

## **Schedule 31 (Authority Policies)**

The following are the Authorities Policies as at the date of this Contract:

1. Whistleblowing policy
2. Equality and Diversity Policy
3. Environmental Policy
4. Sustainability Policy
5. Corporate Publishing Standards (as reasonably required by the Authority)

**Schedule 32 (Not used)**

**Schedule 33 (Cost Apportionment Table) [*Confidential*]**

### **Schedule 34 (Foreseeable Waste Management Legislation)**

1	Hazardous Waste (England & Wales) Regulations 2005
2	Waste Electrical and Electronic Equipment (WEEE) Regulations 2004
3	Landfill (England and Wales) Amendment Regulations 2005

Further and for the avoidance of doubt, the Contractor agrees that the Contractor has taken into account in its Contractor's Proposals for the ERF, including without limitation the Basic Design Proposals and the ERF Construction Contract:-

1. all relevant Guidance binding as at the Revised BAFO Date in respect of the ERF; and
2. the following Legislation and Guidance to the extent binding on the Contractor as at the date of this Contract:-

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on batteries and accumulators and spent batteries and accumulators COM (2003) 723.

The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005. SI 2005/2900.

Guidance on the Clean Neighbourhoods and Environment Act 2005.

Revisions to Code of Practice on Litter and Refuse.

The Waste Management (England and Wales) Regulations 2006.

"Sector Guidance Note IPPC S5.01: Guidance for the Incineration of Waste and Fuel Manufactured from or Including Waste" Issue 1, July 2004 V5, as issued by the Environment Agency.

## Schedule 35 (Environmental Criteria) - REDACTED

## **Schedule 36 (Required Insurance)**

This is Schedule 36 comprising the Required Insurances referred to in the Contract for waste management services between:

- (1) Nottinghamshire County Council and
- (2) Nottinghamshire Environmental Services Limited.

This Schedule 36 comprises four parts-

- PART 1** Policies to be taken out by the Contractor and maintained during the Works Period
- PART 2:** Policies to be taken out by the Contractor and maintained during the Service Period
- PART 3:** Endorsements
- PART 4:** Broker's Letter of Undertaking

## PART 1

### **Policies to be taken out by the Contractor and maintained during the Works Period**

Common to each policy in Part 1 (unless stated otherwise):

#### **Insureds:-**

1. Authority
2. Contractor
3. Construction Sub-Contractor
4. Operating Sub-Contractor
5. Sub-contractors of any tier to Insured 2, 3 and 4
6. To Insured 2, 3 and 4 suppliers, manufacturers and consultants to all of the above for site risks only

each for respective rights and interests in the Project

#### **1. Contractors' 'All Risks' Insurance (CAR)**

##### **1.1 Insured Property**

The permanent and temporary Works, materials, goods, plant and equipment for incorporation in the Works (other than constructional plant, tools, accommodation and equipment) and all other property used or for use in connection with Works associated with the Project.

##### **1.2 Coverage**

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

##### **1.3 Sum Insured**

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the Construction Contract plus provision to include principal extensions and conditions as appropriate.

##### **1.4 Maximum Deductible**

Not to exceed £250,000 each and every claim for defective design, materials and workmanship and testing and commissioning, 20% co-insurance in respect of inflation on incomplete works, and in respect of all other claims, £50,000.

1.5 **Territorial Limits**

United Kingdom including offsite storage and during inland transit.

1.6 **Period of Insurance**

From the Works Commencement Date until the Service Commencement Date and thereafter in respect of defects liability until expiry of the defects liability period in respect of the Works as defined in the Construction Contract.

1.7 **Cover Features & Extensions**

1. Full value "All Risks" Terrorism
2. Munitions of war clause
3. Additional costs of completion on unbuilt portions (inflation wording)
4. Professional fees clause
5. Debris removal clause
6. 72 hour clause
7. European Union local authorities clause
8. 10 % escalation clause
9. Automatic reinstatement of sum insured clause
10. Loss minimisation
11. Guarantee maintenance
12. Reinstatement/replacement basis of claim settlement with cash option for non-reinstatement
13. Testing/commissioning period clause
14. Plans and documents
15. Expediting expenses
16. Temporary repairs

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17. Taken into use
18. Advance payments
19. Marine 50/50

### 1.8 **Principal Exclusions**

1. War and related perils (UK market agreed wording)
2. Nuclear/radioactive risks (UK market agreed wording)
3. Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds
4. Wear, tear and gradual deterioration
5. Liquidated damages, penalties and consequential financial losses
6. Cyber risks
7. Inventory losses, fraud and employee dishonesty
8. Motor vehicles and other tools of trade
9. Toxic mould
10. Faulty design, workmanship and materials LEG3
11. Deliberate Acts of the Insured
12. Machinery Breakdown but not consequences therefrom
13. Cash and the like
14. Piling conditions

## 2 **Delay in Start Up Insurance (DSU)**

### 2.1 **Insureds**

1. Contractor

each for their respective rights and interests in the Project.

### 2.2 **Indemnity**

In respect of:

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1. loss of anticipated revenue of Contractor during the Minimum Indemnity Period arising from a delay in completion of the Works as a result of physical loss or damage covered under the Contractors' All Risks' Insurance effected in accordance with Item 1 of Part 1 of this Schedule and/or as provided by the Principal Extensions, including physical loss or damage which would be indemnifiable but for the application of any deductible;
2. the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of gross Revenue of the Contractor which without such expenditure would have taken place, during the Minimum Indemnity Period.

### 2.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

### 2.4 **Maximum Excess**

60 days.

### 2.5 **Minimum Indemnity Period**

24 months.

### 2.6 **Period of Insurance**

As per the Contractors' "All Risks" Insurance, excluding the defects liability period.

### 2.7 **Cover Features & Extensions**

1. Denial of access
2. Utilities
3. Full value "All Risks" Terrorism cover
4. Auditors fees
6. Payments on account

### 2.8 **Principal Exclusions**

The exclusions under the Contractors' 'All Risks' Insurance, other than for consequential financial losses, but with additional exclusion as follows:

1. Delayed response by a public body or state authority

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2. Modifications or original design and specification
3. Loss or permit or licence
4. Non availability of funds

### 3. **Construction Third Party Liability Insurance**

#### 3.1 **Insureds**

As per 1 above Contractors' "All Risks" Insurance

#### 3.2 **Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

- (a) death, or bodily injury, illness, death, disease contracted by any person;
- (b) loss or damage to property;
- (c) interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the Period of Insurance and arising out of or in connection with the Works.

#### 3.3 **Limit of Indemnity**

Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution.

#### 3.4 **Maximum Deductible**

£10,000 for each and every occurrence of property damage. (Personal injury claims will be paid in full).

#### 3.5 **Territorial Limits**

UK and elsewhere in the world in respect of non manual visits.

#### 3.6 **Jurisdiction**

Worldwide excluding USA/Canada

**3.7 Period of Insurance**

As per the Contractors' "All Risks" Insurance, including the defects liability period.

**3.8 Cover Features & Extensions**

1. Munitions of war
2. Cross liability clause
3. Contingent motor
4. Legal defence costs
5. Contractual liability
6. Health and Safety at Work Act Defence clause
7. Defective Premises Act clause
8. Data Protection Act clause
9. Cross liabilities clause
10. Food Safety Act
11. Consumer Protection Act clause
12. Indemnity to Principal Clause

**3.9 Principal Exclusions**

1. Liability for death, illness, disease or bodily injury sustained by employees of the insured.
2. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
3. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
4. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured.

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5. Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
6. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
7. Liability arising from seepage and pollution unless caused by a sudden, identifiable unintended and unexpected occurrence.
8. Losses indemnified under the CAR policy or DSU policy.
9. Nuclear/radioactive risks (UK market agreed wording)
10. War and related perils (UK market agreed wording)
11. Asbestos
12. Toxic mould
13. Deliberate acts of the Insured
14. Financial loss

## PART 2

### **Policies to be taken out by the Contractor and maintained during the Service Period**

Common to all policies in Part 2 (unless stated otherwise):

#### **Insureds:-**

1. Authority
2. Contractor
3. Operating Sub Contractor
4. Sub-Contractors of any tier to Insured 2 and 3 to extent required by the Sub-Contract

each for their respective rights and interests in the Project.

#### **1. Property Damage Insurance**

##### **1.1 Insured Property**

The physical project assets including the ERF which are the property of the Contractor or for which the Contractor may be responsible including but not limited to the ERF.

##### **1.2 Coverage**

“All risks” of physical loss or damage to the Insured Property from any cause not excluded, including machinery breakdown and computer breakdown in respect of appropriate equipment .

##### **1.3 Sum Insured**

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Principal Extensions as appropriate.

##### **1.4 Maximum Deductible**

£250,000 Indexed in accordance with Clause 122.13 of the Contract (Increase in Insured Amounts)) each and every claim.

##### **1.5 Territorial Limits**

United Kingdom plus elsewhere whilst in inland transit.

1.6 **Period of Insurance**

From the Service Commencement Date or as otherwise specified in the Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise by the Parties.

1.7 **Cover Features & Extensions**

1. Full Value "All Risks" Terrorism cover
2. Automatic reinstatement of sum insured
3. Capital additions clause
4. 72 hour clause
5. European Union local authorities clause
6. Professional fees
7. Debris removal
8. Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded
9. Repair / reinstatement basis of claims settlement with cash option for non-reinstatement.
10. Goods temporarily removed
11. Replacement of computer records
12. Day one reinstatement – 10% uplift
13. Plans and documents
14. Temporary repairs and expediting expenses
15. Advance payments

1.8 **Principal Exclusions**

1. War and related perils (UK market agreed wording).
2. Nuclear/radioactive risks (UK market agreed wording).
3. Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
4. Wear, tear and gradual deterioration.

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5. Consequential financial losses.
6. Cyber risks.
7. Losses recovered under the CAR policy.
8. Unexplained shortages
9. Latent defects
10. Toxic mould
11. Deliberate acts of the Insured

## 2. **Business Interruption Insurance**

### 2.1 **Insureds**

1. Contractor

each for their respective rights and interests in the Project.

### 2.2 **Indemnity**

In respect of:

1. loss of anticipated revenue of Contractor during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under Property Damage Insurance effected in accordance with paragraph 1 of Part 2 of this Schedule including physical loss or damage which would be indemnifiable but for the application of any deductible;
2. the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of revenue of the Contractor which without such expenditure would have taken place, during the Indemnity Period.

### 2.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

### 2.4 **Maximum Excess**

45 days.

### 2.5 **Minimum Indemnity Period**

24 months.

**2.6 Period of Insurance**

From the Service Commencement Date for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

**2.7 Cover Features & Extensions**

1. Denial of access.
2. Full value "All Risks" Terrorism cover
3. Utilities.
4. Accountants Clause.
5. Payments on account

**2.8 Principal Exclusions**

Exclusions under the Property Damage Insurance, other than for consequential financial losses, but with additional exclusions as follows:

- 1.. Delayed response by a public body or state authority.
2. Modification of original design and specification
3. Loss of permit or license
4. Non-availability of funds

**3. Third Party Public and Products Liability Insurance**

**3.1 Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

1. death, or bodily injury, illness, death, disease contracted by any person;
2. loss or damage to property;
3. interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

3.2 **Limit of Indemnity**

Not less than £50,000,000 (Indexed in accordance with Clause 122.13 of the Contract (Increase in Insured Amounts) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

3.3 **Maximum Deductible**

£25,000 (Indexed in accordance with Clause 122.13 of the Contract (Increase in Insured Amounts)) for each and every occurrence of property damage. (Personal injury claims will be paid in full).

3.4 **Territorial Limits**

UK and elsewhere in the world in respect of non manual visits.

3.5 **Jurisdiction**

Worldwide excluding USA/Canada

3.6 **Period of Insurance**

From the Service Commencement Date or as otherwise specified in the Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

3.7 **Cover Features & Extensions**

1. Munitions of war.
2. Cross liability clause.
3. Contingent motor.
4. Legal defence costs.

3.8 **Principal Exclusions**

1. Liability for death, illness, disease or bodily injury sustained by employees of the insured.
2. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

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3. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
4. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party.
5. Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.
6. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
7. Liability arising from seepage and pollution unless caused by a sudden, identifiable unintended and unexpected occurrence.
8. Losses under the property damage policy or business interruption policy.
9. Nuclear/radioactive risks (UK market agreed wording)
10. War and related risks (UK market agreed wording)
11. Asbestos
12. Toxic mould
13. Deliberate Acts of the Insured
14. Financial loss

## PART 3

### Endorsements

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Contract.

Notwithstanding any other provision of this Policy, the following endorsement shall apply:

#### Section I: Definitions

1. In this endorsement:

**Authority** means Nottinghamshire County Council;

**Insured** means those parties so described in the Policy Schedule;

**Insurers** means the insurer or insurers underwriting this insurance policy;

**Project** has the meaning given to it in the Facilities Agreement;

**Contractor** means [ ] Limited;

**Insurance Proceeds Account** means the account so described in the name of the Project Company.

#### Section II: Policy formation / basis

2. **Separate Policy**

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

3. **Interest of the Authority**

The Insurers acknowledge that the Authority and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each additional co-insureds under the sections of this Policy relating to material damage risks and public liability risks and that the premium specified in this Policy provides consideration for their being co-insured parties.

4. **Liability for premium**

the Authority shall not be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve Contractor from its obligations to pay any premium under this Policy.

## **5. Disclosure**

Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

### **Section III: Rights to avoid / cancel or change Policy terms**

## **6. Non-vitiation**

- 6.1 The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy.

The Insurers agree that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together "the Relevant Matter"), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

## **7. Cancellation**

- 7.1 The Insurers agree that they shall not seek to cancel or suspend the construction phases of this insurance except: (i) for non payment of premium; or (ii) where an insured party consistently fails to comply with Insurers' requirements relating to survey or loss control action points; or (iii) where an insured party is in breach of an applicable Joint Code of Practice (or equivalent).
- 7.2 The Insurers shall promptly notify the Authority in writing in the event of any:
- 7.2.1 suspension, cancellation, termination; or

7.2.2 in the case of cover under Sections 4, 5 or 6 of this Policy (material damage - operational period; loss of revenue - services; public liability - services), non-renewal

of this Policy by the Insurers or by the Insured. The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or (in the case of cover under Sections 4, 5 or 6) non-renewal is given to the Authority. Nothing in this clause shall give the Insurers any right to suspend, cancel or terminate this Policy which the Insurers do not otherwise have under this Policy.

7.3 The Insurers shall promptly notify the Authority in writing of any default in the payment of premium and shall give the Authority at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

## **8. Changes in cover**

The Insurers shall give the Authority at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

## **Section IV: Claims**

### **10. Notice of claims**

10.1 Notice of claim by the Authority or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

### **11. Claim Payments / Loss Payee**

Payments made in accordance with this Clause 11 shall, to the extent of the payment, discharge the Insurers' liability to pay Contractor or any other Insured.

11.1 In respect of the insurance under this Policy of material damage risks only

All claim payments or return premium shall be paid into the Joint Insurance Account

11.2 In respect of the insurance under this Policy of public liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Insurance Proceeds Account Any return premiums shall be paid to the Insurance Proceeds Account

11.3 In respect of the insurance under this Policy of loss of revenue risks only

All claim payments or return premiums shall be paid to the Insurance Proceeds Account

11.4 **Set-off**

Insurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by Contractor under or in relation to the Policy.

12. **Waiver of subrogation**

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate Schedules arising out of any Occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- (i) such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- (ii) consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iii) supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- (iv) such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13(a)–(e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out); or
- (v) in relation to losses paid under Sections 4 or 5 of the Policy (material damage - operational period; loss of revenue – services), any Insured who is not covered under those Sections.

13. **Primary insurance**

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The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- (a) excess layers of third party cover effected specifically for the Project;
- (b) any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
- (c) any claim under this Policy to which a Marine 50/50 Clause applies;
- (d) any claim made under a Contingent Motor Liability extension to this Policy; or
- (e) any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
  - (i) any other policy specifically effected for the construction or operational phase(s) of the Project; or
  - (ii) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project;or a related business interruption insurance policy.

### Section V: Miscellaneous

#### 15. Notice

15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:

15.1.1 if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and

15.1.2 if by post, within 2 business days of release from the relevant Insurer's office.

15.3 The address and fax number of the Authority for all notices under or in connection with the Policy are those notified from time to time by the Authority for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Authority is as follows:

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The Authority: Nottinghamshire County Council  
Address: County Hall  
West Bridgford  
Nottingham NG2 7QP  
Fax No: 0115 2419977  
Attention: Chief Executive

**16. Governing law & Jurisdiction**

The Policy shall be governed and interpreted in accordance with English law.

This endorsement overrides any conflicting provision in this Policy.

## PART 4

### Broker's Letter of Undertaking

To: The Authority

Dear Sirs

Agreement dated [ ] entered into between Nottinghamshire Environmental Services Limited (the "Contractor") and Nottinghamshire County Council (the "Authority") (the "Agreement")

- 1 We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
2. We act as insurance broker to the Contractor in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to Clause 120 (Insurance) and Schedule 36 (Required Insurance) of the Agreement:
  - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
  - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect
  - 2.3 all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however make any representations regarding such insurers' current or future solvency or ability to pay claims; and
  - 2.4 the endorsements set out in Part 3 to Schedule 36 of the Agreement are as at today's date in full force and effect in respect of the Required Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Contractor and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Required Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Required Insurances:
  - 4.1 **Notification Obligations**
    - 4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Contractor to negotiate renewal and in the event of our

receiving instructions to renew, to advise you promptly of the details thereof;

4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to the Contractor unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable; and

4.1.3 to pay into the Joint Insurance Account without set off or deduction of any kind for any reason all payments in respect of claims received in relation to the Required Insurances specified at Clause 121.2 of the Agreement.

#### **4.2 Advisory Obligations**

4.2.1 to notify you promptly of any default in the payment of any premium for any of the Required Insurances;

4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances, at least 30 (thirty) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than 30 (thirty) days before it is to take effect;

4.2.3 to notify you as soon as reasonably predictable of any act or omission, breach or default of the Contractor or any other insured under the Required Insurances of which those of our employees directly involved with the placement or administration of the Insurances become aware and which acting reasonably they consider may invalidate any insurance or render it void, avoidable or unenforceable in whole or in part or which may otherwise materially impact on the extent of cover provided under the Required Insurances;

4.2.4 in accordance with our duty to the Contractor to notify the Contractor of its pre-contractual duties of disclosure to insurers including the duty to disclose all information that would be considered material in the context of such duty

#### **4.3 Disclosure Obligations**

4.3.1 to disclose to insurers all information and any fact, change of circumstances or occurrence made available to us by the Contractor which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers as soon as practicable after we are in receipt from the Contractor of such information or of the approval of the Contractor in respect of such information

and become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and

4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Contractor or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances in discharge of our obligation set out at paragraph 4.3.1 of this letter. Our obligations of confidentiality shall not conflict with our duties owed to the Contractor and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

#### 4.4 **Administrative Obligations**

4.4.1 to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;

4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in clause 4.4.1 of this letter, and to the extent available, to make available to such persons promptly upon the Authority's request the originals of such documents;

4.4.3 to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;

4.4.4 to administer the payment of claims from insurers in respect of the Insurances (the "Insurance Claims") including:

4.4.4.1 negotiating settlement of Insurance Claims presented in respect of the Required Insurances;

4.4.4.2 collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and

4.4.4.3 insofar as it is relevant and practicable, liaising with and reporting to each Authority throughout the settlement, payment and administration of such Insurance Claims.

4.4.5 to advise the Authority promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Required Insurances and which, if effected, would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;

i. to advise the Authority in advance of any lapse or non-renewal of any policy maintained in respect of the Required Insurances; and

ii. to use our best endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in Part 3 to Schedule 36 (Required Insurance) of the Agreement.

#### **4.5 Insurance Cost Reporting Procedures**

to prepare following request, at the expense of the Contractor, a Joint Insurance Cost Report on behalf of both the Contractor and the Authority in accordance with the Insurance Review Procedure as set forth in Schedule 37 (Premium Risk Share) of the Agreement. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

### **5 Notification Details**

5.1 Our obligations at paragraph 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

Nottinghamshire County Council

Chief Executive

County Hall

West Bridgford

Nottingham NG2 7QP

### **6 General**

6.1 For the avoidance of doubt, the undertaking and confirmations given in this letter relate solely to the Required Insurances. They do not apply to any other insurances and nothing in this letter should be taken as

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providing any undertakings or confirmations in relation to any insurance (other than the Required Insurances) that ought to have been placed or may at some future date be placed by ourselves or by other brokers.

- 6.2 Following termination of our appointment as broker to the Contractor, on written notice to the Authority we are released from all ongoing obligations set forth in this letter.
- 6.3 Nothing in this letter shall prejudice insurers' right to cancel the Required Insurances in accordance with their terms and the undertakings and confirmations set out in this letter are given subject to such right.
- 6.4 This letter is given by us on the instructions of the Contractor and with the Contractor's full knowledge and consent as to its terms as evidenced by the Contractor's signature below. Accordingly, the Contractor hereby waives any potential liability we might otherwise have had to it arising from actions taken by us to comply with the terms of this letter (Including, without limitation, any particular liability relating to any conflict of interest.)
- 6.5 This letter shall be governed and construed in accordance with English Law.

Yours faithfully

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For and on behalf of [Contractor's broker]

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For and on behalf of Contractor

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For and on behalf of the Authority

## Schedule 37 (Insurance Premium Risk Sharing)

### 1. DEFINITIONS

1.1. For the purposes of this Schedule, the following words and expressions shall bear the following meanings:

<p>"Actual Relevant Insurance Cost"</p>	<p>means the aggregate of the insurance premiums reasonably incurred by the Contractor to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions</p>
<p>"Base Cost"</p>	<p>means £883,920 in respect of the Works Period and £599,686 per annum in respect of the Service period being the amounts as agreed at the Bid Date and set out in the Financial Model which represent the insurance costs (which exclude amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Commencement Date, expressed in real terms as at the Bid Date</p>
<p>"Base Relevant Insurance Cost"</p>	<p>means, the aggregate of the Base Costs which were (at Bid Date) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPI from the Bid Date up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction</p>
<p>"Base Relevant Insurance Reduction"</p>	<p>means the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:</p>

	<p>(a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be £0); or</p> <p>(b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:</p> <p>(i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the "Actual Reduction");</p> <p>(ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and</p> <p>(iii) the effects of RPI since the Bid Date</p>
<p>"Business Interruption Cover"</p>	<p>shall bear the meaning ascribed to it in Schedule 36 (Required Insurance Schedule)</p>
<p>"Contract Period"</p>	<p>means the period from and including the date of this Contract to the Expiry Date, or if earlier, the Termination Date</p>
<p>"Contractor Related Party"</p>	<p>means the Contractor's agents and contractors (including without limitation the Construction Sub-Contractor) and its or their subcontractors of any tier and its or their directors, officers, employees and</p>

	workmen in relation to the Project and any person on or at any of the Sites or Facilities at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party)
"Corporate Debt Service Costs"	shall mean interest and debt service costs incurred in respect of the Initial Financing Agreements less:-  a) sums which are in arrears;  b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Initial Financing Agreements.
"Exceptional Cost"	means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period
"Exceptional Saving"	means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period
"First Insurance Review Date"	means the first Business Day following the first anniversary of the Relevant Insurance Inception Date
"Insurance Cost Decrease"	means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one
"Insurance Cost Differential"	shall, subject to the Insurance Review Procedure, be determined as follows:-  Insurance Cost Differential = (ARIC - BRIC) - (±PIC)  where:  ARIC is the Actual Relevant Insurance

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	<p>Cost</p> <p>BRIC is the Base Relevant Insurance Cost</p> <p>PIC is any Project Insurance Change</p>
"Insurance Cost Increase"	means the Insurance Cost Differential if the value thereof is greater than zero
"Insurance Cost Index"	means any index introduced by the United Kingdom Government or the Office of National Statistics after the date of this Contract and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs
"Insurance Review Date"	means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period
"Insurance Review Procedure"	means the procedure set out in paragraph 2 of this Schedule 37
"Insurance Review Period"	means a two year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period
"Joint Insurance Cost Report"	Shall bear the meaning ascribed to it in paragraph 2.2 of this Schedule 37

<p>"PFI"</p>	<p>means the United Kingdom's Private Finance Initiative</p>
<p>"Portfolio Cost Saving"</p>	<p>means any insurance cost saving which arises from the Contractor changing the placement of the Required Insurances from being on a standalone project-specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero</p>
<p>"Project Insurance Change"</p>	<p>means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:</p> <ul style="list-style-type: none"> <li>(a) the claims history or re-rating of the Contractor or any Contractor Related Party;</li> <li>(b) the effect of any change in deductible unless the following applies:-             <ul style="list-style-type: none"> <li>i. such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and</li> <li>ii. the deductible, further to such change, is either greater than or equal to the maximum in Schedule 36 (Required Insurance);</li> </ul> </li> <li>(c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving.</li> </ul> <p>For the purpose of determining the Insurance Cost Differential, in the event</p>

	that there is a net increase, the Project Insurance Change shall have a positive value. In the event that there is a net decrease the Project Insurance Change shall have a negative value
"Relevant Insurance"	means the Required Insurance and any other insurances as may be required by law other than Business Interruption Cover except to the extent that it relates to Unavoidable Fixed Costs
"Relevant Insurance Inception Date"	means the Commencement Date
"Relevant Insurance Market"	means the insurance market which insures the majority of all PFI projects across all of the PFI sectors (as determined by the number of PFI projects). At the date of this Contract, the Relevant Insurance Market is in the United Kingdom.
"Required Insurance"	Shall bear the meaning ascribed to it in the Contract
"Revenue"	is defined as the projected Unavoidable Fixed Costs and Corporate Debt Service Costs of the Contractor
"RPI"	shall bear the meaning ascribed to it in the Contract
"Unavoidable Fixed Costs"	means the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:-  a) costs which could have reasonably been mitigated or avoided by the Contractor;  b) payments to the Contractor's Associated Companies;  c) payments which are not entirely at

	<p>arm's length;</p> <p>d) payments to holders of equity in the Contractor, subordinated lenders and any other financing costs other than Corporate Debt Service Costs;</p> <p>e) indirect losses suffered or allegedly suffered by any person;</p> <p>f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;</p> <p>g) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability;</p> <p>h) payments to the extent that the Contractor has available to it</p> <p style="padding-left: 40px;">i) reserves which the Contractor can draw upon without breaching the Initial Financing Agreement;</p> <p style="padding-left: 40px;">ii) standby or contingent facilities or funds of Corporate Debt or equity which the Contractor is entitled to have available;</p> <p>i) payments representing any profits of the Project (to the extent not already excluded in (e) above).</p>
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**2. INSURANCE REVIEW PROCEDURE**

- 2.1. This procedure shall be used to determine whether the Authority shall bear any increase or benefit from any decrease in Relevant Insurance costs.
- 2.2. The Contractor's insurance broker shall prepare a report on behalf of both the Contractor and the Authority (the Joint Insurance Cost Report).. The Report is to be prepared at the Contractor's

expense, and should, as a minimum, contain the following information for the relevant Insurance Review Period:

- 2.2.1. A full breakdown of the Actual Relevant Insurance Cost;
- 2.2.2. A full breakdown of the Base Relevant Insurance Cost;
- 2.2.3. A spreadsheet (the Insurance Summary Sheet) detailing separately:-
  - (a) the sum(s) insured/limit of indemnity (ie rateable factor) for each of the Relevant Insurances;
  - (b) the premium rate for each of the Relevant Insurances;
  - (c) the net premium paid (or to be paid) for each of the Relevant Insurances (ie excluding both insurance premium tax and brokers fees and commissions);
  - (d) the deductible(s) for each Relevant Insurance;
  - (e) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £100,000, being the amount stated in Clause 120.7;
- 2.2.4. An assessment and quantification of each Project Insurance Change together with the reasons therefore;
- 2.2.5. Full details of any Portfolio Cost Saving;
- 2.2.6. Any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost;
- 2.2.7. The opinion of the Contractor's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above;
- 2.2.8. The calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation; and
- 2.2.9. Evidence satisfactory to the Authority (acting reasonably) of any changes to circumstances generally

prevailing in the Relevant Insurance Market that are claimed to account for the Insurance Cost Differential.

- 2.3. Details of movements in the CBS Private Capital non marine index plus, if available from other appropriate sources, details of changes in insurance cost across the PFI market as a whole.
- 2.4. The Contractor shall procure that the Broker, no later than the date which is ten (10) Business Days after the Insurance Review Date, delivers to the Authority, at the same time as it delivers to the Contractor, at least two copies of the Joint Insurance Cost Report. At the same time the Contractor should send a copy of the Insurance Summary Sheet to HM Treasury private finance unit or its nominee. Following receipt of the Joint Insurance Cost Report, the Authority shall notify the Contractor in writing within fifteen (15) Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Authority does not provide such notification and/or details of any disagreement to the Contractor within fifteen (15) Business Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report. If the Authority disagrees with any item in the Joint Insurance Cost Report, the Parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the Parties fail to agree the contents of the Joint Insurance Cost Report within thirty five (35) Business Days from the date it was delivered to the Authority, the matter shall be resolved pursuant to Clause 116 (Dispute Resolution), provided always that references in Clause 116.4 to an expert shall be construed as references to an independent insurance expert agreed by the Parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators.
- 2.5. The Authority may make the Joint Insurance Cost Report available to any of its or HM Treasury's agents or advisers or other body or bodies nominated by HM Treasury for insurance cost verification, benchmarking or similar purpose.

### **3. SHARING OF EXCEPTIONAL COST AND EXCEPTIONAL SAVING**

- 3.1. If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Authority shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Contractor equal to 85% of the Exceptional Cost.
- 3.2. If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Authority equal to 85% of the Exceptional Saving.

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- 3.3. Following the completion of the Insurance Review Procedure, if it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance Cost Differential shall be borne by or benefit the Contractor.

## 4. **INSURANCE COST INDEX**

- 4.1. If at any time an Insurance Cost Index is published and intended for use in PFI contracts of a similar nature to this Contract, the Parties shall meet with a view to agreeing
  - 4.1.1. its application to the Project, taking into account any relevant guidance issued by HM Treasury and
  - 4.1.2. how a Portfolio Cost Saving may be accounted for when the index is in use.

**Schedule 38 (Base Case) [*Confidential*]**

### **Schedule 39 (Suspensory Provisions)**

The following Suspensory Provisions shall apply to this Contract B until the earlier to occur of the Conversion Date or (in the event that the Conversion Date does not occur in respect of this Contract B) the Termination Date or Expiry Date of Contract A:

1. The Authority may retain or set off any amount owed to it by Contractor A under Contract A which has fallen due and payable against any amount due to the Contractor under this Contract B.
2. Where any obligation is placed on the Authority in this Contract B to procure the performance of Contractor A, such performance shall be procured by Contractor B on the Authority's behalf.
3. The Parties agree that the Authority shall not be liable under this Contract B for any Compensation Event, Relief Event, or claim pursuant to the indemnity contained in Clause 118.7, to the extent that the breach or other circumstance giving rise to such Compensation Event, Relief Event, or indemnity claim arises as a direct result of:
  - 3.1 in the case of any Compensation Event or indemnity claim under Clause 118.7 any act or omission to act or neglect or default of Contractor A or any Contractor Related Party of Contractor A; and
  - 3.2 in the case of any Relief Event any wilful default or wilful act of Contractor A or any of Contractor A's Sub-Contractors (of any tier)

PROVIDED THAT this Schedule 39 (Suspensory Provisions) shall in no circumstances entitle the Authority to recover compensation or make any claim (by way of set off or otherwise) or exercise any right under this Contract B in respect of any matter arising under Contract A:

- (a) in the event that it has been fully compensated in accordance with the terms of Contract A in respect of that matter; or
- (b) to a greater extent (taken together with any compensation successfully claimed under Contract A) than it is entitled under Contract A in respect of that matter

AND PROVIDED FURTHER THAT the Authority shall not be entitled to recover compensation or make any claim (by way of set off or otherwise) pursuant to this Contract B to the extent that it has already been compensated in respect of that claim under Schedule 39 of Contract A.

**Schedule 40 (Unitary Charge Adjustment Protocol) [Confidential]**

## **Schedule 40A (Compensation for lost Third Party Income)**

In the event that, in the circumstances set out in this Schedule 40a, the Authority is required to compensate the Contractor for lost Third Party Income, the level of compensation payable shall be assessed on the basis set out below:

### **1. POST-TERMINATION SERVICE AMOUNT**

- 1.1. Third Party Income actually received by the Authority or any Authority Related Party must be added to the Unitary Charge, and (without double counting) the costs of generating such Third Party Income deducted, in the calculation of the Post Termination Service Amount.

### **2. COMPENSATION EVENTS**

- 2.1. The standard “no better/no worse” test applies to the amount of compensation under the Compensation Event regime for lost Third Party Income
- 2.2. However the Authority shall only be required to compensate for lost Third Party Income at the lower of actual and Base Case levels (whether under this Contract or the Operating Contract).

### **3. QUALIFYING CHANGE OF LAW**

- 3.1. Compensation should be capped at the lower of recent/current performance and Base Case level net (without double counting) of related costs (whether under this Contract or the Operating Contract).

### **4. AUTHORITY CHANGE**

- 4.1. The standard “no better/no worse” test should be applied to include the additional or lost revenue and the (without double counting) cost of Third Party Income generation (whether under this Contract or the Operating Contract).

### **5. FORCE MAJEURE EVENT**

- 5.1. If the Authority chooses to continue the Contract following a Termination Notice from the Contractor then the ongoing payments of Unitary Charge will be adjusted to take account of the lost Third Party Income (whether under this Contract or the Operating Contract) at the lower of recent/current performance or Base Case level net of related costs (without double counting).

### **6. AUTHORITY STEP-IN**

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- 6.1. In circumstances where the Contractor is not in breach, the Contractor's compensation for lost Third Party Income (whether under this Contract or the Operating Contract) should be the higher of (i) the amount received by the Authority and (ii) at the lower of recent/current performance and Base Case level net (without double counting) of related costs.