

SCHEDULE 1 (DEFINITIONS)

1999 Act	means the Local Government Act 1999 (as amended by the Local Government and Public Involvement in Health Act 2007);
Abandon	means not to carry out any Works contemplated by the Construction Programme at [a Site] for twenty (20) consecutive Business Days or during sixty (60) Business Days (whether consecutive or not) in any Contract Year;
Acceptance Test Certificate	means a certificate issued by the Independent Certifier that the Acceptance Tests have been satisfied;
Acceptance Longstop Date	means such date that is [twelve to eighteen (12 - 18)] ¹ Months after the Planned Services Commencement Date;
Acceptance Tests	means the Tests so described in Schedule 11 (Tests);
Accepted	<p>means the Contractor:</p> <p>a) is able to lawfully accept Contract Waste at the Delivery Point [or Contingency Delivery Point] and where delivered by the Authority in fact does accept it; and</p> <p>b) is able to accurately weigh and provide a transfer note for Contract Waste.</p> <p>Ad Hoc Contract Waste which cannot be accepted lawfully at the Delivery Point or Contingency Delivery Point shall be nevertheless considered Accepted if the Contractor arranges for a third party to accept the Ad Hoc Contract Waste and the third party does lawfully accept and accurately weigh the Ad Hoc Waste and provides a transfer note</p> <p>(and the terms Accept and Contract Waste Accepted shall be construed accordingly);</p>
Accrued Rights	has the meaning given to it in paragraph 10.8 of Schedule 24 (Direct Agreement);
Accrued Rights Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Actual Landfill Tonnage	has the meaning given to it in Schedule 4 (Payment Mechanism);
Actual Relevant Insurance Cost	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Ad Hoc Waste	<p>means those categories or components of Contract Waste which are either:</p> <p>(i) received separately by the Contractor; or</p> <p>(ii) segregated from delivered mixed loads by the Contractor in accordance with the Waste</p>

¹ Authorities ought to consider carefully the impact of a longer longstop period given the value for money of interim services where the Authority does not have alternative and extendable disposal arrangements in place, the continued commissioning payment and whether liquidated damages are due.

Acceptance Protocol,

and require in accordance with all or any of Good Industry Practice, Consents, Guidance, Legislation and the terms of this Contract segregation from and different treatment or landfill from other Contract Waste including (without limiting the generality of the foregoing) the Contract Waste of the nature and commodity set out in Part 1 (Ad Hoc Waste) of Schedule 31 (Incoming Waste Parameters);

[Bidders to propose²]

Additional Permitted Borrowing

means on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be amended whether or not with the approval of the Authority) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date, but only to the extent that:

- (i) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (ii) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under paragraph 11.4 of the Direct Agreement as it applies to such Additional Permitted Borrowing;

and provided further that any such excess amount of principal which is (i) invested as part of any Qualifying Variation or (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at the date of this Contract, disregarding any subsequent amendment or (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to Clause 7.4.2(a), shall not be counted as Additional Permitted Borrowing;

Additional Permitted Borrowings Limit

means an amount equal to:

- (a) ten percent (10%) of the Original Senior Commitment, for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is reduced to fifty percent (50%) or less of the Original Senior Commitment, and thereafter;
- (b) the higher of:

² This will cover all items which the Contractor cannot operationally or lawfully handle and must send or divert for specialist processing or to hazardous landfill. Some commodities may only be Ad Hoc in certain quantities and these quantities ought to be defined. The Contractor is bound to Accept the Ad Hoc Contract Waste (contractually, though not necessarily at the Facility) but Authorities may exclude Ad Hoc Waste from targets and Minimum Tonnage.

- (i) five percent (5%) of the Original Senior Commitment; and
- (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in (a);

Additional Waste	means Contract Waste in excess of the [Maximum Tonnage];
Adjoining Owners	means all owners and occupiers of Adjoining Property;
Adjoining Property	means any land and/or property adjoining or in the neighbourhood of the Site(s) and each and every part thereof including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;
Adjudicator	has the meaning given to it in paragraph 3 (Adjudication), of Schedule 22 (Dispute Resolution Procedure);
Adjusted Amount	has the meaning given to it in Clause 58.1.4;
Adjusted Estimated Fair Value of the Contract	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Adjusted Highest Compliant Tender Price	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Administrative Area	means the area defined by the map attached at Schedule [] (i.e. the Authority's current administrative borders which will be defined by a map attached to the contract);
Admission Body	has the meaning given to it in Schedule 20 (Employment and Pensions);
Adverse Rights	means all (if any) rights of light and air and other rights and easements whatever (including any rights and easements in respect of Conduits) and all (if any) other restrictions enjoyed over the Site(s) by any Adjoining Property or Adjoining Owner;
Affected Party	has the meaning given to it in the definition of Force Majeure Event in Schedule 1 (Definitions);
Affiliate	means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;
Agent	means [] in its capacity as agent for the Senior Lenders under the Senior Financing Agreements;

Agreed Abatement	has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);
Agreed Form	means in relation to any document, the form of the document agreed between the Parties and initialled by or on behalf of the Parties for the purpose of identification; ³
Alterations	has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);
Ancillary Documents	means those documents to which the Authority is not a party to and which are listed in Part 1 (Ancillary Documents) of Schedule 5 (Ancillary Documents and Financing Agreements) as they may be amended or replaced from time to time; ⁴
Ancillary Rights	means: <ul style="list-style-type: none"> (a) a non-exclusive licence to enter and remain upon those parts of the Sites that the Contractor and/or any Contractor Related Party requires access to in order to carry out the Works [or provide the Services];⁵ (b) such rights of access to and egress from the Sites as are necessary for the Contractor and any Contractor Related Party to perform their obligations and exercise their rights under this Contract and in particular for the purposes of implementing the Works [and providing the Services]⁶ including those highlighted [] on the Site Plans, provided that such rights may be varied by the Authority and such variation will be deemed to be a Medium Value Change; (c) rights of free and uninterrupted passage and running of water soil gas electricity telephone and other services including those highlighted [] on the Site Plans provided that such rights of passage may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time; and (d) the right where necessary to inspect repair maintain or renew the Services Media and the right (at the cost of the Contractor) to connect into the Services Media and to construct such new Services Media as may from time to time be necessary to serve the Sites provided that the prior written consent of the Authority is obtained (such consent not to be unreasonably withheld or

³ Such documents should be annexed to the Contract.

⁴ These will usually be listed in a schedule and include contracts the Contractor has with its main Sub-Contractors, usually: (a) the Construction Sub-Contractor; and (b) the Operating Sub-Contractor. The definition should not, however, be extended to include Financing Agreements or contracts between the Sub-Contractors and their sub-contractors (i.e. those without a direct contractual relationship with the Contractor) save for key sub sub contracts over which the Authority wants to have some control.

⁵ Delete if the licence is for the Works Period only.

⁶ Delete if the licence is for the Works Period only.

delayed),

provided that:

- (e) the rights are granted insofar as the Authority is capable of granting them and such rights are subject to the Disclosed Title Matters; and
- (f) the rights shall not in any circumstances entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Sites (save as may be required by the Contractor and approved by the Authority (such approval not to be unreasonably withheld or delayed) in order to comply with relevant health and safety legislation) on a temporary basis;

Annual Services Plan	has the meaning given to it in paragraph 3.4 of Schedule 15 (Best Value and Continuous Improvement);
Annual Services Report	has the meaning given to it in paragraph 3.1 of Schedule 15 (Best Value and Continuous Improvement);
Annual Services Report Date	has the meaning given to it in Schedule 15 (Best Value and Continuous Improvement);
APB Distribution	means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;
Appeal Contingency	has the meaning given to it in Schedule 26 (Planning);
Appointed Representative	has the meaning given to it in Schedule 24 (Direct Agreement);
Approval Criteria	has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);
Architectural Enhancement	has the meaning given to it in Schedule 26 (Planning);
Architectural Enhancement Cost	has the meaning given to it in paragraph 3.9.2 of Schedule 26 (Planning);
As Built Drawings	means drawings, technical information, models, operation and maintenance manuals to encompass the method of construction, manufacture, operation and maintenance of each element of a Facility in sufficient detail to allow a competent person to understand all material elements of the construction of the Facility and to maintain, dismantle, reassemble, adjust and operate all plant and equipment forming the same;
Assets⁷	means all assets and rights to enable the Authority or a

⁷ The precise nature of the assets involved and any exclusions will, of course, depend on the project concerned. This definition assumes that all contractual rights and assets including any off-take contracts will be transferred to the Authority. Authority should consider on a project by project basis whether it is appropriate for all off – take contracts to be transferred to it on expiry or termination.

successor contractor to own, operate and maintain the Project in accordance with this Contract including:

- (a) any land or buildings (including the Facility);
- (b) any plant, machinery or equipment;
- (c) any books and records (including operating and maintenance manuals, the Operating Manual, health and safety manuals, documents maintained in accordance with the Site Waste Management Plans Regulations 2008, as built drawings and other know how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights (including the novation of Third Party Waste and Off-Take Contracts);
- (f) any intellectual property rights;
- (g) subject to Clause 80.7, any Consents; and
- (h) where termination occurs pursuant to paragraph 3.5 of Schedule 26 (Planning) [or paragraph 11.1.5 of Schedule 27 (Approach to Permit Risk)], all documents, letters and instructions and enclosures to and opinions of Leading Counsel or the Contractor's consultants relating to any Planning Application, Environmental Permit, Planning Permission, Proceedings or Permit Proceedings,

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner;

Assigned Employees

has the meaning given to it in paragraph 2.5.1(a) of Schedule 20 (Employment and Pensions);

Associated Company⁸

means in respect of a relevant company, a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Contractor shall include [Holdco and] each of the Shareholders save that for the purposes of determining whether one entity is an Associated Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

Authority Break Point Date

means [];⁹

Authority Change

has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);

⁸ If a fund or limited partnership or "50:50" owned vehicle which is not a ("subsidiary") or similar is in the relevant ownership chain of the Contractor, this definition will need to be expanded to cover it.

⁹ This term should be defined on a project-specific basis.

Authority Change Notice	has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);
Authority Construction Collateral Warranty	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Construction Liability Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Construction Liquidated Damages Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Default	means one of the following events: <ul style="list-style-type: none"> (a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Contractor [and/or shares of Holdco] by the Authority or other Relevant Authority; (b) a failure by the Authority to make payment of any amount of money exceeding £[] (Indexed) that is due and payable by the Authority under this Contract within twenty (20) Business Days of service of a formal written demand by the Contractor, where that amount fell due and payable [two (2)] (or more) Months prior to the date of service of the written demand; (c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of [two (2)] Months;¹⁰ or (d) a breach by the Authority of Clause 81.1 (Restrictions on Transfer of this Contract by the Authority) occurs;
Authority Default Termination Sum	means the amount payable in accordance with Clause 66 (Compensation on Termination for Authority Default);
Authority Existing Employee	has the meaning given to it in Schedule 20 (Employment and Pensions);
Authority Initial Confirmation	has the meaning given in paragraph 2.3 of Part 4 (High Value Changes) of Schedule 21 (Change Protocol);
Authority Liability Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Materials	shall have the meaning given to it in Clause 87.11.2;
Authority Operating Liability Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Operating Life	has the meaning given to it in Schedule 24 (Direct

¹⁰ The periods triggering Authority Default in paragraphs (b) and (c) are subject to the further rectification periods set out in Clause 65 (Termination for Authority Default).

Cycle Works Cap	Agreement);
Authority Operating Termination Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority’s Policies	means the policies of the Authority referred to in Schedule 13 (Authority’s Policies);
Authority Property	has the meaning given to it in Clause 61.1.2;
Authority Project Intellectual Property	means all Intellectual Property Rights owned by the Authority and subsisting in any Disclosed Data, the Project Data, the Trade Marks and/or any other materials, information documents data and/or know how, provided to or made available by the Authority to any Contractor Related Party at any time during the Contract Period;
Authority Related Party	means any of the following: <ul style="list-style-type: none"> (a) an officer, servant, employee or agent of the Authority acting in that capacity; (b) any contractor or sub-contractor of the Authority of any tier [(including, for the avoidance of doubt the WCAs)]¹¹ and their directors, officers, servants, employees or agents acting in that capacity; <p>but excluding in any case the Contractor and any Contractor Related Parties;</p>
Authority’s Representative	means the representative appointed by the Authority pursuant to Clause 9.1 (Representatives of the Authority);
Authority’s Requirements	means the requirements of the Authority in respect of the Project set out in Schedule 2 (Authority’s Requirements);
Authority Stage 1 Confirmation	has the meaning given in paragraph 4.2(a) of Schedule 21 (Change Protocol) Part 4 (High Value Change);
Authority Stage 2 Confirmation	has the meaning given in paragraph 7.1(a) of Schedule 21 (Change Protocol) Part 4 (High Value Change);
Base Case	means the Financial Model agreed between the parties prior to the date of this Contract (as updated from time to time in accordance with the terms of this Contract) ¹² for the purpose of, amongst other things, calculating the Unitary Charge. When Base Case is used in conjunction with discount rates, the reference to Base Case shall be the Base Case with cash flow in constant prices when real discount rates are used and in current prices if nominal discount rates are used ¹³ ;

¹¹ If the Authority is to accept liability of Waste Collection Authorities, this liability should be passed through to the WCAs and the risk managed as far as is possible in an Inter Authority Agreement.

¹² For example, following a benchmarking or market testing exercise, a Qualifying Change in Law or an Authority Change. The model should cover payments in respect of the Contractor and any other relevant company (e.g. Holdco).

¹³ See Guidance Note: The Use of Internal Rates of Return in PFI Projects.

Base Case Change Date	has the meaning given to it in Schedule 19 (Revision Of Base Case And Custody);
Base Case Equity IRR	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Base Cost	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Base Relevant Insurance Costs	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Base Relevant Insurance Reduction	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Base Senior Debt Termination Amount	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Benchmarking Process	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Benchmarking Report	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Best Value Assistance and Reporting Method Statement	has the meaning given to it in Schedule 15 (Best Value and Continuous Improvement);
Best Value Duty	has the meaning given to it in Schedule 15 (Best Value and Continuous Improvement);
Best Value Inspector	has the meaning given to it in Schedule 15 (Best Value and Continuous Improvement);
Best Value Performance Indicators	has the meaning given to it in Schedule 15 (Best Value and Continuous Improvement);
Best Value Service Change Notice	has the meaning given to it in paragraph 3.3 of Schedule 15 (Best Value and Continuous Improvement);
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
Business Interruption Cover	has the meaning given to it in Schedule 10 (Required Insurances);
Capital Expenditure	means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time; ¹⁴
CDM Regulations	means the Construction (Design and Management) Regulations 2007;
Certification Requirements	means the requirements which must be satisfied for a contract to be a certified contract for the purposes of the

¹⁴ For “composite trader” projects this definition may be amended to read “Works Expenditure” or “Relevant Expenditure”.

Local Government (Contracts) Act 1997;

Cessation Date	has the meaning given to it in Schedule 20 (Employment and Pensions);
Challenge Period	has the meaning given to it in Schedule 26 (Planning) and;
Change	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Change Notice	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Change Protocol	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Change in Costs	<p>means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor and/or any Sub-Contractors (without double counting), including, as relevant, the following:</p> <ul style="list-style-type: none"> (a) the costs of continued employment of, or making redundant, staff who are no longer required, (b) the costs of employing additional staff, (c) reasonable professional fees, (d) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Unitary Charge, (e) the effects on costs of implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement, (f) operating costs, or life cycle, maintenance or replacement costs, (g) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Authority is responsible), (h) the costs required to ensure continued compliance with the Financing Agreements,

- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy, and
- (j) Losses, including reasonable legal expenses on an indemnity basis;

provided that the Change in Costs shall only include any breakage or other costs associated with a Third Party Waste Contract or Off-Take Contract to the extent the Contractor has complied with the provisions of Clause 51 (Third Party Waste and Off-Take Contracts).

Change in Law

means the coming into effect after the date of this Contract of:

- (a) Legislation, other than any Legislation which on the date of this Contract has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Communities;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

Change in Project Costs

has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);

Change in Revenue

means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Contractor and/or [any Sub-Contractor] including subject to Clause 50.2, Third Party Income (without double counting)¹⁵;

Change of Ownership

means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares¹⁶ in the Contractor [or Holdco] (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the rights to dividends); and/or

¹⁵ In most projects, this would only cover Commissioning Payment, Unitary Charge and subject to Clause 50.2, Third Party Income (without double counting). If that is the case, the Authority can make this explicit in the definition.

¹⁶ Where limited partnerships are used then a reference to the general partner and/or manger should be made here.

	(b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above;
Code	has the meaning given to it in Schedule 20 (Employment and Pensions);
Code Dispute Resolution Procedure	means the document set out in Appendix 3 to Schedule 20 (Employment and Pensions);
Code Obligations	has the meaning given to it in Schedule 20 (Employment and Pensions);
Collateral Warranty	means a collateral warranty executed as a deed between the Authority and either (as the case may be) the Construction Sub-Contractor, a member of the Professional Team, or the Operating Sub-Contractor [specify any other relevant sub-contractor/professional] in the relevant form as set out in Schedule 25 (Form of Collateral Warranty);
Commencement Date	means the date of this Contract;
Commercial Waste	has the meaning given in Section 75(7) of the EPA;
Commercially Sensitive Information	means the sub set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 23 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 23 (Commercially Sensitive Information);
Commissioning Payment	means the amount calculated in accordance with paragraph 13 of Schedule 4 (Payment Mechanism);
Commissioning Period	means the period between the Readiness Date and the Services Commencement Date;
Commissioning Plan	means the detail plan developed from the Outline Commissioning Plan in accordance with the Commissioning Requirements;
Commissioning Requirements	means the requirements for the commissioning contained in [Part A (Commissioning Requirements)] of Schedule 2 Error! Reference source not found. (Authority's Requirements);
Committed Standby Facility	means a standby facility committed to by the Senior Lenders at the date of this Contract or, without prejudice to Clause 7.4.2 (a), as the same may be amended as allowed by Clause 7.4.1 for the purposes of funding any unforeseen cost overruns, increased expenses or loss of revenues to be incurred by the Contractor;
Companies Act	means the Companies Act 2006;
Comparable Market	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);

Compensation Date	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Compensation Event	means: <ul style="list-style-type: none"> (a) in respect of [the period from the date of this Contract until the Services Commencement Date], a breach by the Authority of any of its obligations under this Contract;¹⁷ (b) in respect of [the period from the Services Commencement Date]: <ul style="list-style-type: none"> (i) [To be listed specifically on a project specific basis having regard to the principles set out in Section 3.2 of the Defra Derogations Guidance.]
Compensation Event TPI Adjustment	has the meaning given to it in Schedule 19 (Revision of Base Case and Custody);
Compensation Regulations	has the meaning given to it in Schedule 20 (Employment and Pensions);
Compliant Tender	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Compliant Tenderer	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Conduits	means all pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus and includes any fixtures, louvers, cowls and any other ancillary apparatus;
Confidential Information	means: <ul style="list-style-type: none"> (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how, of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and (b) Commercially Sensitive Information;¹⁸

¹⁷ To the extent that the Authority is contracting on behalf of others, then these should be included. Other persons responsible to the Authority can, by failing to act, also trigger Compensation Events. This is particularly relevant for waste projects when there is often a Lead Authority contracting on behalf of a number of other Authorities. Unless there are project specific reasons for agreeing to extend this to Authority Related Parties, Authorities should not be liable through the Compensation Events mechanism for the acts or omissions of WCAs as (i) the Contractor will be better placed than the Authority to manage the WCAs on site and (ii) in relation to Contract Waste (composition and volumes) the Contract provides other mechanisms to afford protection to the Contractor.

¹⁸ Any information or classes of information that the parties agree should be treated as Commercially Sensitive Information should be included in Part 2 of the Schedule 23 (Commercially Sensitive Information). The Authority should be mindful of guidance on this issue when agreeing which information should be categorised

Confirmation Notice	has the meaning given to it in Part 1 (Definitions) of Schedule 21 Part 1 (Change Protocol);
Consents	means all permissions, consents, approvals, certificates, permits, licenses and authorisations of a Relevant Authority required for the performance of any of the Contractor's obligations under this Contract including for the avoidance of doubt: <ul style="list-style-type: none"> (a) all Environmental Permits; (b) all Planning Permissions; and (c) all Planning Obligations;
Consents List	has the meaning given to it in Clause 12.5.1;
Construction Accrued Rights Liquidated Damages Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Construction Accrued Rights Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Construction/Operating Sub-Contract	has the meaning given to it in Schedule 24 (Direct Agreement);
Construction Panel	has the meaning given to it in paragraph 4 (Identity of Adjudicator) of Schedule 22 (Dispute Resolution Procedure);
Construction Period Insurance	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Construction Programme	means the programme for the carrying out of the Works as contained in Part 3 (Construction Programme) of Schedule 3 (Contractor's Proposals);
Construction Sub-Contract	means, subject to Clause 7 (Amendment of Documents) the Construction Sub-Contract(s) in the Agreed Form between the Contractor and the Construction Sub-Contractor relating to the Works;
Construction Sub-Contract Dispute	has the meaning given to it in paragraph 17.1 of Schedule 22 (Dispute Resolution Procedure);
Construction Sub-Contractor	means [INSERT NAME(S) AND COMPANY REGISTERED NUMBER(S)], or such other Sub-Contractor(s) as the Contractor may, subject to Clause 81 (Assignment and Sub-Contracting) appoint to carry out the Works;
Construction Sub-Contractor Default	has the meaning given to it in the Construction Sub-Contract;
Construction Sub-Contractor's Liability Cap	has the meaning given to it in the Construction Sub-Contract;

as commercially sensitive. This can cover specific bid information (for specific periods) or other types of generic information but broad blanket categorisations are not appropriate – see the first footnote to Clause 84.2 and the Freedom of Information (Civil Procurement) Guidance on the OGC website at www.ogc.gov.uk.

Construction Sub-Contractor's Liquidated Damages Cap	has the meaning given to it in the Construction Sub-Contract;
Contamination	means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);
Contingency Plans	means the contingency arrangements set out in the Method Statements;
Contingent Funding Liabilities	<p>means the contingent or future liabilities to subscribe for equity or subordinated debt (if any) at the relevant time of the:</p> <ul style="list-style-type: none"> (a) Shareholders; and/or (b) the Subordinated Lender; and/or (c) any other parties providing equity or subordinated debt, <p>owed under any of the Financing Agreements to the Contractor[, Holdco] and/or the Senior Lenders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;</p>
Contract	means this agreement (main body) executed by the Parties and all its Schedules;
Contract Month	means each successive calendar Month in a Contract Year;
Contract Period	means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;
Contract Waste ¹⁹	means [all] ²⁰ Municipal Waste arising from time to time in the Authority's Administrative Area excluding WCA Retained Waste and [<i>excluded waste to be defined on a project specific basis</i>]. For the avoidance of doubt, Contract Waste does not include Third Party Waste and Substitute Waste;
Contract Waste Shortfall	has the meaning given in Clause 25.2.3(b);
Contract Year	<p>means a period of twelve (12) Months commencing on 1 April, provided that:</p> <ul style="list-style-type: none"> (a) the first Contract Year shall be the period commencing on the Commencement Date and ending on the day immediately following 31 March; and

¹⁹ The broader this definition the less flexibility the Authority has in managing its waste streams. Where exclusivity is assessed as providing better value for money, Authorities should aim to have as narrow a definition of Contract Waste as possible and to expressly exclude waste that is to be managed outside the Contract eg. beach or park waste, co-collected trade waste, fly tipped waste or waste from HWRCs.

²⁰ "All" is subject to the exclusivity provisions.

- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;
- Contractor Change** has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
- Contractor Change Notice** has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
- Contractor Default**²¹ means any one or more of the following events:
- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services;
 - (b) a Persistent Breach occurs;
 - (c) a court makes an order that the Contractor [or Holdco] be wound up or a resolution for a voluntary winding-up of the Contractor [or Holdco] is passed;
 - (d) any receiver or receiver manager in respect of the Contractor [or Holdco] is appointed or possession is taken by or on behalf of any creditor of any property of the Contractor [or Holdco] that is the subject of a charge;
 - (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor [or Holdco];
 - (f) an administration order is made or an administrator is appointed in respect of the Contractor [or Holdco];
 - (g) a breach of Clause 81.2 (Restriction on the Contractor) or clause occurs;
 - (h) a breach of Clause 82 (Change of Ownership) occurs;²²
 - (i) the Contractor Abandons the Works at any time;²³
 - (j) failure to submit a Planning Application by the [],²⁴

²¹ Authorities may consider inclusion of additional termination triggers, such as in relation to health and safety, particularly where such matters are not dealt with appropriately by other provisions of the Contract.

²² This catches non-permitted transfers of shares in the Contractor/Holding Company.

²³ This is likely to be the only circumstance in which Contractor Default during the construction phase can occur. The existence of early termination milestones are unlikely in most projects to be of any practical benefit.

²⁴ To be completed on a project specific basis – could be a date or a defined “Planning Longstop Date”.

- (k) failure to commence the [relevant] Works by such date as is [] Months after the [relevant] Planned Works Commencement Date;
- (l) the Readiness Test Certificate for the [specify relevant Facility] has not been issued by the Readiness Longstop Date²⁵;
- (m) the Acceptance Test Certificate for the [specify relevant Facility] has not been issued by the Acceptance Longstop Date;
- (n) if the tonnage to which Non-Acceptance Deductions applies is equal to or exceeds:²⁶
 - (i) [] tonnes in any consecutive period of [three (3) Months]; or
 - (ii) [] tonnes in any [] Month period;²⁷
- (o) if the Contractor fails to process at least []% of Contract Waste at the Facility:
 - (i) in any consecutive period of [six (6) Months]; or
 - (ii) more than [] Months in any [] Month period;²⁸ or
- (p) if Actual Landfill Tonnage is equal to or greater than [X]% of Target Landfill Tonnage:
 - (i) for more than [] Months in any consecutive period of [] Months; or
 - (ii) more than [] Months in any [] Month period;²⁹ or
- (q) [Other Payment Mechanism and Performance Framework triggers for discussion during dialogue;]³⁰

²⁵ Authorities to consider inclusion on a project specific basis – it may be appropriate to rely on limb (m) below particularly where there is not a lengthy period between the longstop dates for readiness and acceptance.

²⁶ Where Authorities have assessed exclusivity as providing better value for money, they should consider the interrelationship between granting exclusivity and default triggers relating to contract targets (e.g. diversion from Landfill). In particular, If the Contractor could potentially landfill more than the Target Landfill Tonnage but less than the contract default threshold (noting that the probability of this scenario crystallising can be reduced by minimising or negating the gap between the default trigger and the Target Landfill Tonnage), Authorities should look at either:

(a) applying a ratchet mechanism on the Diversion Performance Deduction in relation to the tonnages that are being landfilled between the Contract Target and the default level ('Excess Landfilled Tonnages'); or

(b) considering in dialogue an 'exclusivity release trigger' whereby exclusivity is withdrawn for Excess Landfill Tonnages.

²⁷ To be completed on a project specific basis.

²⁸ To be completed on a project specific basis.

²⁹ To be completed on a project specific basis.

³⁰ Such triggers to be discussed during dialogue.

(r) subject to Clause 57 (Uninsurability) a breach by the Contractor of its obligations to take out and maintain any of the Required Insurances;³¹

Contractor Initial Response has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);

Contractor Materials means all or any programmes, software, code, databases, data materials, works (whether literary, artistic or otherwise), know how and/or information which are used from time to time by the Contractor and/or any Contractor Related Party or are otherwise relevant to the maintenance, management, provision, replacement, carrying out and operation of the relevant Facility and/or the Service;

³²**Contractor Related Party** means the Contractor's agents and Sub-Contractors (including without limitation the Construction Sub-Contractor and the Operating Sub-Contractor) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and any person on or at the Site(s) at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party);

Contractor Response has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);

Contractor Stage 1 Response has the meaning given to it in paragraph 2.6 of Schedule 21 (Change Protocol) Part 4 (High Value Changes);

Contractor Stage 2 Response has the meaning given to it in paragraph 4.1 of Schedule 21 (Change Protocol) Part 4 (High Value Changes);

Contractor's Proposals means the proposals of the Contractor to deliver the Project to satisfy the Authority's Requirements, as set out in Schedule 3 (Contractor's Proposals);

Contractor's Representative means the person to be appointed by the Contractor pursuant to Clause 9.2 (Representatives of the Contractor);

Contractor's Share³³ means the percentage figure corresponding to that part of the Cumulative Capital Expenditure at the relevant time, as shown in the first column of the table set out below:

Expenditure ³⁴	Contractor's Share ³⁵
£ 0 - £[a] million (inclusive)	100%

³¹ Not all failures to insure should lead to a termination event occurring. Only the Required Insurances should be caught. This approach goes hand in hand with the treatment of the issues relating to non-availability of certain insurances.

³² Authorities should consider where reference is made to Contractor Related Parties whether this should be widened to include reference also to counterparts to Off-Take Contract and Third Party Waste Contracts.

³³ Authorities should consider whether to adopt Section 5.3.7 of the Defra Derogations Guidance at the bidding stage.

³⁴ These figures are to be bid as part of the bid submission. In each case they are not to be indexed.

³⁵ These figures are illustrative only and it is open for the Authority or bidders to set the Contractor's or Authority's Share at zero or one hundred per cent with no incremental changes, or have only one or two stages in the graduation. This approach will help the Authority find the appropriate level.

£[a] million to £[b] million (inclusive)	80%
£[b] million to £[c] million (inclusive)	60%
£[c] million to £[d] million (inclusive)	40%
£[d] million to £[e] million (inclusive)	20%
£[e] million to £[f] million (inclusive)	10%
£[f] million and above	0%

Contractor Warranted Data	means the information relating to the Contractor and its Affiliates contained Schedule 6 (Contractor Warranted Data);
Conviction	means, other than in relation to minor road-traffic offences, any previous prosecutions, convictions cautions and binding over orders (excluding any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act (Exemption) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);
Cumulative Capital Expenditure³⁶	means the aggregate of: <ul style="list-style-type: none"> (a) all Capital Expenditure which has been incurred as a result of each General Change in Law that has come into effect during the Services Period; and (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under Clause 44 (Change in Law);
Custodian	has the meaning given to it in Schedule 19 (Revision Of Base Case And Custody);
Custody Agreement	has the meaning given to it in Schedule 19 (Revision Of Base Case And Custody);
Deductions	means all negative adjustments to the [Monthly Payment or Unitary Charge] as provided for in Schedule 4;
Deemed New Contract	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Deemed Refusal	has the meaning given to it in Schedule 26 (Planning);
Default Interest	means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;

³⁶ See footnote to Clause 44.4 (Contractor's Share).

Delivery Point	has the meaning given to it in Schedule 4 (Payment Mechanism);
Design Proposals	means the Contractor’s design for the Facility as set out in Schedule 29 (Design Proposals);
Design Data	means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Project in each case that is used by or on behalf of the Contractor and/or its Sub-Contractors in connection with the provision of the Works and/or the Services or the performance of the Contractor’s obligations under this Contract;
Direct Agreement	means the direct agreement dated on or about the date of this Contract and made between the Authority, the Contractor and the Agent in the form set out in Schedule 24 (Direct Agreement);
Direct Losses	means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
Directive	has the meaning given to it in Schedule 20 (Employment and Pensions);
Disclosed Data	means information relating to the Project disclosed to the Contractor and its Shareholders and advisers including: <ul style="list-style-type: none"> (a) the ISDS; (b) the Descriptive Document issued by the Authority on [date] in relation to the Project; (c) the data room located at [<i>INSERT DETAILS</i>]; (d) [<i>others</i>];
Disclosed Title Matters	means the matters set out in Part [] of Schedule 7 (Sites Information);
Discriminatory Change in Law	means a Change in Law, the terms of which apply expressly to: <ul style="list-style-type: none"> (a) the Project and not to similar projects procured under the PFI; (b) the Contractor and not to other persons; and/or (c) PFI Contractors and not to other persons;
Disputed Amount	has the meaning given to it in Clause 45.5.2;
Dispute Resolution Procedure	means the procedure for the resolution of disputes set out in Schedule 22 (Dispute Resolution Procedure);

Distribution	<p>means:</p> <p>(a) whether in cash or in kind any:</p> <ul style="list-style-type: none"> (i) dividend or other distribution in respect of share capital; (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital; (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise); (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms, or <p>(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;</p>
DPA	means the Data Protection Act 1998;
EEA	has the meaning given to it in Schedule 16 (Refinancing);
Effective Date	means [the date on which any conditions precedent have been satisfied]; ³⁷
Eligible Employees	has the meaning given to it in Schedule 20 (Employment and Pensions);
Emergency	means an event causing or, in the reasonable opinion of a party, threatening to cause death or serious injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services (and whether or not an Emergency has

³⁷ Conditions precedent will often not be necessary in a Contract. They can be used as a checklist of what needs to be delivered on or prior to signing (e.g. the Senior Financing Agreements). Such issues can be dealt with in separate ways, for example, by having a checklist of tasks that must be completed or documents signed prior to the Contract being signed. Conditions precedent are strictly only needed if they relate to things which must be done after signing. One example would be planning consents in projects in which it is necessary to have a signed document prior to a planning application being made.

	arisen shall be determined in the case of any dispute by the Authority acting reasonably);
Employee Costs	has the meaning given to it in Schedule 20 (Employment and Pensions);
Employee Liability Information	has the meaning given to it in Schedule 20 (Employment and Pensions);
Enforced Closure	means that a Facility is required by Legislation and/or any Environmental Permit to be closed to the reception of Waste;
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Environmental Permitting Regulations	means the Environmental and Permitting (England and Wales) Regulations 2007 SI 2007 No. 3538;
Environmental Permit	means the permit required and issued by the Permitting Authority pursuant to the Environmental Permitting Regulations in respect of the Facility;
EPA	means the Environmental Protection Act 1990;
Equal Pay Legislation	has the meaning given to it in Schedule 20 (Employment and Pensions);
Equal Pay Ruling	has the meaning given to it in Schedule 20 (Employment and Pensions);
Equipment	means all moveable plant and equipment [to be provided and maintained by the Contractor in order to comply with its obligations under this Contract;] ³⁸
Equipment List	means the list detailing all Equipment prepared and updated in accordance with Clause 30 (Equipment);
Equity IRR	has the meaning given to it in Schedule 16 (Refinancing);
Estimated Change in Project Costs	means in respect of any Relevant Event the aggregate of any estimated Change in Costs and/or (without double counting) Change in Revenue (as relevant);
Estimated Fair Value of the Contract	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Exceptional Cost	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Exceptional Saving	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Excusing Cause	means those events listed in Clause 41.2;

³⁸ This needs to be considered on a project specific basis.

Executive	shall have the meaning given in the CDM Regulations;
Exempt Refinancing	has the meaning given to it in Schedule 16 (Refinancing);
Expert	has the meaning given to it in Schedule 24 (Direct Agreement);
Expiry Date	means [], ³⁹
Facility	means [specify the treatment facilities] and all supporting infrastructure including associated plant and amenities to be designed, constructed, tested and commissioned pursuant to this Contract;
Fair Value	means the amount at which an asset or liability could be exchanged on an arm's length transaction between informed and willing parties, other than in a forced liquidation or sale;
Fees Regulations	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
Final Equipment List	has the meaning given in Clause 30.1.5;
Final Statement	has the meaning given to it in the Construction Sub-Contract;
Final Warning Notice	means a notice served under Clause 67.4.2;
Financial Close	has the meaning given to it in the Senior Credit Agreement, as at the date of this Contract;
Financial Model	has the meaning given to it in the Senior Financing Agreements;
Financing Agreements⁴⁰	means all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the Contractor or any of its Associated Companies relating to the re-scheduling of their indebtedness or any Refinancing);
Financing Default⁴¹	means [];
Final Employee List	has the meaning given to it in paragraph 2.A.6 (Final Employee List) of Schedule 20 (Employment and Pensions);

³⁹ Set date required so that the Contract is not extended automatically – to be inserted by parties at Financial Close.

⁴⁰ This definition assumes that the project is being financed using Senior Debt and equity and would cover subordinated debt and any mezzanine debt. This guidance does not deal specifically with the provision of mezzanine debt to a project and its treatment (e.g. in terms of the compensation payable on termination for Authority Default, refinancing and force majeure), although this has been used in some PFI projects. How mezzanine financing is treated is an issue for specific projects, although this will naturally depend upon the particular funding structure, the rate of return on the mezzanine and the nature of the project concerned. Where mezzanine finance is used, it should be determined whether it has more the nature of senior debt or equity and treated accordingly, and advice should be sought from WIDP to ensure that it is classified correctly.

⁴¹ This should be defined by reference to the borrower defaults under the Senior Financing Agreements (and applies whether or not the Senior Lenders choose to accelerate their loan).

First Contractor	has the meaning given to it in Schedule 20 (Employment and Pensions);
First Employee List	has the meaning given to it in paragraph 2.A.5 (Employment Costs) of Schedule 20 (Employment and Pensions);
First Insurance Review Date	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
Force Majeure Event	<p>means the occurrence after the date of this Contract of:</p> <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism; or (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any actions or breach of the Contractor or its sub-contractors of any tier except where such actions or breach of the Contractor constitute solely the receipt or treatment by the Contractor or Sub-Contractor of Contract Waste⁴² (containing nuclear, chemical or biological contamination) in accordance with the Contract; or (c) pressure waves caused by devices travelling at supersonic speeds, <p>which directly causes either Party (the "Affected Party") to be unable to comply with all or a material part of its obligations under this Contract;</p>
Force Majeure Termination Sum	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Force Majeure TPI Adjustment	has the meaning given to it in paragraph Schedule 19 (Revision of Base Case and Custody);
Freehold Site(s)	means the freehold site(s) listed at Schedule 7 (Sites Information);
Future Service Provider	has the meaning given to it in paragraph 2.A.13 (Contractor Indemnities) of Schedule 20 (Employment and Pensions);

⁴² In considering whether to offer protection for deliveries of contaminated waste supplied under Third Party Waste Contracts, Authorities will need to consider a number of factors including the Authority's overall share of capacity at the Facility, the Contractor's obligations in relation to the receipt and treatment of Third Party Waste (as set out at Clause 25.1) and whether the Authority is content with the nature of approval rights over Third Party Waste Contracts. Further, the Contractor must accept and handle such Third Party Waste in accordance with Clause 51.1.2.

General Change in Law	means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law or a Qualifying Change in Law; ⁴³
Good Industry Practice	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or Construction Sub-Contractor or Operating Sub-Contractor or any sub-contractor under the same or similar circumstances;
Guidance	means any applicable guidance or directions with which the Contractor is bound to comply;
Handback Requirements	means the requirements on termination or expiry of this Contract set out in Part 1 (PR4 – Handback Requirements) of Schedule 2 (Authority’s Requirements);
[Head Lease]	means [the lease relating to the Site where the Site is the subject of a Lease or an Underlease;]
High Value Changes	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Highest Compliant Tender Price	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Holdco	means [insert details of the Contractor’s 100% holding company if any]; ⁴⁴
Holding Company	has the meaning given to it in Section 1159 of the Companies Act save that for the purposes of determining whether one entity is a Holding Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;
Household Waste	has the meaning attributed to it in Section 75(5) and Section 89 of the EPA and Schedules 1 and 2 of the Controlled Waste Regulations 1992;
Indemnified Party	has the meaning given to it in Clause 61.4 (Notification of Claims);
Indemnifying Party	has the meaning given to it in Clause 61.4 (Notification of Claims);
Independent Certifier⁴⁵	means the person appointed jointly by the Authority and the Contractor to act as independent certifier to the Project in

⁴³ This model contract assumes no deferred facilities. For projects where the construction period lasts more than 3 years, Authorities should refer to Section 5.2 of the Defra Derogations Guidance (May 2006). The model contract also assumes the Contractor’s Share of Qualifying Change in Law only relates to General Changes in Law giving rise to capital expenditure. Authorities should explore with Bidders whether extending the application of the Contractor’s Share to limbs (b), (d), (e) and (f) of the definition of Qualifying Change in Law provides better value for money (see footnote to Clause 44.5).

⁴⁴ If there is no 100% holding company used as part of the project structure then this definition should not be used and reference to Holdco in the definition of the Associated Company or elsewhere should be deleted. References to “Holding Company” however, must remain.

⁴⁵ The appointment of the Independent Certifier could be made solely by the Contractor – if that is the case then the Authority will need to ensure it obtains a collateral warranty from the Independent Certifier and this is a specific requirement of any appointment.

	accordance with the Independent Certifier’s Deed of Appointment;
Independent Certifier’s Deed of Appointment	means the deed of appointment of the Independent Certifier in the Agreed Form;
Independent Technical Advisor	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Index	has the meaning given to it in Schedule 4 (Payment Mechanism);
Indexation Date	has the meaning given to it in Schedule 4 (Payment Mechanism);
Indexed	has the meaning given to it in Schedule 4 (Payment Mechanism);
Indirect Losses	<p>means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature provided always and notwithstanding the foregoing, any</p> <p>A) breakage costs under Off-Take Contracts or Third Party Waste Contracts meeting the requirements of Clause 51 (Off-Take Contracts and Third Party Waste Contracts); or</p> <p>B) loss of Unitary Charge or Third Party Income or [any other revenue] under this Contract,</p> <p>shall not be excluded by reason of this definition;</p>
Information	has the meaning given under Section 84 of the Freedom of Information Act 2000;
Initial Financing Agreements	<p>means the Financing Agreements put in place upon signature of this Contract as follows:</p> <p>[]</p> <p>copies of which have been initialled by the parties for the purposes of identification;</p>
Instalment Dates	has the meaning given to it in paragraph 4.2.1(a) of Schedule 17 (Compensation on Termination) Part 7 (General);
Insurance Cost Decrease	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Cost Differential	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Cost Increase	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Cost Index	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Review Date	has the meaning given to it in Part 5 (Insurance Premium

	(b) for all other purposes has the meaning given to it in Waste Emissions Trading Act 2003;
	and "Landfilled" and "Landfilling" shall be interpreted accordingly; ⁴⁷
Landfill Directive	has the meaning given in Council Directive 1999/31/EC;
Landfill Tax	has the meaning set out in Section 39(1) of the Finance Act 1996;
Latest Service Element	means [<i>specify element of financial model relating to Market Tested Services</i>];
Leading Counsel	has the meaning given to it in Schedule 26 (Planning) [in respect of matters relating to planning and in Schedule 27 (Approach to Permit Risk) in respect of matters relating to Environmental Permits];
Lease	means the headlease[s] of [each of] the Freehold Site(s) in the form set out in Part [] of Schedule 7 (Sites Information);
Lease Completion Date	means the date upon which the Lease [Underlease] is completed being [specify on a project specific basis];
Leasehold Site(s)	means the leasehold site(s) listed at Schedule 7 (Sites Information);
Lender(s)	has the meaning given to it in Schedule 25 (Form of Collateral Warranty);
Legal Requirements	means that a Facility complies with all Legislation so that is its lawfully able to receive Contract Waste demonstrated inter alia by the obtaining and maintenance of a valid Planning Permission and Environmental Permit;
Legislation	means: <ul style="list-style-type: none"> (a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978; (b) any exercise of the Royal Prerogative; and (c) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom; ⁴⁸
Licence	has the meaning given in Clause 10.1.3;
Licensed Purposes	means:

⁴⁷ Definition to be cross checked with Technical and Financial aspects.

⁴⁸ See Clause 1.2.5 (Interpretation) - Legislation includes any re-enactment, amendment, consolidation or replacement of legislation.

	(a) the maintenance, management, provision, carrying out, replacement and/or operation of the Facility and/or the Service; and/or
	(b) the maintenance, management, provision, carrying out, replacement and/or operation of services analogous to the Service but provided by a third party; and/or
	(c) the receipt of the Service and/or any services analogous to the Service but provided by a third party;
Life Cycle Works Cap	has the meaning given to it in the Operating Sub-Contract;
Liquid Market	has the meaning given to it in Schedule 17 (Compensation on Termination);
Local Government Pension Scheme	has the meaning given to it in Schedule 20 (Employment and Pensions);
Lock In Period	means the period expiring on the date that is [twelve (12) Months] after the Services Commencement Date for the [<i>specify last facility to be completed where more than one Facility is envisaged</i>];
Losses	means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
Low Value Change	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Low Value Change Request	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Low Value Change Threshold	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Maintenance Requirements	means those requirements in respect of the maintenance of the Facility set out in Part 1 (PR3 – Service Requirements) of Schedule 2 (Authority’s Requirements);
Market Costs	means the charges made by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Tested Services in question;
Market Tested Services	means [<i>specify on a project specific basis</i>];
Market Testing	market testing in accordance with Clause 34.1 (Market Testing Procedure);
Market Testing Proposal	has the meaning given to it in Clause 34.1.2;
Market Testing Review Dates	means [<i>specify on a project specific basis</i>];

Market Value Availability Deduction Amount	has the meaning given to it in Schedule 17 (Compensation on Termination);
Material Departure	means a change by the Waste Collection Authorities (or Authority) which results in [<i>to be defined on a project specific basis (e.g. changes which result in changes to BMW content that result in the Waste composition being outside the agreed parameters e.g. CV banding)</i>];
Maximum Tonnage	has the meaning given to Maximum Tonnage of Contract Waste in Schedule 4 (Payment Mechanism);
Maximum Unitary Charge	has the meaning given to it in Schedule 17 (Compensation on Termination);
Medium Value Change	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Medium Value Change Threshold	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Method Statements	means the Works Method Statement and the Services Method Statements;
Mileage Deductions	means the amount calculated in accordance with paragraph 7 of Schedule 4 (Payment Mechanism);
Minimum Tonnage	means [] tonnes of Contract Waste per year;
Month	<p>means any month in a Contract Year provided that:</p> <p>(a) the first Contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs; and</p> <p>(b) the last Contract Month shall begin on the first day of the month in which the last day of the Contract Period occurs and end on that day,</p> <p>and the term Months shall be construed accordingly;</p>
Monthly Operating Payment	has the meaning given to it in the Operating Sub-Contract;
Monthly Payment	has the meaning given to it in Schedule 4 (Payment Mechanism);
Municipal Waste	means Waste which by virtue of Legislation a local authority has a statutory duty or power to collect, including (without limitation) Household Waste, Commercial Waste, fly tipped waste and street cleansing arisings (and, in relation to Commercial Waste, which the Authority or relevant WCA does in fact collect); ⁴⁹
National Performance Indicators	has the meaning given to it in Schedule 15 (Best Value and Continuous Improvement);

⁴⁹ See note to definition of Contract Waste.

Net Present Value	means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;
New Contract	has the meaning given to it in Schedule 17 (Compensation on Termination);
New Contractor	means the person who has entered or who will enter into the New Contract with the Authority or where applicable to the retendering procedure in Schedule 17 the Deemed New Contract;
New Contractor Rectification Period	means such period as is reasonable in the circumstances from the date of the New Contract to allow the New Contractor to carry out the New Contractor Rectification Works as shall be agreed by the parties or in default of agreement determined pursuant to Clause 60 (Dispute Resolution);
New Contractor Rectification Plan	means the rectification plan to be implemented by the New Contractor setting out the New Contractor Rectification Works and timescales;
New Contractor Rectification Works	means such works (including new and rectification works) and implementation of such new systems as shall be required to enable the New Contractor to achieve the standards and targets set out in Schedule 2 (Authority' Requirements);
New Employee	has the meaning given to it in Schedule 20 (Employment and Pensions);
NNDR	means the National Non Domestic Rates (or successor or replacement thereof) as contained in the Local Government Finance Act 1988;
Non-Acceptance Deduction	means the deduction calculated in accordance with paragraph 8 of Schedule 4 (Payment Mechanism);
Not Accepted	means the Contractor: <ul style="list-style-type: none"> (i) is not able to lawfully accept Contract Waste at a Delivery Point [or Contingency Delivery Point] unless in respect of Ad Hoc Waste it is lawfully accepted by a third party who accurately weighs it and provides a transfer note; and/or (ii) does not accept Contract Waste; and/or (iii) is not able to accurately weigh and provide a transfer note for Contract Waste <p>(and the terms does Not Accept and Contract Waste Not Accepted shall be construed accordingly);</p>
Notice Date	has the meaning given to it in Schedule 17 (Compensation on Termination);
Notice of Non-Completion	has the meaning given to it in Clause 21.2.8(b);

Notifiable Financings	has the meaning given to it in Schedule 16 (Refinancing);
Off-Site Expenditure	has the meaning given to it in Schedule 26 (Planning);
Off-Site Works	has the meaning given to it in Schedule 26 (Planning);
Off-Take Contracts	means [<i>specify relevant off-take contracts for process residues/electricity/heat/power/SRF and any other relevant matter</i>]; ⁵⁰
Operating Accrued Rights Life Cycle Works Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Operating Accrued Rights Termination Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Operating Accrued Rights Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Operating Manual	has the meaning given to it in Clause 28.1 (Maintenance of Manual);
Operating Sub-Contract	means, subject to Clause 7 (Amendment of Documents) the agreement in the Agreed Form between the Contractor and the Operating Sub-Contractor relating to the Services;
Operating Sub-Contract Dispute	has the meaning given to it in paragraph 17.2 of Schedule 22 (Dispute Resolution Procedure);
Operating Sub-Contractor	means [INSERT NAME AND COMPANY NUMBER], or such other Sub-Contractor as the Contractor may, subject to Clause 81 (Assignment and Sub-Contracting), appoint to provide the Services; ⁵¹
Operating Sub-Contractor Default	has the meaning given to it in the Operating Sub-Contract;
Operating Sub-Contractor Liability Cap	has the meaning given to it in the Operating Sub-Contract;
Operating Sub-Contractor Termination Cap	has the meaning given to it in the Operating Sub-Contract;
Operational Panel	has the meaning given to it in paragraph 4.1 of Schedule 22 (Dispute Resolution Procedure);
Option Period	has the meaning given to it in Clause 57.4 (Relevant Payment);
Original Employee	has the meaning given to it in Schedule 20 (Employment and Pensions);
Original Facilities	has the meaning given to it in Schedule 21 Part 1 (Change

⁵⁰ Authorities to consider carefully to ensure that Off-Take and Sub Contracts are clearly distinguished and correctly defined (because clause 51 applies to Off-Take but Clause 81 to Sub-Contracts). SRF and other similar arrangements which deal with a significant part of the Contracts Waste and are crucial to the achievement of targets are better classified as Sub-Contracts.

⁵¹ In the absence of a single Service provider assuming all such obligations, this definition should be amended to refer to persons contracting directly with the Contractor to provide the constituent elements of the Service.

	Protocol);
Original Senior Commitment	means the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);
Other Contract Documents	means documents other than the Contract to which the Contractor and the Authority may be party;
Outline Commissioning Plan	means the plan provided by the Contractor in accordance with the Works Requirements as set out in the Works Method Statement;
Outstanding Principal	has the meaning given to it in Schedule 17 (Compensation on Termination);
Outstanding Work	has the meaning given to it in Clause 79.4 (Maintenance Work);
Partner Admission Agreement	has the meaning given to it in Schedule 20 (Employment and Pensions);
Party	means a party to this Contract and 'Parties' shall be construed accordingly;
Past Service Reserve	has the meaning given to it in Schedule 20 (Employment and Pensions);
Pay	has the meaning given to it in Schedule 20 (Employment and Pensions);
Payment Mechanism	means the payment mechanism set out in Schedule 4 (Payment Mechanism);
Payment Period	means each Month during the Contract Period;
Performance Deductions	has the meaning given to it in Schedule 4 (Payment Mechanism);
Performance Standard	means the standards set out at [] of Part B (Performance Measurement Framework) of Schedule 2 (Authority's Requirements);
Permitted Borrowing	means, without double counting, any: <ul style="list-style-type: none"> (a) advance to the Contractor under the Senior Financing Agreements⁵², (disregarding any amendments that have not been approved for the purposes of clause 7.4.2(a)) provided that such advance is not made under any Committed Standby Facility; (b) Additional Permitted Borrowing;

⁵² If the Senior Lenders are not committing a Committed Standby Facility at Financial Close, the Authority should conduct due diligence over the sizing of the facilities that are committed, so as to ensure that they have not been inflated in such a way that the effect is to create a facility which by its very nature, also acts as a "Committed Standby Facility".

- (c) advance to the Contractor under any Committed Standby Facility which is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Contractor incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those purposes; and⁵³
- (d) interest on the above amounts and (disregarding any amendments that have not been approved for the purposes of clause 7.4.2(a)) other amounts⁵⁴ accrued or payable under the terms of the Senior Financing Agreements,

except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;

Permitting Authority means the relevant competent regulatory authority for the purposes of the issuing of an Environmental Permit;

Persistent Breach means a breach for which a Final Warning Notice (referred to in Clause 67.4.2 has been issued, (which has continued or recurred [] or more times within [six (6)] Months after the date on which such Final Warning Notice is served on the Contractor;⁵⁵

Personal Data means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;

Personnel means the employees, servants, agents, sub-contractors or other representatives, of the Contractor, or of any Sub-Contractor, involved directly, or indirectly, in the provision of the Service;

⁵³ This will need to be defined and will be any standby facility that is committed by the Senior Lenders at Financial Close for the purposes of funding any unforeseen cost overruns, increased expenses or loss of revenues incurred by the Contractor, and the Authority should conduct due diligence over the size and terms of the facility prior to Financial Close to evaluate its potential liability under Clause 7.4. The protection given to the Contractor under Clause 7.4 (Changes to Financing Agreements and Project Documents) should only take effect if the purpose of the advance under the Committed Standby facility is to fund genuine unforeseen costs and not, for example, to prepay amounts owed by the Contractor under the Subordinated Financing Agreements.

⁵⁴ It is vital that the Authority's advisers satisfy themselves as to the appropriateness of the senior finance terms (especially any possibly unusual fees or indemnities) in the light of this potential liability. If the Authority is not so satisfied, it should either ask the Senior Lenders to revise their terms or alternatively restrict the Authority's exposure under limb (d) in the definition of Permitted Borrowings above to those fees which it is willing to pay on a relevant termination.

⁵⁵ This event of default addresses "Persistent Breaches" of the same type where each single breach may in itself not constitute a material breach but the persistent nature renders the contractual relationship untenable. This type of default should be used where the performance regime is not able to cover all types of breaches and the Authority would otherwise be left with no sanction for persistent failure by the Contractor to perform. This does not address the Persistent Breaches of different types (since persistent service failures covered by the performance regime are excluded by the definition). This does not mean that the Persistent Breach clause should itself include wording to the effect that the relationship between the Authority and the Contractor has become untenable, which is in itself highly subjective. The mechanism in Clause 67.3.2 relating to warning notices, and final warning notices, leading to termination, in itself demonstrates that the relationship between the parties has become untenable. Neither should the Clause be amended to the effect that the Authority, in terminating the Contract for Persistent Breach, is acting in a "reasonable and proportionate manner". Again, the detailed mechanism in Clause 67.3.2 is itself sufficient in ensuring that the right to terminate is only exercised for repeated failures following service of a series of warnings, and final warning notices, to the Contractor.

PFI	means the Government's Private Finance Initiative or any similar or replacement initiative;
PFI Contractor	means a person that has contracted with the Government, a local authority or other public or statutory body to provide services under the PFI;
PFI Insurance Market	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Physical Damage Policies	has the meaning given to it in Clause 56.1;
Planned Services Commencement Date ⁵⁶	means [fixed date by [on] which Service Commencement is planned to occur] or such other date as the Parties may agree;
Planned Readiness Date	means [<i>fixed date by which the Readiness Test Certificate is planned to be issued</i>] or such other date as the Parties may agree;
Planned Works Commencement Date	means [<i>specify date by reference to relevant facility</i>];
Planning Act	means the Town and Country Planning Act 1990;
Planning Agreement	has the meaning given to it in Schedule 26 (Planning);
Planning Application	means any planning application submitted or to be submitted by or on behalf of the Contractor pursuant to paragraph 2 (Planning Consents) of Schedule 26 (Planning) to the appropriate Planning Authority in respect of the [specified Works] (or any part) (including any amendment to the application) pursuant to the Planning Act [will include reference to changes in use if applicable];
Planning Authority	means the relevant authority for the purposes of the Planning Act;
Planning Obligation	means any agreement or obligation undertaken pursuant to: <ul style="list-style-type: none"> (a) section 106 of the Planning Act; (b) section 111 Local Government Act 1972; (c) sections 38 or 278 Highways Act 1980; (d) section 104 Water Industry Act 1991 or any other provision of similar intent, within the meaning of the Water Act 1989, with a Relevant Authority for the supply of water or the drainage of surface or foul water from the Site; or (e) any agreement with a Relevant Authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water

⁵⁶ Whether this concept (and definition) is required will depend on:
(a) the attitude taken to early Service Commencement; and
(b) whether any dates need to refer to the date on which the Service is due to commence (for example, a default longstop date).

drainage or any of them;

Planning Permission	means the planning permission granted in relation to [<i>specify Facility and identify the permission specifically on a project specific basis</i>] being in every case either: <ul style="list-style-type: none"> (a) detailed planning permission; or (b) outline planning permission together with such approvals of reserved matters as are required to enable the Contractor to commence the [specified works]; or (c) in every case granted by Planning Authority the Secretary of State or an inspector appointed by him for that purpose;
Planning Permission Longstop Date	has the meaning given to it in Schedule 26 (Planning);
Portfolio Cost Saving	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Post Termination Service Amount	has the meaning given to it in Schedule 17 (Compensation on Termination);
Power and Engineering Insurance Market	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Pre-Refinancing Equity IRR	has the meaning given to it in Schedule 16 (Refinancing);
Prescribed Rate	means [] percent ([]%) above the base rate from time to time of [<i>INSERT NAME</i>] Bank plc;
Price Reference Date	means [];
Proceedings	means any of the following: <ul style="list-style-type: none"> (a) 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; (b) an appeal against refusal including Deemed Refusal) of any Planning Application; (c) an application seeking to remove or modify any conditions imposed by the Planning Permission; (d) an appeal against refusal including deemed Refusal of any application to remove or modify any conditions imposed by the Planning Permission; and (e) an application to the Court pursuant to Section 288 of the Planning Act;
Professional Team	means the professional team employed by the Construction Sub-Contractor in connection with the Works, namely:

	[];
Programmed Maintenance	means the maintenance work which the Contractor is to carry out in accordance with the Schedule of Programmed Maintenance;
Prohibited Act	means: <ul style="list-style-type: none"> (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority; (b) entering into this Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority; or (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010, Prevention of Corruption Acts 1889-1916; (ii) under Legislation creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority; (d) defrauding or attempting to defraud or conspiring to defraud the Authority;
Prohibited Act Termination Amount	has the meaning given to it in Schedule 17 (Compensation on Termination) Part 4 (Compensation following Corrupt Gifts and Fraud);
Prohibited Materials	means those products and materials set out at Schedule 33 (Prohibited Materials);
Project	means the provision of waste management services to the Authority by the Contractor as contemplated by this Contract including the carrying out of the Works and the provision of the Services;

Project Accounts	has the meaning given to it in Schedule 16 (Refinancing);
Project Data	means [], ⁵⁷
Project Insurance Change	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Project IRR	[to be defined by Authority and Bidder financial teams on a project specific basis];
Project Management Fee	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Proposed Workforce	has the meaning given to it in paragraph 2.A.8 (Workforce Information) of Schedule 20 (Employment and Pensions);
Protester Action	means any picketing, demonstration, blockade, embargo or other protester action (other than as a result of industrial action which affects only the employees of the Contractor or its Sub-Contractors or in respect of matters arising from this Contract or the [Facility] to be constructed pursuant to this Contract) taking place at the [Facility] or directly affecting access to the [Facility]; ⁵⁸
Qualification Criteria	means the criteria that the Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with the procurement regulations) shall be: <ul style="list-style-type: none"> (a) the New Contract terms, (b) tenderers demonstrating they have the financial ability to pay the capital sum tendered for the New Contract and the financial ability to deliver the Works and/or the Services (as appropriate) for the price tendered, (c) the tenderers only bidding on the basis of a single capital payment to be made on the date of the New Contract, (d) the tenderers (either itself or through the proposed sub-contractors) being experienced in providing the Works and/or Services or similar services, (e) the technical solution being proposed by the tenderers is capable of delivery and the tenderers (either themselves or through the proposed sub-contractors) being technically capable of delivery of the Works and/or Services, and (f) any other tender criteria agreed by the Authority and the Contractor;

⁵⁷ Define on a project specific basis relating to any such data the ownership of which should pass or be retained by the Authority.

⁵⁸ As per Section 3.3.2 of the Defra Derogations Guidance this applies to Key Facilities to be identified on a project specific basis and in our experience this only tends to be applied to EfW facilities.

Qualifying Bank Transaction has the meaning given to it in Schedule 16 (Refinancing);

Qualifying Change in Law means:

- (a) a Discriminatory Change in Law; and/or
- (b) a Specific Change in Law; and/or
- (c) a General Change in Law, which comes into effect after [a period of [three (3)] years] *[period to be determined on a project specific basis]* the [Services] *[to be inserted and references to “a period of [three (3)] years” to be deleted where Bidder is taking general change in law risk for full period between Commencement Date and Services Commencement Date]* Commencement Date and which involves Capital Expenditure⁵⁹;

which was not foreseeable at the date of this Contract; or

- (d) any Legislation or Guidance coming into effect after the date of this Contract giving effect to any of those documents or policies listed in the Waste Law List;⁶⁰ and/or
- (e) any change to or revocation of any condition of an Environmental Permit for the Key Facility]⁶¹ other than where such change or revocation arises as a result of:
 - (i) the acts or omissions of the Contractor or any Contractor Related Party (save for acts or omissions directly resulting from compliance with the Contractor's obligations under the Contract); or
 - (ii) any breach of the Contract by the Contractor or any Contractor Related Party;
- (f) a change made by the Environment Agency (and confirmed in writing) to any guidance in relation to, or any explanation or interpretation of, any Legislation or Guidance relating to a [Key] Consent for the [Key] Facility, where the Contractor can demonstrate that it had, acting reasonably and in accordance with Good Industry Practice, relied upon such guidance, explanation or interpretation, except to the extent that such change arises as a result of:
 - (i) the acts or omissions of the Contractor or any Contractor Related Party (save

⁵⁹ This will depend on which option in Section 14.7 (General Change in Law at Contractor's Risk) of SoPC4 is adopted and the extent to which Capital Expenditure is at the risk of the Contractor (i.e. the extent to which such amounts have been included in the bid).

⁶⁰ See Section 5.3.1 of the Defra Derogations Guidance. Authorities should ensure the Waste Law List contains only waste specific legislation and not general legislation (i.e. that the list is Specific Change in Law only).

⁶¹ Protection only to be granted in relation to Environmental Permits for the Key Facility and would not include facilities would have been subject to a Waste Management Licence rather than a PPC Permit.

for acts or omissions directly resulting from compliance with the Contractor's obligations under the Contract); or

- (ii) any breach of the Contract by the Contractor or any Contractor Related Party;

Qualifying Change in Law TPI Adjustment has the meaning given to it in Schedule 19 (Revision of Base Case and Custody);

Qualifying Institution has the meaning given to it in Schedule 16 (Refinancing);

Qualifying Refinancing has the meaning given to it in Schedule 16 (Refinancing);

Qualifying Variation⁶² means either:

- (a) a change in the Works and/or⁶³ the Services in respect of which either an Authority Change Notice or a Contractor Change Notice has been served, and in the case of:

- (i) an Authority Change Notice, the Authority has confirmed the Estimate and, where the Contractor is not funding all or part of the required Capital Expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; and

- (ii) a Contractor Notice of Change, has been accepted by the Authority, or

- (b) a Qualifying Change in Law;

and in respect of which any documents or amendments to the Ancillary Documents which are required to give effect to such change in the Works and/or the Services or Qualifying Change in Law have become unconditional in all respects;

Readiness Date means in respect of a Facility the date on which the Readiness Test Certificate is issued in respect of that Facility or in the event of referral for determination under the Dispute Resolution Procedure pursuant to Clause 21.4.1 the date upon which it is determined that the Facility passed the Readiness Tests;

Readiness Longstop Date means such date as is twelve (12) Months after the Planned Readiness Date;

Readiness Test Certificate means a certificate issued by the Independent Certifier that the Readiness Tests have been satisfied;

⁶² See definition of Original Senior Commitment.

⁶³ References to Works should only be included if variations in the build phase are to be allowed and an appropriate definition should be used. Definitions of "Authority Change Notice", "Contractor Change Notice" and "Estimate" should all relate to the relevant drafting in the Change Protocol developed pursuant to **Error! Reference source not found.** (Change Protocol).

Readiness Tests	means the Tests so described in Schedule 11 (Tests);
Recipient	has the meaning given to it in Clause 49.1.2;
Rectification Costs	has the meaning given to it in Schedule 17 (Compensation on Termination);
Reference Price	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Refinancing	has the meaning given to it in Schedule 16 (Refinancing);
Refinancing Gain	has the meaning given to it in Schedule 16 (Refinancing);
Regulated Collective Investment Scheme	has the meaning given to it in Schedule 16 (Refinancing);
Reinstatement Outline	has the meaning given to it in Clause 56.3.1;
Reinstatement Plan	has the meaning given to it in Clause 56.3.5;
Reinstatement Works	has the meaning given to it in Clause 56.3.1;
Relevant Assets	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Relevant Assumptions	has the meaning given to it in Schedule 17 (Compensation on Termination);
Relevant Authority	means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
Relevant Discharge Terms	means the terms defined in Clause 4.5 (Relevant Discharge Terms);
Relevant Employees	has the meaning given to it in Schedule 20 (Employment and Pensions);
Relevant Event	means an Authority Change, a Qualifying Change in Law, a Compensation Event or any other matter as a result of which there may be a revision of the Unitary Charge in accordance with Schedule 19 (Revision of Base Case and Custody);
Relevant Incident	has the meaning given to it in Clause 56.3;
Relevant Insurance	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Relevant Insurance Inception Date	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Relevant Insurance Market	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);

Relevant Person	means a Shareholder and any of its Affiliates;
Relevant Payment	has the meaning given in Clause 57.4;
Relevant Proceeds	means any amounts standing to the credit of the Joint Insurance Account in accordance with Clause 56.3.6;
Relevant Required Insurances	has the meaning given to it in Schedule 24 (Direct Agreement);
Relevant Sub-Contractor	has the meaning given to it in Schedule 24 (Direct Agreement);
Relevant Transfer	has the meaning given to it in Schedule 20 (Employment and Pensions);
Relevant Transfer Date	has the meaning given to it in Schedule 20 (Employment and Pensions);
Relevant Year	has the meaning given to it in Schedule 24 (Direct Agreement);
Relief Event	<p>means:</p> <ul style="list-style-type: none"> (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion; (b) failure by any statutory undertaker, utility company, local authority or other like body (but excluding for the avoidance of doubt the Authority as purchaser) to carry out works or provide services; (c) any accidental loss or damage [to the development or any roads servicing it;] (d) any failure or shortage of power, fuel or transport; (e) any blockade or embargo which does not constitute a Force Majeure Event; (f) any: <ul style="list-style-type: none"> (i) official or unofficial strike; (ii) lockout; (iii) go-slow; or (iv) other dispute, <p>generally affecting the haulage, construction, or waste management industries or a significant sector of them;</p> <ul style="list-style-type: none"> (g) the occurrence of Protester Action provided that the Contractor has complied with its obligations pursuant to Clause 42 (Protester Action);

- (h) the discovery of fossils, antiquities or human remains requiring action in accordance with Clause 14 (Fossils and Antiquities); or
- (i) the delivery to a Facility as part of a delivery of Waste during the Services Period of munitions, hazardous materials or human remains which directly results in Enforced Closure provided that such Waste has been Accepted, handled and processed by the Contractor in accordance with this Contract;

unless:

- (A) any of the events listed in paragraphs (a) to (i) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any of its sub-contractors; or
- (B) in the case of paragraph (i) above arises (directly or indirectly) as a result of the negligence of the Contractor or any of its sub-contractors;

Remuneration Costs	has the meaning given to it in paragraph 2.A.8 (Workforce Information) Schedule 20 (Employment and Pensions);
Reorganisation Costs	has the meaning given to it in paragraph 2.A.8 (Workforce Information) Schedule 20 (Employment and Pensions);
Representative	has the meaning given to it in Schedule 24 (Direct Agreement);
Requests for Information	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term 'request' shall apply);
Required Action	has the meaning given to it in Clause 33.3 (Action by Authority);
Required Insurances	means the insurances specified in Schedule 10 (Required Insurances);
Required Period	has the meaning given to it in Schedule 24 (Direct Agreement);
Required Standard	has the meaning given to it in Clause 79.3.1;
Restricted Share Transfer	means any transfer of shares in the Contractor [or Holdco]: <ul style="list-style-type: none"> (a) during the Lock in Period; [or] [(b) to any person engaged or with substantial interests in gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco or the manufacture or sale

of arms and weapons;]⁶⁴

- (c) to any person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of residual waste treatment in the area; [or]
- (d) to any person whose activities in the reasonable opinion of the Authority, could pose a threat to national security;

Restrictions	means all matters (whether arising before or after the date of this Contract) affecting a Site(s) or its use registered or capable of registration as local land charges, and all notices, charges, orders, resolutions, demands, proposals, requirements, regulations, restrictions, agreements, directions or other matters affecting a Site(s) or its use served or made by any local or other competent authority or otherwise arising under any Legislation;
Retendering Information	has the meaning given to it in paragraph [2.5.1] [2.A.16] (Retendering) of Schedule 20 (Employment and Pensions);
Retention Fund Account	has the meaning given to it in Clause 79.5 (Retention Fund);
Returning Employees	has the meaning given to it in paragraph [2.6.1] [2.A.17] (Termination of Contract) of Schedule 20 (Employment and Pensions);
Revenue	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Review Procedure	means the procedure set out in Schedule 9 (Review Procedure);
[Reviewable Design Data]	[means the items of Design Data listed in the Appendix to the Review Procedure;]
Revised Senior Debt Termination Amount	has the meaning given to it in Schedule 17 (Compensation on Termination);
RPIX	means the index published in Table 5 (excluding mortgage interest payments) of Business Monitor (MM23) published by the Office of National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better or worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;
Satisfactory Planning Permission	has the meaning given to it in Schedule 26 (Planning);

⁶⁴ Authorities to consider inclusion on a project specific basis. See Section 18.4.5 of SoPC4 for guidance.

Schedule of Programmed Maintenance	means the Contractor's annual programme for the maintenance of the Facility and the Assets to satisfy the Service Requirements;
Senior Credit Agreement	means [] as at the date of this Contract or as amended with the prior written approval of the Authority pursuant to clause 7.4.2;
Senior Debt	means the financing provided by the Senior Lenders under the Senior Financing Agreements;
Senior Debt Discharge Date	has the meaning given to it in Schedule 24 (Direct Agreement);
Senior Debt Rate	has the meaning given to it in Schedule 17 (Compensation on Termination);
Senior Debt Service Costs	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Senior Financing Agreements	means [] ^{65 66} as at the date of this Contract or, without prejudice to clause 7.4.2 as the same may be amended as allowed by clause 7.4.1; ⁶⁷
Senior Lender	means a person providing finance to the Contractor under the Senior Financing Agreements; ⁶⁸
Service Commencement	means the commencement of the Services;
Service Delivery Plan	means the plans set out in Part 2 of Schedule 3 (Contractor's Proposals);
Service Transfer Date	has the meaning given to it in Schedule 20 (Employment and Pensions);
Services	means the whole of the services or any of them to be provided by the Contractor pursuant to this Contract which are necessary for the Contractor to undertake in order to comply with the Service Requirements, the Services Method Statements and the other provisions of this Contract;

⁶⁵ Reference should be made here to the document under which the senior loan facility is made available.

⁶⁶ These are all documents relating to the Senior Debt and may include:

- (a) a credit agreement;
- (b) interest rate, forex and other hedging agreements; and
- (c) security documents.

Where bond financing is used the definition will include the bond trust deed, the terms and conditions of the bond, as well as security documents. A monoline insured deal will also include reference to the monoline's Policy and Endorsement and its Insurance and Indemnity Agreement (each of which will be defined in the Contract).

⁶⁷ Where referred to in the Contract, Senior Financing Agreements should mean those agreements as at the date of the Contract as they may be amended with the approval of the Authority pursuant to Clause 7.4 (Changes to Financing Agreements and Ancillary Documents). This is particularly important if Senior Debt is paid on early termination of the Contract. On signature of the Contract, the Authority has an assumed exposure to termination liabilities (based on the financing structure in place at financial close); the Authority should therefore have the right to approve any amendments to its termination liability. If the Contractor makes changes to the Senior Financing Agreements which have not been approved by the Authority for the purposes of Clause 7.3 they will be disregarded for the purposes of calculating termination sums unless they qualify as Additional Permitted Borrowing.

⁶⁸ Reference may be made to approved hedge counter-parties if relevant. This and related definitions will need to be carefully reviewed for projects whose financial structures include a mixture of Senior Debt and mezzanine debt in addition to subordinated debt and equity.

Services Commencement Date	means the date ⁶⁹ on which Service Commencement occurs in accordance with Clause 21.1.3;
Services Method Statements	means the proposals for the method of providing the Services to satisfy the Service Requirements set out in Part 2 of Schedule 3 (Contractor's Proposals);
Services Media	means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media appliances and apparatus including any fixtures, louvers, cowls and other ancillary apparatus;
Services Period	means the period specified in Clause 3.2; ⁷⁰
Service Requirements	means the specification contained in Part 1 (PR3 – Service Requirements) of Schedule 2 (Authority's Requirements);
Shareholders	means any person from time to time holding share capital in the Contractor or its Holding Company; ⁷¹
Shortfall Period	has the meaning given in Clause 25.2.3(c);
Site Conditions	means the conditions of the Site(s) including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;
Site Plan	means the plan of the Site(s) set out in the Agreed Form;
Site(s)	means the area edged [red] on the relevant Site Plan together with the Facility [and the service ducts and media for all utilities and services serving the Facility;]
Small Works Rates	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Snagging Items	means minor defects, deficiencies or omissions of a snagging nature which do not prevent the Independent Certifier from issuing an Acceptance Test Certificate in relation to the relevant Facility;
Snagging List	means the list to be prepared by the Independent Certifier in accordance with Clause 21.5.1 containing Snagging Items;
Specific Change in Law	means: <ul style="list-style-type: none"> (a) any Change in Law which specifically refers to:

⁶⁹ This assumes a single Service Commencement Date. To the extent a project has more than one Service Commencement Date, this will need amendment to recognise that partial provision of the Service may commence prior to the main Service Commencement Date.

⁷⁰ That is the period from the Service Commencement Date to the Expiry Date, unless the Contract is terminated early.

⁷¹ This definition should include any intermediate special purpose company between the Contractor and the investors in the Project. If the Contractor is a partnership or other legal entity, the definition should be revised so as to include all equity investors such as the General Partner and Limited Partner in the case of a Limited Liability Partnership.

	(i)	the provision of any services the same as or similar to any of the Services; or
	(ii)	the construction, operation and maintenance of premises for the provision of any services the same as or similar to the Services; or
	(iii)	to the holding of shares in companies whose main business is providing services the same as or similar to the Services or the construction operation and maintenance of premises for the provision of any service the same as or similar to any of the Services;
	(b)	[in the case of <i>[insert reference to EfW facility⁷² if included in the Project]</i>] any Change in Law which specifically refers to emissions from industrial facilities; or ⁷³
	(c)	[any Change in Law that discriminates against the sale of electricity generated from a thermal treatment facility]; ^{74 75}
Step-In Date		has the meaning given to it in Schedule 24 (Direct Agreement);
Step-in Event		means those events referred to in Clause 33.1 (Right to Step-in);
Step-In Period		has the meaning given to it in Schedule 24 (Direct Agreement);
Step-Out Date		has the meaning given to it in paragraph 7.1 of Schedule 24 (Direct Agreement);
Sub-Contractors		means each of the counterparties of the Contractor to the Construction Sub-Contract and the Operating Sub-Contract or any person engaged by the Contractor from time to time as may be permitted by this Contract to procure the provision of the Works and/or the Services (or any of them). References to sub-contractors means sub-contractors (of any tier) of the Contractor;
Sub-Contracts		means the contracts entered into between the Contractor and the Sub-Contractors;
Sub-Contractor Costs	Breakage	has the meaning given to it in Schedule 17 (Compensation on Termination);

⁷² This may be extended if relevant to other facilities that generate electricity such as AD and gassifiers.

⁷³ See Section 5.3.6 of the Defra Derogations Guidance (May 2006) – if it is relevant to the project, Authorities may extend Specific Change in Law protection to include Changes in law relating to emissions from the processing of waste.

⁷⁴ See Section 5.4.3 (d) of the Defra Derogations Guidance (May 2006) – this additional protection is applicable to EfW Facilities and to other facilities that generate electricity such as AD and gassifiers.

⁷⁵ Change in Law protection in relation to ROCs/LECs revenue may be considered where such revenue is included in the Base Case to reduce the Unitary Charge at a level confirmed as appropriate by the Authority's financial and technical advisers.

Subordinated Financing Agreements	means [] ⁷⁶ as at the date of this Contract or as amended with the prior written approval of the Authority;
Subordinated Lenders	means a person providing finance under a Subordinated Financing Agreement;
Substitute Waste	means waste (other than Contract Waste) which is to be received at the Facility in the event that the amount of Contract Waste falls below the Minimum Tonnage in a Contract Year;
Substitute Waste Amount	means an amount calculated as being the number tonnes of Substitute Waste contracted for by the Contractor in a Contract Year multiplied by the Substitute Waste Price;
Substitute Waste Contract	means the contract entered into by the Contractor and the Substitute Waste Contractor provided any such contracts entered into with Affiliates of the Contractor shall be excluded unless the contracts with the Affiliates have been entered into on an arms length basis;
Substitute Waste Contractor	means the person providing the Substitute Waste;
Substitute Waste Notice	has the meaning given in Clause 25.2.3;
Substitute Waste Plan	means the plan for the securing of Substitute Waste developed from the Outline Substitute Waste Plan and updated in accordance with Clause 25.2 (Substitute Waste);
Substitute Waste Price	means the gate fee per tonne payable by the Substitute Waste Contractor under or in connection with the Substitute Waste Contract;
Successful Tenderer	has the meaning given to it in Clause 34.3.1;
Suitable Substitute Contractor	means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as: <ul style="list-style-type: none"> (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Contract; (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Contract; and (c) being a Suitable Third Party;
Suitable Third Party	means any person who is not an Unsuitable Third Party;
Superior Landlord	means [] or its successors in title entitled to the

⁷⁶ These are the debt financing documents signed at Financial Close, through which the equity investors will often invest 'equity' in the Project in the form of subordinated debt.

	reversionary interest in the headlease from time to time;
Supplier	has the meaning given to it in Clause 49.1.2;
Target Landfill Tonnage	has the meaning given to it in Schedule 4 (Payment Mechanism);
Tax	means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Contract and imposed by a Relevant Authority;
Tender Costs	has the meaning given to it in Schedule 17 (Compensation on Termination);
Tender Documents	has the meaning given to it in Clause 34.1.1(d);
Tender Process	has the meaning given to it in Schedule 17 (Compensation on Termination);
Tender Process Monitor	has the meaning given to it in Schedule 17 (Compensation on Termination);
Tendering Report	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Termination Date	means any date of early termination of this Contract in accordance with Part XII (Termination and Compensation on Termination);
Termination Date Discount Rate	has the meaning given to it in Schedule 17 (Compensation on Termination);
Termination Notice	means a notice of termination issued in accordance with this Contract;
Termination Sum	has the meaning given to it in Schedule 17 (Compensation on Termination);
Test Certificate	means the Readiness Test Certificate or the Acceptance Test Certificate as appropriate;
Tests	means the Readiness Tests and Acceptance Tests as appropriate;
Third Party Consents	<p>means, in relation to any Adverse Right which would or might be interfered with by the carrying out of the Works or Services, the consent in writing of all Adjoining Owners entitled to or interested in the Adverse Right in question to either:</p> <ul style="list-style-type: none"> (a) the removal or diversion (whether temporarily or permanently) of the subject matter of the Adverse Right in question; or (b) the carrying out of the Works or Services notwithstanding such interference; <p>such consent in each case to be on terms previously approved in writing by the Authority (such approval not to be unreasonably withheld or delayed);</p>

Third Party Costs	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Third Party Income	means the Contractor's or Affiliates [and/or Sub-Contractor's] income from third parties (other than the Authority under this Contract) associated with the Project including without limitation that derived from the sale of or making arrangements in relation to [<i>the acceptance, handling and processing of Third Party Waste at the Facility, heat, power, recycle, RDF, SRF etc</i>] [(less the costs of generating such income where such costs are reasonably additional to the costs in the Base Case)];
Third Party Waste	means all waste received at the Facility other than Contract Waste; ⁷⁷
Third Party Waste Contracts	means contracts entered into by [the Contractor [and/or the Sub-Contractor] in respect of Third Party Waste excluding Off-Take Contracts;
Threshold Equity IRR	means [<i>INSERT NUMBER</i>] per cent; ⁷⁸
Threshold Operating Capacity ⁷⁹	means the [<i>specify Facility</i>] operating at no less than [[]% capacity] over a given period;
TPI Adjusted Base Case Equity IRR	has the meaning given to it in Clause 6.8 of Schedule 19 (Revision of Base Case and Custody);
Trade Marks	means [<i>insert details of Authority trade marks, if any, to be licensed</i>] (whether unregistered or registered and including any applications for registration) and other Intellectual Property Rights subsisting in such trade marks from time to time;
Transfer Amount	has the meaning given to it in Schedule 20 (Employment and Pensions);
Transfer Date	has the meaning given to it in Schedule 20 (Employment and Pensions);
Transfer Value	has the meaning given to it in Schedule 20 (Employment and Pensions);
Transferring Employee	has the meaning given to it in Schedule 20 (Employment and Pensions);
Transferring Original Employee	has the meaning given to it in Schedule 20 (Employment and Pensions);
TUPE	has the meaning given to it in Schedule 20 (Employment and Pensions);

⁷⁷ Refer to Clause 50 (Third Party Income) and associated provisions in the Payment Mechanism and Authority's requirements.

⁷⁸ This is the nominal post-tax (i.e. post tax with respect to the Contractor, pre-tax with respect to the shareholders in the Contractor). Equity IRR set out in the Base Case, which excludes the effects of any anticipated refinancing.

⁷⁹ This definition should be completed on a project specific basis.

Unavoidable Fixed Costs	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Underleases	means the underleases of [each of] the Leasehold Site(s) in the form set out in Part [] of Schedule 7 (Sites Information);
Uninsurable	means in relation to a risk, either that: <ul style="list-style-type: none"> (a) insurance is not available to the Contractor in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or (b) the insurance premium payable for insuring that risk is at such a level that the risk⁸⁰ is not generally being insured against in the worldwide insurance⁸¹ market⁸² with reputable insurers of good standing by contractors in the United Kingdom;
Unitary Charge	means the payment calculated in accordance with Schedule 4 (Payment Mechanism);
Unrestricted Assets	has the meaning given to it in Schedule 24 (Direct Agreement);
Unsuitable Person	means any person who: <ul style="list-style-type: none"> (a) has any Conviction; (b) in the reasonable opinion of the Authority: <ul style="list-style-type: none"> (i) is or is likely to cause damage to the reputation of the Authority; or (ii) persistently fails or would fail to comply with the health and safety or other material obligations of the Contractor under this Contract; or (iii) is not a fit and proper person to be engaged, or employed in or in connection with the provisions or performance of any part of the Service; or (iv) may present an actual or potential risk to the health, safety or welfare of any Authority Related Party or member of the public; or (v) is not appropriately trained, qualified, skilled and/or competent to carry out

⁸⁰ The effect of this provision should not be to give the Contractor protection against changes in terms of insurance or levels of deductibles, but to only give protection if the cost of insurance (on any terms) is at such a level that the market is not generally insuring against that risk.

⁸¹ To the extent relevant, the wider risk transfer market (rather than just the insurance market) should be referred to. Insurance advice should be taken on this. Reference to any geographically narrower market, such as the European market, will not be acceptable.

⁸² This approach is preferable to one dealing with the extent to which prices of premiums have increased.

any part of the Service;

Unsuitable Third Party	means any of: <ul style="list-style-type: none"> (a) any person or party who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks and/or pornography; (b) any person or party whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of residual waste treatment in the area; or (c) any person or party whose activities, in the reasonable opinion of the Authority, could pose a threat to national security;
VAT	means any value added taxes;
Warning Notice	has the meaning given to it in Schedule 24 (Direct Agreement);
Waste	has the meaning ascribed to it in Section 75 of the EPA;
Waste Collection Authority	means a waste collection authority in accordance with Section 30(3) of the EPA;
Waste Disposal Authority	means a waste disposal authority in accordance with Section 30(2) of the EPA;
Waste Law List	means the anticipated Specific Changes in Law set out in Schedule 14 (Waste Law List), ⁸³
[Waste Management Licence]	[means all statutory permissions, authorisations, licences and similar forms of instrument required under the Environmental Protection Act 1990 and any other legislation governing the acceptance, treatment, keeping, deposit and disposal of waste;]
WCAs	means the Waste Collection Authorities in the Authority's Administrative Area being [<i>specify waste collection authorities where relevant</i>];
WCA Retained Waste	means Waste that is retained for recycling or composting by the WCAs or the Authority from time to time;
WCA Baseline	means the activity set out in Part 2 of Schedule 31 (Incoming Waste Parameters)
Whole Life Costs	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);

⁸³ In settling the Waste Law List, Authorities should consider the mechanisms set out in Section 5.3.5 of the Defra Derogations Guidance (May 2006) aimed at incentivising the Contractor to innovate and to minimise the cost of implementing the proposed change. Bidders to propose the Waste Law List as part of their response to the ISDS.

Works	means all of the works (including design and works necessary for obtaining access to the Site(s), commissioning and conduct of the Tests) to be undertaken in accordance with this Contract in accordance with the Works Requirements, Commissioning Requirements and the Works Method Statements;
Works Delivery Plans	means the plans set out in Part 1 of Schedule 3 (Contractor's Proposals);
Works Method Statements	means part of the Contractor's Proposals as set out in Part 1 of Schedule 3 (Contractor's Proposals);
Works Period	means the period from the Commencement Date to the Services Commencement Date; and
Works Requirements	means the specification contained in Part 1 (PR1 – Works Requirements) of Schedule 2 (Authority's Requirements).