinion; and

(b) an indication of what action could be taken (if any) by the Contractor or the Authority to enable the Contractor to comply with the CBL RTS Planning Permission without being in breach of this Contract and which would render it a Satisfactory CBL RTS Planning Permission or render compliance with the relevant part of such Unsatisfactory CBL RTS Planning Permission unnecessary including without limitation:

(1) CBL RTS Proceedings; or

(2) the issue of an Authority Change Notice to vary the CBL RTS Works and/or Services.

(the "CBL RTS UPP Notice")

8.4 If the Contractor fails to provide the CBL RTS UPP Notice within twenty five (25) Business Days after issue of the CBL RTS Planning Permission, the CBL RTS Planning Permission shall be deemed to be a Satisfactory CBL RTS Planning Permission.

8.5 If:

(a) the Contractor notifies the Authority that the CBL RTS Planning Permission is a Satisfactory CBL RTS Planning Permission; or

(b) such a CBL RTS Planning Permission is deemed to be a Satisfactory CBL RTS Planning Permission in accordance paragraph 8.4,
then the provisions of paragraph 8.1 shall apply accordingly.

8.6 If the Contractor notifies the Authority that the CBL RTS Planning Permission is an Unsatisfactory CBL RTS Planning Permission in accordance with paragraph 8.3 the Authority shall, within ten (10) Business Days of receipt of the CBL RTS UPP Notice, notify the Contractor in writing whether or not the Authority accepts that the CBL RTS Planning Permission is an Unsatisfactory CBL RTS Planning Permission and whether the Authority accepts the action indicated by the Contractor in the CBL RTS UPP Notice.

8.7 If the Authority does not accept or does not notify the Contractor (in which case the Authority shall be deemed not to have accepted), within the time set out in paragraph 8.6 that the CBL RTS Planning Permission is an Unsatisfactory CBL RTS Planning Permission the matter may be referred at the instance of either Party for determination by an expert under clause 102(Dispute Resolution) as to whether the CBL RTS Planning Permission is a Satisfactory CBL RTS Planning Permission or an Unsatisfactory CBL RTS Planning Permission.

8.8 If the Authority accepts in accordance with paragraph 8.8 or it is determined pursuant to clause 102(Dispute Resolution) that the CBL RTS Planning Permission is an Unsatisfactory CBL RTS Planning Permission and the Parties agree or it is determined that CBL RTS Proceedings will not be likely to secure a Satisfactory CBL RTS Planning Permission the Authority may subject to this paragraph 8.8 within thirty (30) Business Days after it is accepted by the Authority pursuant to paragraph 8.6 or it is determined that a CBL RTS Planning Permission is an Unsatisfactory CBL RTS Planning Permission in accordance with paragraph 8.7, issue an Authority Change Notice in respect of the Works or Services or other actions required to enable the Contractor to comply with the terms of the CBL RTS Planning Permission without being in breach of this Contract and which renders it a Satisfactory CBL RTS Planning Permission or renders compliance with the relevant part of such Unsatisfactory New CBL Planning Permission unnecessary.

Failure to obtain Satisfactory CBLRTS Planning Permission

8.9 At the earlier of:

(a) the date when the Parties reasonably conclude or it is determined in accordance with clause 102 (Dispute Resolution) that it will not be possible to obtain a Satisfactory CBL RTS Planning Permission by the CBL RTS Planning Long Stop Date; and

(b) the CBL RTS Planning Long Stop Date (where at such date the Contractor has failed to obtain the Satisfactory CBL RTS Planning Permission or the Contractor has obtained the Satisfactory CBL RTS Planning Permission but the Challenge
Period has not expired (unless the Authority has exercised its rights under paragraph 8.11); and

(c) unless the Parties agree otherwise, the date at which Leading Counsel advises under paragraph 7.5 (CBL RTS Proceedings) that there is no reasonable prospect of success in pursuing or continuing to pursue any CBL RTS Proceedings and obtaining a Satisfactory CBL RTS Planning Permission, save where the Authority directs or the Contractor chooses to initiate or continue to pursue those CBL RTS Proceedings under paragraphs 7.5 to 7.10 (CBL RTS Proceedings) in which case paragraphs 8.9(a), 8.9(b) or 8.9(d) shall apply; and

(d) unless the Parties agree otherwise, the date at which CBL RTS Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory CBL RTS Planning Permission has not been obtained; and

(e) where the Authority has exercised its rights under paragraph 8.11 and the Satisfactory CBL RTS Planning Permission is successfully challenged,

then provided that:

(f) the Contractor has complied with its obligation under paragraph 8.1 to use All Reasonable Endeavours to obtain a Satisfactory CBL RTS Planning Permission; or

(g) the Contractor has failed to comply with its obligation under paragraph 8.1 to use All Reasonable Endeavours to obtain a Satisfactory CBL RTS Planning Permission and either:

(i) the Authority has, pursuant to paragraph 7.3(b), notified the Contractor of any such failure and the Contractor has remedied the failure; or

(ii) the Authority has failed to notify the Contractor of any such failure pursuant to paragraph 7.3(b),

then such failure to obtain a Satisfactory CBL RTS Planning Permission shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.

8.10 If:

(a) the Authority accepts; or

(b) it is determined pursuant to clause 102 (Dispute Resolution),
that a CBL RTS Planning Permission is an Unsatisfactory CBL RTS Planning Permission; and

(c) the Parties agree; or

(d) if the Parties are unable to agree and either Party wishes,

to have determined whether CBL RTS Proceedings may secure a Satisfactory CBL RTS Planning Permission, the Parties shall seek the opinion of Leading Counsel pursuant to paragraph 7.5 (CBL RTS Proceedings) and the provisions of paragraphs 7.5 to 7.10 (CBL RTS Proceedings) shall apply. If CBL RTS Proceedings are not instituted or if instituted are withdrawn or determined leaving in place an Unsatisfactory CBL RTS Planning Permission then such failure to obtain a satisfactory CBL RTS Planning Permission shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.

Challenge Period

8.1 Where the Authority directs the Contractor to proceed to implement a Satisfactory CBL RTS Planning Permission without allowing the Challenge Period to elapse in respect of any relevant decision pursuant to paragraphs 8.1 to 8.10 Satisfactory CBL RTS Planning Permission) and a challenge is instituted within the Challenge Period the Authority shall indemnify and keep indemnified the Contractor for all costs, losses, expenses and liabilities reasonably and properly incurred up to the point at which such challenge is finally determined and the Contractor shall mitigate such costs, losses, expenses and liabilities provided that any indemnification of any costs, losses, expenses or liabilities shall be calculated on the basis that the Contractor should be left in no better or no worse position than it would have been in had such costs, losses, expenses or liabilities not arisen. If a challenge is successful the provisions of paragraph 8.9 shall apply.
ACKNOWLEDGEMENT

The Authority and the Contractor acknowledge that as at the Amendment Date a Satisfactory Helston Planning Permission has been obtained.

HELSTON WORKS

9. HELSTON PLANNING PERMISSION

Contractor to obtain Helston Planning Permission

9.1 The Contractor shall:

(a) use All Reasonable Endeavours to obtain a Satisfactory Helston Planning Permission to enable it to undertake the Helston Works and to deliver the relevant part of the Service at the Helston;

(b) in pursuing the Helston Planning Permission, use reasonable endeavours to:

(i) lodge the Helston Planning Application by the Helston Planning Application Target Date;

(ii) obtain a Satisfactory Helston Planning Permission by the Helston Planning and PPC Target Date; and

(c) implement the Satisfactory Helston Planning Permission:

(i) in accordance with the terms of the Contract; and

(ii) within the period of its validity and in accordance with its terms.

9.2 The Contractor shall:

(a) subject to paragraphs 9.11 to 9.15 bear the costs of making a Helston Planning Application and of obtaining, implementing and complying with the provisions and conditions of the Satisfactory Helston Planning Permission;

(b) within five (5) Business Days of the end of each Contract Month, provide to the Authority a written summary of:

(i) the steps taken by the Contractor in that Contract Month in compliance with its obligations under paragraphs 4.1; and
(ii) those steps which it anticipates taking in the following Contract Month in order to comply with its obligations under paragraphs 4.1.

9.3 Without limiting the Contractor's obligations under paragraphs 4.1 and 4.2 the Authority may within ten (10) Business Days after receipt of the summary referred to in paragraph 4.2(b):

(a) notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under paragraph 4.1 and the Contractor shall give due consideration to any such suggestions of the Authority; and

(b) notify the Contractor if any steps taken or proposed to be taken by the Contractor as referred to in the summary do not in the Authority's opinion constitute All Reasonable Endeavours to obtain a Satisfactory Helston Planning Permission.

Meaning of All Reasonable Endeavours

9.4 For the purposes of this Part E, "All Reasonable Endeavours" means that, having regard to the Helston (Gays Hill) site and the Helston Planning Application Target Date and the Helston Planning Target Date the Contractor shall:

(a) in relation to the making of any Helston Planning Application and seeking to obtain a Satisfactory Helston Planning Permission, incur such expenditure and do all other things reasonably necessary (including the commencement and prosecution or defence of Helston Proceedings in accordance with and subject to the provisions hereof) and in doing so shall exercise all proper care and skill to secure or procure the grant of Satisfactory Helston Planning Permission; and

(b) subject to paragraph 9.1 Helston Actual Planning Costs, meet the costs of any Helston Proceedings such costs to include the cost of instructing Leading Counsel (including for the purposes of deciding whether to initiate or pursue Helston Proceedings) and securing the services of any expert witnesses, considered necessary for the purpose of such Helston Proceedings; and

(c) provide as soon as reasonably practicable to the Authority any draft instructions (including enclosures) that are proposed to be given to Leading Counsel and opinions received from Leading Counsel (for the Authority's approval in accordance with paragraph 9.5) relating to such Helston Proceedings in respect of any Helston Planning Permission. The Authority's Representative shall be entitled to attend any conference with Leading Counsel and the Contractor shall use all reasonable endeavours when arranging such conference to agree a convenient time for attendance by the Authority's Representative.
Helston Proceedings

9.5 If the relevant Planning Authority:

(a) resolves to or is minded to grant a Helston Planning Permission and that Helston Planning Application is called-in by the Secretary of State under section 77 of the Planning Act; or

(b) refuses to grant a Helston Planning Permission (including any refusal on any re-determination of a Helston Planning Application following the quashing of a decision to grant such Helston Planning Permission) or there is a Deemed Refusal; or

(c) grants a Helston Planning Permission which is not a Satisfactory Helston Planning Permission in circumstances where the Authority and the Contractor agree (or are unable to agree and it is determined pursuant to clause 102 (Dispute Resolution)) that Helston Proceedings may secure a Satisfactory Helston Planning Permission;

the Contractor shall, unless the parties agree (acting reasonably) that they do not require the opinion of Leading Counsel to determine the merits of pursuing any Helston Proceedings, take the opinion of Leading Counsel as to the merits of pursuing any Helston Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably. For the avoidance of doubt, Leading Counsel shall be instructed by the Contractor and the Authority.

9.6 If Leading Counsel advises the Contractor pursuant to paragraphs 4.5, 4.7 or 4.8(b) that there is a reasonable prospect of success in pursuing any Helston Proceedings in order to obtain a Satisfactory Helston Planning Permission or if the parties agree that the Contractor shall pursue Helston Proceedings without referring the matter to Leading Counsel, the Contractor shall obtain the prior written consent of the Authority to institute such Helston Proceedings, which the Authority shall not unreasonably withhold or delay and if such approval is granted the Contractor shall pursue or defend the Helston Proceedings until determination of such Helston Proceedings unless subsequently in accordance with paragraph 4.9 the Authority directs that such Helston Proceedings shall cease to be pursued.

9.7 At any reasonable time after the commencement of any Helston Proceedings in relation to any Helston Planning Permission, the Authority may (acting reasonably) require the Contractor to take (or the Contractor may take (subject to obtaining the Authority’s prior written consent (acting reasonably)) the opinion of Leading Counsel as to the merits of continuing to pursue such Helston Proceedings and to make such opinion available to the Authority and in each case the identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably.
9.8 In the event that Leading Counsel advises under paragraph 4.6 or subsequently under paragraph 4.7 or 4.84.8(b) that there is no reasonable prospect of success, the Authority shall, by serving written notice on the Contractor on or before a date twenty (20) Business Days from the receipt by the Authority of the advice of Leading Counsel either:

(a) direct that the Contractor shall not pursue or shall cease to pursue the relevant Helston Proceedings;

(b) require the Contractor to take the opinion of an alternative Leading Counsel in accordance with paragraph 4.7 provided that (a) the Authority shall not be entitled to require the Contractor to take the opinion of more than one alternative Leading Counsel pursuant to this subparagraph (b) in relation to the merits of continuing to pursue the same Helston Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably; or

(c) direct that the Contractor institutes or continues the relevant Helston Proceedings, and such a direction shall be treated as an approval to those Helston Proceedings given pursuant to paragraph 4.6, and shall act reasonably in consultation with the Contractor before determining which option to select.

9.9 If the Authority (acting reasonably in all cases):

(a) does not give approval to any Helston Proceedings; or

(b) directs that the Contractor should cease to pursue any Helston Proceedings,

the Contractor shall be entitled to institute or continue to pursue such Helston Proceedings (subject to service of prior written notice of its intention to do so upon the Authority within twenty (20) Business Days of receipt of the Authority’s notice under paragraph 4.8) and the Contractor shall bear all the costs of instituting or continuing to pursue such Helston Proceedings which it incurs from the point at which the Authority serves notice pursuant to paragraph 4.8 and in such case paragraphs 9.11 (Helston Actual Planning Costs) and 9.15 (Costs Awarded in Helston Proceedings) shall not apply to those costs.

9.10 The Contractor shall be entitled, in its absolute discretion, to cease to pursue any Helston Proceedings which it institutes or continues pursuant to paragraph 4.9 (approval being withheld or a direction having been given to the contrary) and in respect of which it has undertaken to bear the costs pursuant to paragraph 4.9.

Helston Actual Planning Costs
9.11 The Contractor and the Authority shall bear the Helston Actual Planning Costs (including for the avoidance of doubt the costs of obtaining any Leading Counsel’s opinion under paragraphs 4.5 to 4.10) in the proportions noted below:

<table>
<thead>
<tr>
<th>Helston Actual Planning Costs</th>
<th>Authority's share</th>
<th>Contractor's share</th>
</tr>
</thead>
<tbody>
<tr>
<td>£1 or above</td>
<td>90%</td>
<td>10%</td>
</tr>
</tbody>
</table>

9.12 The Authority shall pay its share of the Helston Actual Planning Costs to the Contractor provided that:

(a) the Contractor shall, prior to commencing any Helston Proceedings, provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such Helston Proceedings that the Contractor considers are necessary and appropriate to obtain a Satisfactory New Helston Planning Permission including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate or employ any additional or alternative legal or professional advisers without the further approval of the Authority; and

(b) the Contractor shall use all reasonable endeavours to ensure that at all times the costs of all Helston Proceedings are kept to the minimum prudent and reasonable.

9.13 Subject to the Contractor complying with its obligations under paragraph 7.12 the Authority shall pay its share of the Helston Actual Planning Costs to the Contractor through any one of the following means, the choice of such means to be in the Authority’s absolute discretion:

(a) by way of an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Adjustments to the Annual Unitary Charge) for all or some part of the remainder of the Service Period;

(b) by way of a lump sum payment made in one or more instalment together with an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Adjustments to the Annual Unitary Charge);

(c) by way of a lump sum payment made in one or more instalment in respect of the whole amount; or
9.14 Should the Authority specify the means by which its share of any such Helston Actual Planning Costs are to be paid, and so requests in writing, the Contractor shall provide such breakdown of costs as is reasonably practicable for each of the specified methods of payment.

**Costs awarded in Helston Proceedings**

9.15 Any costs that are awarded to the Contractor in Helston Proceedings ("Helston Awarded Costs") shall be paid as follows:

<table>
<thead>
<tr>
<th>Helston Awarded Costs</th>
<th>Authority's share</th>
<th>Contractor's share</th>
</tr>
</thead>
<tbody>
<tr>
<td>£1 or above</td>
<td>90%</td>
<td>10%</td>
</tr>
</tbody>
</table>

10. **SATISFACTORY HELSTON PLANNING PERMISSION**

**Satisfactory Helston Planning Permission**

10.1 Where, by the Helston Planning Long Stop Date the Contractor obtains:

(a) a Satisfactory Helston Planning Permission; or

(b) an Unsatisfactory Helston Planning Permission in respect of which an Authority Change Notice has been agreed and implemented to enable the Contractor to comply with the Unsatisfactory Helston Planning Permission without being in breach of this Contract and which:

(i) renders compliance with the relevant part of the Unsatisfactory Helston Planning Permission unnecessary; or

(ii) renders the Unsatisfactory Helston Planning Permission a Satisfactory Helston Planning Permission,

it shall after the expiry of the Challenge Period (if any) relating to the Satisfactory Helston Planning Permission proceed to implement the Satisfactory Helston Planning Permission. Subject to paragraph 5.11 (Challenge Period), the Authority may by written notice require the Contractor to so proceed without allowing the relevant Challenge Period to expire.

10.2 As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of a Helston Planning Permission the Contractor shall provide to the Authority a copy of the Helston Planning Permission and shall notify the Authority in writing whether
or not the Contractor considers the Helston Planning Permission is a Satisfactory Helston Planning Permission;

**Unsatisfactory Helston Planning Permission**

10.3 If the Contractor considers that the Helston Planning Permission is an Unsatisfactory Helston Planning Permission it shall provide within ten (10) Business Days of the notice given pursuant to paragraph 5.2 to the Authority:

(a) full details of the grounds for such opinion; and

(b) an indication of what action could be taken (if any) by the Contractor or the Authority to enable the Contractor to comply with the Helston Planning Permission without being in breach of this Contract and which would render it a Satisfactory Helston Planning Permission or render compliance with the relevant part of such Unsatisfactory Helston Planning Permission unnecessary including without limitation:

(1) Helston Proceedings; or

(2) the issue of an Authority Change Notice to vary the Helston Works and/or Services.

(the "Helston UPP Notice")

10.4 If the Contractor fails to provide the Helston UPP Notice within twenty five (25) Business Days after issue of the Helston Planning Permission, the Helston Planning Permission shall be deemed to be a Satisfactory Helston Planning Permission.

10.5 If:

(a) the Contractor notifies the Authority that the Helston Planning Permission is a Satisfactory Helston Planning Permission; or

(b) such a Helston Planning Permission is deemed to be a Satisfactory Helston Planning Permission in accordance paragraph 10.4,

then the provisions of paragraph 10.1 shall apply accordingly.

10.6 If the Contractor notifies the Authority that the Helston Planning Permission is an Unsatisfactory Helston Planning Permission in accordance with paragraph 10.3 the Authority shall, within ten (10) Business Days of receipt of the Helston UPP Notice, notify the Contractor in writing whether or not the Authority accepts that the Helston Planning Permission is an Unsatisfactory Helston Planning Permission and whether the Authority accepts the action indicated by the Contractor in the Helston UPP Notice.
10.7 If the Authority does not accept or does not notify the Contractor (in which case the Authority shall be deemed not to have accepted), within the time set out in paragraph 10.6 that the Helston Planning Permission is an Unsatisfactory Helston Planning Permission the matter may be referred at the instance of either Party for determination by an expert under clause 102 (Dispute Resolution) as to whether the Helston Planning Permission is a Satisfactory Helston Planning Permission or an Unsatisfactory Helston Planning Permission.

10.8 If the Authority accepts in accordance with paragraph 10.6 or it is determined pursuant to clause 102 (Dispute Resolution) that the Helston Planning Permission is an Unsatisfactory Helston Planning Permission and the Parties agree or it is determined that Helston Proceedings will not be likely to secure a Satisfactory Helston Planning Permission the Authority may subject to this paragraph 10.8 within thirty (30) Business Days after it is accepted by the Authority pursuant to paragraph 10.6 or it is determined that a Helston Planning Permission is an Unsatisfactory Helston Planning Permission in accordance with paragraph 10.7, issue an Authority Change Notice in respect of the Works or Services or other actions required to enable the Contractor to comply with the terms of the Helston Planning Permission without being in breach of this Contract and which renders it a Satisfactory Helston Planning Permission or renders compliance with the relevant part of such Unsatisfactory Helston Planning Permission unnecessary.

**Failure to obtain Satisfactory Helston Planning Permission**

10.9 At the earlier of:

(a) the date when the Parties reasonably conclude or it is determined in accordance with clause 102 (Dispute Resolution) that it will not be possible to obtain a Satisfactory Helston Planning Permission by the Helston Planning Long Stop Date; and

(b) the Helston Planning Long Stop Date (where at such date the Contractor has failed to obtain the Satisfactory Helston Planning Permission or the Contractor has obtained the Satisfactory Helston Planning Permission but the Challenge Period has not expired (unless the Authority has exercised its rights under paragraph 10.11)); and

(c) unless the Parties agree otherwise, the date at which Leading Counsel advises under paragraph 9.5 (Helston Proceedings) that there is no reasonable prospect of success in pursuing or continuing to pursue any Helston Proceedings and obtaining a Satisfactory Helston Planning Permission, save where the Authority directs or the Contractor chooses to initiate or continue to pursue those Helston
Proceedings under paragraphs 9.5 to 9.10 (Helston Proceedings) in which case paragraphs 10.9(a), 10.9(b) or 10.9(d) shall apply; and

(d) unless the Parties agree otherwise, the date at which Helston Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory Helston Planning Permission has not been obtained; and

(e) where the Authority has exercised its rights under paragraph 10.11 and the Satisfactory Helston Planning Permission is successfully challenged,

then provided that:

(f) the Contractor has complied with its obligation under paragraph 10.1 to use All Reasonable Endeavours to obtain a Satisfactory Helston Planning Permission; or

(g) the Contractor has failed to comply with its obligation under paragraph 10.1 to use All Reasonable Endeavours to obtain a Satisfactory Helston Planning Permission and either:

(i) the Authority has, pursuant to paragraph 9.3(b), notified the Contractor of any such failure and the Contractor has remedied the failure; or

(ii) the Authority has failed to notify the Contractor of any such failure pursuant to paragraph 9.3(b),

then such failure to obtain a Satisfactory Helston Planning Permission shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.

10.10 If:

(a) the Authority accepts; or

(b) it is determined pursuant to clause 102 (Dispute Resolution),

that a Helston Planning Permission is an Unsatisfactory Helston Planning Permission; and

(c) the Parties agree; or

(d) if the Parties are unable to agree and either Party wishes,

to have determined whether Helston Proceedings may secure a Satisfactory Helston Planning Permission, the Parties shall seek the opinion of Leading Counsel pursuant to paragraph 9.5 (Helston Proceedings) and the provisions of paragraphs 9.5 to 9.10 (Helston Proceedings) shall apply. If Helston Proceedings are not instituted or if instituted
are withdrawn or determined leaving in place an Unsatisfactory Helston Planning Permission then such failure to obtain a satisfactory Helston Planning Permission shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.

Challenge Period

10.11 Where the Authority directs the Contractor to proceed to implement a Satisfactory Helston Planning Permission without allowing the Challenge Period to elapse in respect of any relevant decision pursuant to paragraphs 10.1 to 10.10 (Satisfactory Helston Planning Permission) and a challenge is instituted within the Challenge Period the Authority shall indemnify and keep indemnified the Contractor for all costs, losses, expenses and liabilities reasonably and properly incurred up to the point at which such challenge is finally determined and the Contractor shall mitigate such costs, losses, expenses and liabilities provided that any indemnification of any costs, losses, expenses or liabilities shall be calculated on the basis that the Contractor should be left in no better or no worse position than it would have been in had such costs, losses, expenses or liabilities not arisen. If a challenge is successful the provisions of paragraph 10.9 shall apply.
11A ACKNOWLEDGEMENT

The Authority and the Contractor acknowledge that as at the Amendment Date a Satisfactory Launceston (Bangors) Planning Permission has been obtained.

LAUNCESTON (BANGORS) WORKS

11. LAUNCESTON (BANGORS) PLANNING PERMISSION

Contractor to obtain Launceston (Bangors) Planning Permission

11.1 The Contractor shall:

(a) use All Reasonable Endeavours to obtain a Satisfactory Launceston (Bangors) Planning Permission to enable it to undertake the Launceston (Bangors) Works and to deliver the relevant part of the Service at the Launceston (Bangors);

(b) in pursuing the Launceston (Bangors) Planning Permission, use reasonable endeavours to:

(i) lodge the Launceston (Bangors) Planning Application by the Launceston (Bangors) Planning Application Target Date;

(ii) obtain a Satisfactory Launceston (Bangors) Planning Permission by the Launceston (Bangors) Planning and PPC Target Date; and

(c) implement the Satisfactory Launceston (Bangors) Planning Permission:

(i) in accordance with the terms of the Contract; and

(ii) within the period of its validity and in accordance with its terms.

11.2 The Contractor shall:

(a) subject to paragraphs 11.11 to 11.15 bear the costs of making a Launceston (Bangors) Planning Application and of obtaining, implementing and complying with the provisions and conditions of the Satisfactory Launceston (Bangors) Planning Permission;

(b) within five (5) Business Days of the end of each Contract Month, provide to the Authority a written summary of:

(i) the steps taken by the Contractor in that Contract Month in compliance with its obligations under paragraphs 11.1; and
(ii) those steps which it anticipates taking in the following Contract Month in order to comply with its obligations under paragraphs 11.1.

11.3 Without limiting the Contractor's obligations under paragraphs 11.1 and 11.2 the Authority may within ten (10) Business Days after receipt of the summary referred to in paragraph 11.2(b):

(a) notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under paragraph 11.1 and the Contractor shall give due consideration to any such suggestions of the Authority; and

(b) notify the Contractor if any steps taken or proposed to be taken by the Contractor as referred to in the summary do not in the Authority's opinion constitute All Reasonable Endeavours to obtain a Satisfactory Launceston (Bangors) Planning Permission.

Meaning of All Reasonable Endeavours

11.4 For the purposes of this Part F, "All Reasonable Endeavours" means that, having regard to the Launceston (Bangors) site and the Launceston (Bangors) Planning Application Target Date and the Launceston (Bangors) Planning Target Date the Contractor shall:

(a) in relation to the making of any Launceston (Bangors) Planning Application and seeking to obtain a Satisfactory Launceston (Bangors) Planning Permission, incur such expenditure and do all other things reasonably necessary (including the commencement and prosecution or defence of Launceston (Bangors) Proceedings in accordance with and subject to the provisions hereof) and in doing so shall exercise all proper care and skill to secure or procure the grant of Satisfactory Launceston (Bangors) Planning Permission; and

(b) subject to paragraph 11.11 (Launceston (Bangors) Actual Planning Costs), meet the costs of any Launceston (Bangors) Proceedings such costs to include the cost of instructing Leading Counsel (including for the purposes of deciding whether to initiate or pursue Launceston (Bangors) Proceedings) and securing the services of any expert witnesses, considered necessary for the purpose of such Launceston (Bangors) Proceedings; and

(c) provide as soon as reasonably practicable to the Authority any draft instructions (including enclosures) that are proposed to be given to Leading Counsel and opinions received from Leading Counsel (for the Authority's approval in accordance with paragraph 11.5) relating to such Launceston (Bangors)
Proceedings in respect of any Launceston (Bangors) Planning Permission. The Authority's Representative shall be entitled to attend any conference with Leading Counsel and the Contractor shall use all reasonable endeavours when arranging such conference to agree a convenient time for attendance by the Authority's Representative.

Launceston (Bangors) Proceedings

11.5 If the relevant Planning Authority:

(a) resolves to or is minded to grant a Launceston (Bangors) Planning Permission and that Launceston (Bangors) Planning Application is called-in by the Secretary of State under section 77 of the Planning Act; or

(b) refuses to grant a Launceston (Bangors) Planning Permission (including any refusal on any re-determination of a Launceston (Bangors) Planning Application following the quashing of a decision to grant such Launceston (Bangors) Planning Permission) or there is a Deemed Refusal; or

(c) grants a Launceston (Bangors) Planning Permission which is not a Satisfactory Launceston (Bangors) Planning Permission in circumstances where the Authority and the Contractor agree (or are unable to agree and it is determined pursuant to clause 102 (Dispute Resolution)) that Launceston (Bangors) Proceedings may secure a Satisfactory Launceston (Bangors) Planning Permission;

the Contractor shall, unless the parties agree (acting reasonably) that they do not require the opinion of Leading Counsel to determine the merits of pursuing any Launceston (Bangors) Proceedings, take the opinion of Leading Counsel as to the merits of pursuing any Launceston (Bangors) Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably. For the avoidance of doubt, Leading Counsel shall be instructed by the Contractor and the Authority.

11.6 If Leading Counsel advises the Contractor pursuant to paragraphs 11.5, 11.7 or 11.8(b) that there is a reasonable prospect of success in pursuing any Launceston (Bangors) Proceedings in order to obtain a Satisfactory Launceston (Bangors) Planning Permission or if the parties agree that the Contractor shall pursue Launceston (Bangors) Proceedings without referring the matter to Leading Counsel, the Contractor shall obtain the prior written consent of the Authority to institute such Launceston (Bangors) Proceedings, which the Authority shall not unreasonably withhold or delay and if such approval is granted the Contractor shall pursue or defend the Launceston (Bangors) Proceedings until determination of such Launceston (Bangors) Proceedings unless subsequently in...
accordance with paragraph 11.9 the Authority directs that such Launceston (Bangors) Proceedings shall cease to be pursued.

11.7 At any reasonable time after the commencement of any Launceston (Bangors) Proceedings in relation to any Launceston (Bangors) Planning Permission, the Authority may (acting reasonably) require the Contractor to take (or the Contractor may take (subject to obtaining the Authority's prior written consent (acting reasonably)) the opinion of Leading Counsel as to the merits of continuing to pursue such Launceston (Bangors) Proceedings and to make such opinion available to the Authority and in each case the identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably.

11.8 In the event that Leading Counsel advises under paragraph 11.6 or subsequently under paragraph 11.7 or 11.8(b) that there is no reasonable prospect of success, the Authority shall, by serving written notice on the Contractor on or before a date twenty (20) Business Days from the receipt by the Authority of the advice of Leading Counsel either:

(a) direct that the Contractor shall not pursue or shall cease to pursue the relevant Launceston (Bangors) Proceedings;

(b) require the Contractor to take the opinion of an alternative Leading Counsel in accordance with paragraph 11.7 provided that (a) the Authority shall not be entitled to require the Contractor to take the opinion of more than one alternative Leading Counsel pursuant to this subparagraph (b) in relation to the merits of continuing to pursue the same Launceston (Bangors) Proceedings. The identity of the Leading Counsel and the content of his instructions shall be settled by the Authority, acting reasonably; or

(c) direct that the Contractor institutes or continues the relevant Launceston (Bangors) Proceedings, and such a direction shall be treated as an approval to those Launceston (Bangors) Proceedings given pursuant to paragraph 11.6,

and shall act reasonably in consultation with the Contractor before determining which option to select.

11.9 If the Authority (acting reasonably in all cases):

(a) does not give approval to any Launceston (Bangors) Proceedings; or

(b) directs that the Contractor should cease to pursue any Launceston (Bangors) Proceedings,

the Contractor shall be entitled to institute or continue to pursue such Launceston (Bangors) Proceedings (subject to service of prior written notice of its intention to do so
upon the Authority within twenty (20) Business Days of receipt of the Authority's notice under paragraph 11.8) and the Contractor shall bear all the costs of instituting or continuing to pursue such Launceston (Bangors) Proceedings which it incurs from the point at which the Authority serves notice pursuant to paragraph 11.8 and in such case paragraphs 11.11 (Launceston (Bangors) Actual Planning Costs) and 11.15 (Costs Awarded in Launceston (Bangors) Proceedings) shall not apply to those costs.

11.10 The Contractor shall be entitled, in its absolute discretion, to cease to pursue any Launceston (Bangors) Proceedings which it institutes or continues pursuant to paragraph 11.9 (approval being withheld or a direction having been given to the contrary) and in respect of which it has undertaken to bear the costs pursuant to paragraph 11.9.

**Launceston (Bangors) Actual Planning Costs**

11.11 The Contractor and the Authority shall bear the Launceston (Bangors) Actual Planning Costs (including for the avoidance of doubt the costs of obtaining any Leading Counsel's opinion under paragraphs 11.5 to 11.10) in the proportions noted below:

<table>
<thead>
<tr>
<th>Launceston (Bangors) Actual Planning Costs</th>
<th>Authority's share</th>
<th>Contractor's share</th>
</tr>
</thead>
<tbody>
<tr>
<td>£1 or above</td>
<td>90%</td>
<td>10%</td>
</tr>
</tbody>
</table>

11.12 The Authority shall pay its share of the Launceston (Bangors) Actual Planning Costs to the Contractor provided that:

(a) the Contractor shall, prior to commencing any Launceston (Bangors) Proceedings, provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such Launceston (Bangors) Proceedings that the Contractor considers are necessary and appropriate to obtain a Satisfactory New Launceston (Bangors) Planning Permission including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate or employ any additional or alternative legal or professional advisers without the further approval of the Authority; and

(b) the Contractor shall use all reasonable endeavours to ensure that at all times the costs of all Launceston (Bangors) Proceedings are kept to the minimum prudent and reasonable.
11.13 Subject to the Contractor complying with its obligations under paragraph 11.12 the Authority shall pay its share of the Launceston (Bangors) Actual Planning Costs to the Contractor through any one of the following means, the choice of such means to be in the Authority's absolute discretion:

(a) by way of an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Adjustments to the Annual Unitary Charge) for all or some part of the remainder of the Service Period;

(b) by way of a lump sum payment made in one or more instalments together with an adjustment to the Annual Unitary Charge in accordance with Schedule 24 (Adjustments to the Annual Unitary Charge);

(c) by way of a lump sum payment made in one or more instalments in respect of the whole amount; or

(d) by way of set-off in accordance with clause 66 (Set-off).

11.14 Should the Authority specify the means by which its share of any such Launceston (Bangors) Actual Planning Costs are to be paid, and so requests in writing, the Contractor shall provide such breakdown of costs as is reasonably practicable for each of the specified methods of payment.

Costs awarded in Launceston (Bangors) Proceedings

11.15 Any costs that are awarded to the Contractor in Launceston (Bangors) Proceedings ("Launceston (Bangors) Awarded Costs") shall be paid as follows:

<table>
<thead>
<tr>
<th>Launceston Awarded Costs</th>
<th>Authority's share</th>
<th>Contractor's share</th>
</tr>
</thead>
<tbody>
<tr>
<td>£1 or above</td>
<td>90%</td>
<td>10%</td>
</tr>
</tbody>
</table>

12. Satisfactory Launceston (Bangors) Planning Permission

Satisfactory Launceston (Bangors) Planning Permission

12.1 Where, by the Launceston (Bangors) Planning Long Stop Date the Contractor obtains:

(a) a Satisfactory Launceston (Bangors) Planning Permission; or

(b) an Unsatisfactory Launceston (Bangors) Planning Permission in respect of which an Authority Change Notice has been agreed and implemented to enable the
Contractor to comply with the Unsatisfactory Launceston (Bangors) Planning Permission without being in breach of this Contract and which:

(i) renders compliance with the relevant part of the Unsatisfactory Launceston (Bangors) Planning Permission unnecessary; or

(ii) renders the Unsatisfactory Launceston (Bangors) Planning Permission a Satisfactory Launceston (Bangors) Planning Permission,

and in each case the Challenge Period has expired, the Contractor shall implement the Satisfactory Launceston (Bangors) Planning Permission. Subject to paragraph 12.11 (Challenge Period), the Authority may by written notice require the Contractor to so proceed without allowing the relevant Challenge Period to expire.

12.2 As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of a Launceston (Bangors) Planning Permission the Contractor shall provide to the Authority a copy of the Launceston (Bangors) Planning Permission and shall notify the Authority in writing whether or not the Contractor considers the Launceston (Bangors) Planning Permission is a Satisfactory Launceston (Bangors) Planning Permission;

Unsatisfactory Launceston (Bangors) Planning Permission

12.3 If the Contractor considers that the Launceston (Bangors) Planning Permission is an Unsatisfactory Launceston (Bangors) Planning Permission it shall provide within ten (10) Business Days of the notice given pursuant to paragraph 12.2 to the Authority:

(a) full details of the grounds for such opinion; and

(b) an indication of what action could be taken (if any) by the Contractor or the Authority to enable the Contractor to comply with the Launceston (Bangors) Planning Permission without being in breach of this Contract and which would render it a Satisfactory Launceston (Bangors) Planning Permission or render compliance with the relevant part of such Unsatisfactory Launceston (Bangors) Planning Permission unnecessary including without limitation:

(1) Launceston (Bangors) Proceedings; or

(2) the issue of an Authority Change Notice to vary the Launceston (Bangors) Works and/or Services.

(the "Launceston (Bangors) UPP Notice")

12.4 If the Contractor fails to provide the Launceston (Bangors) UPP Notice within twenty five (25) Business Days after issue of the Launceston (Bangors) Planning Permission, the Launceston (Bangors) Planning Permission shall be deemed to be a Satisfactory Launceston (Bangors) Planning Permission.
12.5 If:

(a) the Contractor notifies the Authority that the Launceston (Bangors) Planning Permission is a Satisfactory Launceston (Bangors) Planning Permission; or

(b) such a Launceston (Bangors) Planning Permission is deemed to be a Satisfactory Launceston (Bangors) Planning Permission in accordance paragraph 12.4,

then the provisions of paragraph 12.1 shall apply accordingly.

12.6 If the Contractor notifies the Authority that the Launceston (Bangors) Planning Permission is an Unsatisfactory Launceston (Bangors) Planning Permission in accordance with paragraph 12.3 the Authority shall, within ten (10) Business Days of receipt of the Launceston (Bangors) UPP Notice, notify the Contractor in writing whether or not the Authority accepts that the Launceston (Bangors) Planning Permission is an Unsatisfactory Launceston (Bangors) Planning Permission and whether the Authority accepts the action indicated by the Contractor in the Launceston (Bangors) UPP Notice.

12.7 If the Authority does not accept or does not notify the Contractor (in which case the Authority shall be deemed not to have accepted), within the time set out in paragraph 5.6 that the Launceston (Bangors) Planning Permission is an Unsatisfactory Launceston (Bangors) Planning Permission the matter may be referred at the instance of either Party for determination by an expert under clause 102 (Dispute Resolution) as to whether the Launceston (Bangors) Planning Permission is a Satisfactory Launceston (Bangors) Planning Permission or an Unsatisfactory Launceston (Bangors) Planning Permission.

12.8 If the Authority accepts in accordance with paragraph 12.5 or it is determined pursuant to clause 102 (Dispute Resolution) that the Launceston (Bangors) Planning Permission is an Unsatisfactory Launceston (Bangors) Planning Permission and the Parties agree or it is determined that Launceston (Bangors) Proceedings will not be likely to secure a Satisfactory Launceston (Bangors) Planning Permission the Authority may subject to this paragraph 12.8 within thirty (30) Business Days after it is accepted by the Authority pursuant to paragraph 12.6 or it is determined that a Launceston (Bangors) Planning Permission is an Unsatisfactory Launceston (Bangors) Planning Permission in accordance with paragraph 12.7, issue an Authority Change Notice in respect of the Works or Services or other actions required to enable the Contractor to comply with the terms of the Launceston (Bangors) Planning Permission without being in breach of this Contract and which renders it a Satisfactory Launceston (Bangors) Planning Permission or renders compliance with the relevant part of such Unsatisfactory New Launceston (Bangors) Planning Permission unnecessary.
Failure to obtain Satisfactory Launceston (Bangors) Planning Permission

12.9 At the earlier of:

(a) the date when the Parties reasonably conclude or it is determined in accordance with clause 102 (Dispute Resolution) that it will not be possible to obtain a Satisfactory Launceston (Bangors) Planning Permission by the Launceston (Bangors) Planning Long Stop Date; and

(b) the Launceston (Bangors) Planning Long Stop Date (where at such date the Contractor has failed to obtain the Satisfactory Launceston (Bangors) Planning Permission or the Contractor has obtained the Satisfactory Launceston (Bangors) Planning Permission but the Challenge Period has not expired (unless the Authority has exercised its rights under paragraph 12.11))

(c) unless the Parties agree otherwise, the date at which Leading Counsel advises under paragraph 11.5 (Launceston (Bangors) Proceedings) that there is no reasonable prospect of success in pursuing or continuing to pursue any Launceston (Bangors) Proceedings and obtaining a Satisfactory Launceston (Bangors) Planning Permission, save where the Authority directs or the Contractor chooses to initiate or continue to pursue those Launceston (Bangors) Proceedings under paragraphs 11.5 to 11.10 (Launceston (Bangors) Proceedings) in which case paragraphs 12.9(a), 12.9(b) or 12.9(d) shall apply; and

(d) unless the Parties agree otherwise, the date at which Launceston (Bangors) Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory Launceston (Bangors) Planning Permission has not been obtained;

(e) where the Authority has exercised its rights under paragraph 12.11 and the Satisfactory Launceston (Bangors) Planning Permission has been successfully challenged

then provided that:

(f) the Contractor has complied with its obligation under paragraph 12.1 to use All Reasonable Endeavours to obtain a Satisfactory Launceston (Bangors) Planning Permission; or

(g) the Contractor has failed to comply with its obligation under paragraph 12.1 to use All Reasonable Endeavours to obtain a Satisfactory Launceston (Bangors) Planning Permission and either:
(i) the Authority has, pursuant to paragraph 11.3(b), notified the Contractor of any such failure and the Contractor has remedied the failure; or

(ii) the Authority has failed to notify the Contractor of any such failure pursuant to paragraph 11.3(b),

then such failure to obtain a Satisfactory Launceston (Bangors) Planning Permission shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.

12.10 If:

(a) the Authority accepts; or

(b) it is determined pursuant to clause 102 (Dispute Resolution),

that a Launceston (Bangors) Planning Permission is an Unsatisfactory Launceston (Bangors) Planning Permission; and

(c) the Parties agree; or

(d) if the Parties are unable to agree and either Party wishes,

to have determined whether Launceston (Bangors) Proceedings may secure a Satisfactory Launceston (Bangors) Planning Permission, the Parties shall seek the opinion of Leading Counsel pursuant to paragraph 11.5 (Launceston (Bangors) Proceedings) and the provisions of paragraphs 11.5 to 11.10 (Launceston (Bangors) Proceedings) shall apply. If Launceston (Bangors) Proceedings are not instituted or if instituted are withdrawn or determined leaving in place an Unsatisfactory Launceston (Bangors) Planning Permission then such failure to obtain a satisfactory Launceston (Bangors) Planning Permission shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.

Challenge Period

12.11 Where the Authority directs the Contractor to proceed to implement a Satisfactory Launceston (Bangors) Planning Permission without allowing the Challenge Period to elapse in respect of any relevant decision pursuant to paragraphs 12.1 to 12.10 Satisfactory Launceston (Bangors) Planning Permission) and a challenge is instituted within the Challenge Period the Authority shall indemnify and keep indemnified the Contractor for all costs, losses, expenses and liabilities reasonably and properly incurred up to the point at which such challenge is finally determined and the Contractor shall mitigate such costs, losses, expenses and liabilities provided that any indemnification of any costs, losses, expenses or liabilities shall be calculated on the basis that the
Contractor should be left in no better or no worse position than it would have been had such costs, losses, expenses or liabilities not arisen. If a challenge is successful the provisions of paragraph 12.9 shall apply.
13. **DESIGN METHODOLOGY**

13.1 If during the course of performing its obligations under this Schedule 6, the Relevant Authority formally notifies the Contractor of changes to the Design Data and Methodology that are either:

(a) required by the Relevant Authority considering a Planning Application or PPC Application as a condition to granting a Planning Permission or PPC Permit; or

(b) will enhance the prospects of obtaining a Planning Permission or PPC Permit meeting the requirements of this Schedule 6,

then the Contractor shall notify the Authority, describing the proposed changes in reasonable detail.

13.2 As soon as is reasonably practicable following any notification under paragraph 1.2, the Authority and the Contractor will seek to agree whether the proposed change was Reasonably Foreseeable. For these purposes, “Reasonably Foreseeable” means that an experienced waste contractor in consultation with a consultant experienced in making Planning Applications or PPC Applications (as the case may be) in relation to works and services of the scope, nature and complexity as the relevant Works and Services and with knowledge of the relevant Authority Site and exercising reasonable skill, care and diligence would have anticipated that the proposed change would be required or recommended (as the case may be) by the Relevant Authority. If the parties cannot agree then the dispute will be determined in accordance with clause 102 (Dispute Resolution).

13.3 If it is agreed or it is determined that the relevant changes were Reasonably Foreseeable then the Contractor shall be required to implement the changes at its own cost.

13.4 If it is agreed or it is determined that the relevant changes were not Reasonably Foreseeable then:

(a) the Authority may notify the Contractor that it wishes to implement the proposed changes as an Authority Change in accordance with Clause 70 (Authority Changes), and the provisions of Clause 70 (Authority Changes) shall apply; or

(b) in the event that the Authority elects not to implement the proposed changes as an Authority Change then the Contractor shall be entitled to proceed with the
relevant Planning Application or PPC Application based on the original Design Data and Methodology and in so doing shall not be regarded as being in breach of its obligation to use All Reasonable Endeavours to obtain the relevant Planning Permission or PPC Permit.
PART H

UNITED MINES WASTE TONNAGES

14. **UNITED MINES WASTE TONNAGES**

14.1 The Contractor shall use All Reasonable Endeavours to liaise and negotiate with the Environment Agency with a view to obtaining the approval of the Environment Agency to an increase of the amount of waste that can be landfilled at United Mines (Redruth) Landfill Site to 400,000 tonnes of waste per annum (the "Minimum Tonnages") on or before the date on which the deemed Qualifying Change in Law occurs in relation to the Connon Bridge CBL RTS under paragraph 8 of Schedule 6.

14.2 In the event that the Contractor is unable to obtain the approval of the Environment Agency to the Minimum Tonnages on or before the date referred to in paragraph 14.1, such failure shall be treated as if it were a Qualifying Change of Law and the provisions of clause 73 (Change in Law) shall apply.

**Challenge Period**

14.3 If a challenge to the approval of the Environment Agency to the Minimum Tonnages is successful it shall be treated as if it were a Qualifying Change of Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.
PART I

EXTENSION OF SPECIAL AREAS OF CONSERVATION

1. Definitions

In this Part I of Schedule 6, unless the context otherwise requires:

"Competent Authority" means the Relevant Authority that is the "competent authority" for the purposes of any duty to review the RWTP Planning Permission and/or the RWTP PPC Permit pursuant to and in accordance with section 63(1) of the Habitats Regulations;

"Duty to Review" means any duty to review the RWTP Planning Permission and/or the RWTP PPC Permit pursuant to and in accordance with section 63(1) of the Habitats Regulations;

"Election Notice" means a notice given under paragraph 5.2;

"Extension Proceedings" means RWTP Planning Permission Extension Proceedings and/or RWTP PPC Permit Extension Proceedings, as the case may be;

"Habitats Regulations" means the Conservation of Habitats and Species Regulations 2010;

"Minimum Suspension Period" has the meaning given to that term in paragraph 4.2;

"RWTP Planning Permission Extension Proceedings" means court proceedings in relation to the RWTP Planning Permission arising out of or in connection with the SAC Extension, including judicial reviews of decisions made by any Relevant Authority and claims for compensation from the Competent Authority;

"RWTP Planning Permission Review" means a review of the RWTP Planning Permission by the Competent Authority in accordance with the Habitats Regulations as a consequence of the SAC Extension;

"RWTP PPC Permit Extension Proceedings" means court proceedings in relation to the RWTP PPC Permit arising out of or in connection with the SAC Extension including judicial reviews of decisions made by any Relevant Authority and claims for compensation from the Competent Authority;

"RWTP PPC Permit Review" means a review of the RWTP PPC Permit by the Competent Authority in accordance with the Habitats Regulations as a consequence of the SAC Extension;

"RWTP Review" means the RWTP Planning Permission Review and/or the RWTP PPC Permit Review, as the case may be;

"SAC Extension" means the proposed extension of the six Sites of Special Scientific Interest and the Special Area of Conservation in the vicinity of the RWTP Site into a single landscape-scale designation to be known as the Mid Cornwall Moors SSSI and SAC as set out in a letter from Natural England to Cornwall Council dated 27 July 2012;

"SAC Extension Proceedings Costs" means in connection with any RWTP Review all amounts reasonably and prudently spent or contracted to be spent in the proper and diligent conduct of Extension Proceedings provided that such amounts are not in respect of the internal costs of:
(a) the Contractor, Hold Co or any Contractor Party;
(b) an Affiliate of the Contractor or of Hold Co; or
(c) a Senior Lender;

and have been approved by the Authority in writing in accordance with paragraph 3.9. For the avoidance of doubt the internal costs of the parties referred to above shall not include any external professional fees;

"Scheduled RWTP Completion Date" means 13 April 2016;

"Special Area of Conservation" or "SAC" means a site designated as such under the EU Habitats Directive.

2. **Application of this Part I**

2.1 Subject to paragraph 2.2 below, the provisions in this Part I shall apply from the Amendment Date to the end of the Works Period at the RWTP Site or, if any Extension Proceedings are continuing at the end of the Works Period at the RWTP Site, to the date on which those Extension Proceedings are finally determined with the RWTP Planning Permission and the RWTP PPC Permit remaining in full force and effect.

2.2 In the event the RWTP Works are varied in accordance with paragraph 5.1(a), the provisions in this Part I shall apply from the Amendment Date for the term of the Contract.

2.3 In the event an RWTP Review is initiated, the Contractor shall continue to carry out the Works in accordance with the terms of this Contract save as otherwise contemplated by this Part I.

2.4 In this Part I each reference to a Qualifying Change in Law is to a deemed Qualifying Change in Law and the provisions of clause 73.5 shall not apply and the Contractor's Share shall not be payable by the Contractor. Any change to the terms of a PPC Permit for the RWTP resulting from an RWTP Review shall be a deemed Qualifying Change in Law and shall not be treated as falling within paragraph (f) of the definition of Qualifying Change in Law.

2.5 The Authority shall provide to the Contractor any information it receives prior to the RWTP Access Date in its capacity as waste disposal authority from Natural England that relates to the RWTP Review.

3. **Contractor to provide assistance in connection with any Duty to Review**

3.1 If all or any part of the SAC Extension becomes a Special Area of Conservation and a Duty to Review is or may be triggered, the Contractor shall use All Reasonable Endeavours to maintain the RWTP Planning Permission and RWTP PPC Permit in their form and substance as at the Amendment Date. The Contractor shall be entitled to claim the costs reasonably, prudently and properly incurred (including any costs awarded against it) in performing its obligations under this paragraph 3.1 as a Compensation Event.

3.2 The Contractor shall within five (5) Business Days of the end of each Contract Month during which it performs obligations under paragraph 3.1, provide to the Authority a written summary of:

(i) the steps taken by the Contractor in that Contract Month in compliance with its obligations under paragraph 3.1; and
(ii) those steps which it anticipates taking in the following Contract Month in order to comply with its obligations under paragraph 3.1.

3.3 Without limiting the Contractor's obligations under paragraphs 3.1 and 3.2 the Authority may as soon as reasonably practicable and in any event within ten (10) Business Days after receipt of the summary referred to in paragraph 3.2:

(a) notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under paragraph 3.1 and the Contractor shall give due consideration to any such suggestions of the Authority; and

(b) notify the Contractor if any steps taken or proposed to be taken by the Contractor as referred to in the summary do not in the Authority's opinion constitute All Reasonable Endeavours to comply with its obligations under paragraph 3.1.

Meaning of All Reasonable Endeavours

3.4 For the purposes of this Part I, "All Reasonable Endeavours" means that, having regard to the RWTP Site, the RWTP Planning Permission, the RWTP PPC Permit, the Duty to Review and any RWTP Review, the Contractor shall:

(a) in relation to its obligations under paragraph 3.1, incur such expenditure and do all other things reasonably necessary (including the commencement and prosecution or defence of Extension Proceedings in accordance with and subject to the provisions hereof, the appointment of experts and the preparation of submissions) and in doing so shall exercise all proper care and skill to, so far as reasonably possible, maintain and (if relevant) reinstate the existing RWTP Planning Permission and RWTP PPC Permit; and

(b) provide as soon as reasonably practicable to the Authority any draft instructions (including enclosures) that are proposed to be given to Leading Counsel and opinions received from Leading Counsel (for the Authority's approval in accordance with paragraph 3.6) relating to any Extension Proceedings in respect of any RWTP Review or failure to conduct any RWTP Review or the outcome of any RWTP Review. The Authority's Representative shall be entitled to attend any conference with Leading Counsel and the Contractor shall use all reasonable endeavours when arranging such conference to agree a convenient time for attendance by the Authority's Representative.

Extension Proceedings

3.5 If in connection with an RWTP Review either or both of the RWTP Planning Permission or the RWTP PPC Permit are revoked or amended in circumstances where the Authority and the Contractor agree or the Authority, in its sole discretion, directs that Extension Proceedings may reinstate the whole or specific terms of the existing RWTP Planning Permission and/or the RWTP PPC Permit (as the case may be) then if the parties agree or the Authority, in its sole discretion, directs by notice to the Contractor, the Contractor shall pursue or defend the Extension Proceedings until determination of such Extension Proceedings unless subsequently in accordance with this paragraph 3.5 it is agreed or the Authority directs by notice that such Extension Proceedings shall cease to be pursued. The Authority shall act reasonably in consultation with the Contractor before making a determination under this paragraph. The Contractor shall have no obligation to pursue any Extension Proceedings under this paragraph 3.5 in the event any notice is served under paragraph 5.1 (b) or (c) or 5.3(d) or (e).
3.6 At any reasonable time after the designation of any part of the SAC Extension, the Authority may (acting reasonably) require the Contractor to take (or the Contractor may take (subject to obtaining the Authority’s prior written consent (such consent not to be unreasonably withheld or delayed) the opinion of Leading Counsel in relation to Extension Proceedings and to make such opinion available to the Authority and in each case the identity of the Leading Counsel and the content of his instructions shall be approved by the Authority (such approval not to be unreasonably withheld or delayed). The Contractor shall ensure that the Authority is invited to participate in all conferences and discussions with Leading Counsel relating to the opinion. In the event the identity of the Leading Counsel is not approved by the Authority in accordance with this paragraph 3.6 within 21 days of any request for approval by the Contractor, the Leading Counsel shall be chosen at the request of either party by the President of the Law Society from time to time.

3.7 If

(a) the Authority (acting reasonably in all cases) gives notice under paragraph 3.5 that it:

(i) does not give approval to any Extension Proceedings;

(ii) directs that the Contractor should cease to pursue any Extension Proceedings; or

(b) the Authority fails to give notice under paragraph 3.5 before the date falling five Business Days before the last date for filing any application to initiate or continue relevant court proceedings,

the Contractor shall be entitled to institute or continue to pursue such Extension Proceedings (subject to service of prior written notice of its intention to do so upon the Authority and with the exception of claims for compensation from the Authority in its capacity as planning authority) and the Contractor shall bear all the costs of instituting or continuing to pursue such Extension Proceedings which it incurs from the point at which the Authority serves such notice and in such case paragraph 3.9 (SAC Extension Proceedings Costs) shall not apply to those costs. For the avoidance of doubt, any action taking by the Contractor to pursue or fail to pursue such Extension Proceedings in these circumstances shall not constitute a failure to use All Reasonable Endeavours.

3.8 The Contractor shall be entitled, in its absolute discretion, to cease to pursue any Extension Proceedings which it institutes or continues pursuant to paragraph 3.7 (approval being withheld or a direction having been given to the contrary) and in respect of which it has undertaken to bear the costs pursuant to paragraph 3.7.

SAC Extension Proceedings Costs

3.9 The Authority shall pay the SAC Extension Proceedings Costs to the Contractor provided that:

(a) the Contractor shall, prior to commencing any Extension Proceedings, provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such Extension Proceedings that the Contractor considers are necessary and appropriate in the circumstances including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate or employ any additional or
alternative legal or professional advisers without the further approval of the Authority (such approval not to be unreasonably withheld or delayed); and

(b) the Contractor shall use all reasonable endeavours to ensure that at all times the costs of all Extension Proceedings are kept to the minimum prudent and reasonable.

Subject to the Contractor complying with its obligations under paragraph 3.9 the Contractor may invoice SAC Extension Proceedings Costs once they have been incurred, in accordance with Clause 63. The Contractor shall provide a full breakdown of costs with each invoice.

Costs awarded in Extension Proceedings

3.10 Except where the relevant costs relate to action taken by the Contractor pursuant to paragraph 3.7 (in which case the Contractor shall be entitled to retain any costs awarded to it), any costs that are awarded to the Contractor in Extension Proceedings shall be for the benefit of the Authority.

Failure to use All Reasonable Endeavours

3.11 In the event:

(a) the Contractor fails to comply with its obligation under paragraph 3.1 to use All Reasonable Endeavours; and

(b) the Authority has, pursuant to paragraph 3.3, notified the Contractor of any such failure

then the Contractor shall remedy such failure at its own cost as soon as reasonably practicable.

3.12 In the event that:

(a) the Contractor fails to comply with its obligation under paragraph 3.1 to use All Reasonable Endeavours and the Authority has pursuant to paragraph 3.3(b) notified the Contractor of any such failure and the Contractor has failed to remedy that failure;

(b) the RWTP Planning Permission and/or the RWTP PPC Permit is revoked or amended; and

(c) the Authority exercises its right to terminate the Contract pursuant to paragraphs 5.1(b) or 5.3(a) or the Contractor exercises its right to terminate the Contract pursuant to paragraphs 4.2, 5.4 or 5.5.

then the compensation payable in respect of termination shall be calculated on the basis of Clause 92 (Compensation on Termination for Corrupt Gifts or Fraud) and the Authority shall have no other remedy in relation to any failure to use All Reasonable Endeavours under this Part I in case of termination of the Project Agreement.

4. Suspension of the RWTP Works

4.1 If the RWTP Works are suspended as a direct result of the revocation or amendment of the RWTP Planning Permission or the RWTP PPC Permit or an order of a court of competent jurisdiction in each case in connection with the SAC Extension, the Contractor
shall be entitled to claim the consequences of such suspension as a Compensation Event and the provisions of clause 59 (Compensation Events) shall apply.

4.2 If:

(a) the RWTP Works are suspended as a direct result of an order of a court of competent jurisdiction in connection with the SAC Extension;

(b) such suspension continues for a period of 120 days (the "Minimum Suspension Period"); and

(c) such suspension is continuing,

the Authority shall pay to the Contractor the Base Senior Debt Termination Amount within 60 days and the Contract shall be varied to make such changes to the Payment Mechanism as are required to reflect the payment of the Base Senior Debt Termination Amount;

4.3 If the Authority pays the Base Senior Debt Termination Amount pursuant to paragraph 4.2, at any time thereafter the Authority may either:

(a) elect to continue the Contract in full force and effect save that the Contract shall be varied to remove the requirements relating to the implementation of the RWTP and such variation shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply, in which case:

(i) the Authority shall within 60 days of such election pay the Contractor the Subcontractor Breakage Costs that would have been paid had the Contract terminated, but only in respect of the Construction Subcontract for the RWTP Works and the Operating Subcontract to the extent such contract makes provision for Services at the RWTP, in accordance with clause 91 (Compensation on Termination for Force Majeure); and

(ii) the parties shall agree a new Expiry Date which allows the Authority a reasonable period of time from the date of the deemed Qualifying Change in Law within which to retender the Services or, failing agreement within 20 Business Days of such election, 30 months from the date of such election (and the balance of any compensation payable under clause 91 (Compensation on Termination for Force Majeure), excluding the Base Senior Debt Termination Amount and Subcontractor Breakage Costs already paid, shall be paid on the new Expiry Date); or

(b) elect to continue the Contract in full force and effect and to vary the Contract to ensure funding of completion of the RWTP Works in which case such variation shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply; or

(c) to terminate the Contract in full by written notice to the Contractor in which case compensation shall be payable within 60 days of service of the notice to terminate under Clause 91 (Compensation on Termination for Force Majeure) or, if 3.12 applies, Clause 92 (Compensation on Termination for Corrupt Gifts or Fraud) excluding in each case the Base Senior Debt Termination Amount and Subcontractor Breakage Costs already paid.

During the period of time, if any, after a suspension of the RWTP Works has ended and before a decision has been made under this paragraph 4.3, the consequences for the Contractor of the delay shall be treated as a Compensation Event. The Authority shall
make a determination under this paragraph 4.3 within six months (or such longer period as the parties may agree) after the end of any period of suspension, in default of which limb (a) shall apply.

5. Revocation or amendment of the RWTP Planning Permission and/or RWTP PPPC Permit

5.1 In the event the RWTP Planning Permission and/or the RWTP PPC Permit are required to be amended as a result of any RWTP Review or Extension Proceedings and whether or not any relevant period for challenging the result of such RWTP Review or Extension Proceedings has expired, the Authority may, in its sole discretion:

(a) require the Contractor to vary the RWTP Works and the Services so as to comply with the terms of the amended RWTP Planning Permission and/or RWTP PPC Permit, in which case any variation to the RWTP Works or the Services in accordance with this paragraph 5.1(a) shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply; or

(b) subject to paragraph 5.3 below, serve written notice of termination of the Contract in full in which case compensation shall be payable under Clause 91 (Compensation on Termination for Force Majeure) or, if paragraph 3.12 applies, Clause 92 (Compensation on Termination for Corrupt Gifts or Fraud), with, in each case the Base Senior Debt Termination Amount to be paid within 60 days of any amendment to the RWTP Planning Permission and/or the RWTP PPC Permit as a result of any RWTP Review or Extension Proceedings; or

(c) elect to continue the Contract in full force and effect save that the Contract shall be varied to remove the requirements relating to the implementation of the RWTP and such variation shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply, in which case:

(i) the Authority shall within 60 days of any amendment to the RWTP Planning Permission and/or the RWTP PPC Permit as a result of any RWTP Review or Extension Proceedings pay the Contractor:

(1) the Base Senior Debt Termination Amount; and

(2) the Subcontractor Breakage Costs that would have been paid had the Contract terminated, but only in respect of the Construction Subcontract for the RWTP Works and the Operating Subcontract to the extent such contract makes provision for Services at the RWTP,

in accordance with clause 91 (Compensation on Termination for Force Majeure); and

(ii) the parties shall agree a new Expiry Date which allows the Authority a reasonable period of time from the date of the deemed Qualifying Change in Law within which to retender the Services, or, failing agreement within 20 Business Days of such election, 30 months from the date of such election (and the balance of any compensation payable under clause 91 (Compensation on Termination for Force Majeure) shall be paid on the new Expiry Date.
If the Authority fails within 70 days of any amendment to the RWTP Planning Permission and/or the RWTP PPC Permit as a result of any RWTP Review or Extension Proceedings to implement one of paragraphs (a), (b) or (c) in relation to such amendment, the Authority will be deemed to have made an election under paragraph (c).

5.2 In the event the Authority elects to terminate the Contract pursuant to paragraph 5.1(b), the Contractor may within 30 Business Days from receipt of the Authority’s notice to terminate serve a counter notice on the Authority electing not to accept termination of the Contract and to continue the Contract in full force and effect (including in respect to the implementation of the RWTP) (an “Election Notice”). If the Contractor serves an Election Notice, the Contract shall continue with such amendments as are reasonably required to give effect to the amendments to the RWTP Planning Permission and the RWTP PPC Permit and the Contractor shall, at its own cost and risk continue with the RWTP Works with such changes as may be required to comply with the RWTP Planning Permission and the RWTP PPC Permit (any such changes shall constitute a deemed Contractor Change) and at its own cost may seek compensation from any Relevant Authority (with the exception of claims for compensation from the Authority in its capacity as planning authority) or other third party (which, if recovered, it shall be entitled to retain).

5.3 The Authority shall within 60 days of the occurrence of a Permit Revocation, 12 Month Suspension or Continuing Proceedings (each as defined below), pay the Contractor the Base Senior Debt Termination Amount and if:

(a) the RWTP Planning Permission and/or the RWTP PPC Permit is revoked (“Permit Revocation”) and the Contractor gives notice to the Authority requiring it to do so or the Authority, in its own discretion, gives notice to the Contractor that it intends to act in accordance with this paragraph 5.3; or

(b) any suspension of the RWTP Works as contemplated under paragraph 4 continues for more than 12 months (“12 Month Suspension”) and the Contractor and the Authority agree or obtain an opinion of Leading Counsel in accordance with paragraph 3.6 confirming that there is no reasonable prospect of such suspension being lifted within a further 12 months and either party gives notice thereof to the other; or

(c) (without prejudice to the Parties’ rights under paragraph (a)) any court proceedings which could result in the revocation of the RWTP Planning Permission and/or the RWTP PPC Permit remain outstanding at the date which is 12 months after the Scheduled RWTP Completion Date and so long as such court proceedings are continuing (“Continuing Proceedings”), the Contractor gives notice to the Authority requiring it to do so, or the Authority, in its own discretion, gives notice to the Contractor that it intends to act in accordance with this paragraph 5.3,

then the Authority shall within 20 Business Days of the giving of notice pursuant to either (a), (b) or (c) above, either:

(d) serve written notice of termination of the Contract in full in which case compensation shall be payable under Clause 91 (Compensation on Termination for Force Majeure) or, if 3.12 applies, Clause 92 (Compensation on Termination for Corrupt Gifts or Fraud), save that any compensation payable under this paragraph 5.3(d) shall not include the Base Senior Debt Termination Amount already paid; or
(e) if paragraphs (a) or (b) apply, elect to continue the Contract in full force and effect save that the Contract shall be varied to remove the requirements relating to the implementation of the RWTP and such variation shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply, in which case:

(i) the Authority shall within 60 days of such election (or, if the Contractor has given notice under paragraph (a), within 60 days of the notice) pay the Contractor the Subcontractor Breakage Costs that would have been paid had the Contract terminated, but only in respect of the Construction Subcontract for the RWTP Works and the Operating Subcontract to the extent such contract makes provision for Services at the RWTP, in accordance with clause 91 (Compensation on Termination for Force Majeure); and

(ii) the parties shall agree a new Expiry Date which allows the Authority a reasonable period of time from the date of the deemed Qualifying Change in Law within which to retender the Services or, failing agreement within 20 Business Days of such election, 30 months from the date of such election (and the balance of any compensation payable under clause 91 (Compensation on Termination for Force Majeure), excluding the Base Senior Debt Termination Amount and Subcontractor Breakage Costs already paid, shall be paid on the new Expiry Date); or

(f) if paragraph (c) applies, elect to continue the Contract in full force and effect and to vary the Contract to make such changes to the Payment Mechanism as are required to reflect the payment of the Base Senior Debt Termination Amount and to ensure funding of completion of the RWTP Works in which case such variation shall be treated as if it were a Qualifying Change in Law and the provisions of clause 73 (Qualifying Change in Law) shall apply.

If the Authority fails to make such election it shall be deemed (if paragraphs (a) or (b) apply) to elect the option in paragraph (e) and (if paragraph (c) applies) to elect the option in paragraph (f). In no circumstances shall the Authority be required to pay the Contractor the Base Senior Debt Termination Amount on more than one occasion.

5.4 In the event that the Authority elects to continue the Contract in accordance with paragraph 5.1(c), 5.3(e) or 5.3(f), notwithstanding the new Expiry Date agreed under paragraph 5.3(e), the Contract shall remain in full force and effect and the Contractor shall continue to perform all of its obligations under the Contract (save in each case in respect of the RWTP (and, for the avoidance of doubt any RWTP obligations and related Contractor Defaults shall cease to apply)) until the new Expiry Date or such other date as may be agreed by the Parties.

5.5 The Authority shall not be entitled to pay any termination compensation payments due under this Part I (including the Base Senior Debt Termination Amount in all circumstances when it becomes payable) by instalments, and the provisions of Clause 95.4 shall be disapplied accordingly.