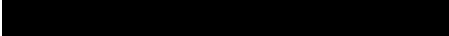


Schedule 1 (Definitions)

1999 Act	means Local Government Act 1999;
Acceptance Certificate	means a certificate issued by the Authority's Representative confirming that a Facility has met the Acceptance Criteria pursuant to Clause 40 (Completion of the Works);
Acceptance Criteria	the criteria for each Facility (but not the Worksop WTS or Newark WTS or the Welshcroft Close WTS) described in Schedule 21;
Acceptance Date	the date specified in Clause 40.6 (Completion of the Works);
Active Waste	means material derived from Contract Waste which is not Inactive Waste;
Actual Weighted Score	has the meaning given in Schedule 6c (Performance Scorecard);
Additional Eastcroft Waste	



Additional Equipment

means any additional moveable plant and equipment (including but not limited to the weighbridges, traffic control equipment, anti-contamination equipment, soil and air testing equipment and storage facilities) to be provided and maintained by the Contractor in accordance with the Contract and that is:

- (a) purchased, leased or taken on hire purchase or other similar arrangement by the Contractor using, directly or indirectly, funds set aside for the purpose in the Base Case; and
- (b) wholly or mainly dedicated to the provision of the Services;

For the avoidance of doubt, the plant and equipment to be provided by the Contractor as at Service Commencement in respect of each relevant Service is set out in Schedule 11 (Equipment List);

Ad Hoc Waste

means those categories of Waste which may require segregation for different treatment from other Waste and for which particular payment arrangements shall be made under Schedule 6 (Payment and Performance Mechanism) including:

- (a) Abandoned vehicles (except vehicle contents which may require disposal as Contract Waste unless such contents themselves constitute Ad Hoc Waste);
- (b) Refrigerators and freezers;
- (c) Asbestos;
- (d) Tyres;
- (e) Hazardous Waste;
- (f) Waste Electrical and Electronic Equipment (WEEE) including for the avoidance of doubt cathode ray tubes;
- (g) Dead domestic pets and animal carcasses;
- (h) Gas cylinders;
- (i) Pressurised containers;
- (j) Fire extinguishers;

- (k) Batteries (domestic and car);
- (l) Car parts;
- (m) Oils;
- (n) Paints;
- (o) Toner cartridges;
- (p) Caravans and trailers;
- (q) Fluorescent light tubes;
- (r) Radioactive material;
- (s) Animal faeces;
- (t) Fibreglass loft insulation;
- (u) Petrol or other inflammable fuels;
- (v) Fireworks;
- (w) Flares;
- (x) Bombs and unexploded ordinance;
- (y) Catering waste containing meat or animal by products (including waste from butchers) if collected by WCAs as Commercial Waste;

Adjoining Property any property adjoining or in the neighbourhood of the Sites and including all Conduits, roads, footpaths, walls, fences, buildings and other erections and apparatus on such property;

Adjudicator the person selected in accordance with Clause 116 (Dispute Resolution) to consider a dispute referred to him;

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

- (a) where relevant any Post Termination Service Amounts paid to the Contractor (if a positive number);**
- (b) the Tender Costs; and**

(c) amounts which the Authority is entitled to set off or deduct under Clause 97 (Set Off On Termination),

plus an amount equal to the aggregate of:

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

to the extent that:

- 1. (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and
- 2. the Authority has received such amounts in accordance with the Contract or such amounts are standing to the credit of the Joint Insurance Account;

**Adjusted Highest
Compliant Tender Price**

the Highest Compliant Tender Price less the aggregate of:

- (a) any Post Termination Service Amounts paid to the Contractor to date;
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under Clause 97 (Set Off On Termination);

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the highest

priced Compliant Tender is received;

- (ii) any insurance proceeds and other amounts owing to the Contractor to the extent not included in (i); and**
- (iii) the Post Termination Service Amounts (if a negative number),**

to the extent that:

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

Adjustment Event means an Authority Change, Qualifying Change in Law, Compensation Event or other event as a result of which there may be an adjustment to the Unitary Charge in accordance with Clause 111 and Schedule 40 (Unitary Charge Adjustment Protocol);

Adverse Rights 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 any Site by any Adjoining Property or Adjoining Owner;

Affiliate 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 736 of the Companies Act 1985;

Agreed Form in relation to any document, the form of the document agreed between the parties for the purpose of this Contract and included in the relevant Schedule;

Ancillary Documents means the following documents:-

the Leases and Underleases;

the Headleases; and

the Collateral Warranties

Annual Actual Ashfield/Mansfield Tonnage has the meaning given in paragraph 2.8.2.1 of Schedule 6a (Payment Mechanism);

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or 'MTy'

Annual Deductible Payment	has the meaning given in Schedule 6a (Payment Mechanism);
Annual Performance Scorecard	has the meaning given in Schedule 6b (Performance Mechanism);
Annual Planned Ashfield/Mansfield Tonnage or 'APMTy'	has the meaning given in paragraph 2.8.2.1 of Schedule 6a (Payment Mechanism);
Annual Planned Sheffield Tonnage ("APST")	has the meaning given in paragraph 2.8.2 of Schedule 6A (Payment Mechanism);
Annual Satisfaction Score	has the meaning given in Schedule 6a (Payment Mechanism);
Annual Service Plan	has the meaning given to it in Clause 78 (Best Value);
Annual Service Report	has the meaning given to it in Clause 78 (Best Value);
APC Residues	means the products and by-products generated by a flue gas treatment process;
Appropriate Site	means:- (a) a New HWRC Site which has received an HWRC Approval in accordance with clause 15.5 (New HWRC Sites); and (b) a Contractor New Site which has received a Contractor New Site Consent in accordance with Clause 15.6 (Contractor New Sites);
Approved RDD Item	an item of Reviewable Design Data which has been returned or deemed to have been returned marked "no comment" or "proceed subject to amendment" under Schedule 16 (Review Procedure);
As-Built Drawings	drawings, technical information, models, operation and maintenance manuals and technical information of a like nature to encompass the method of construction, manufacture, operation and maintenance of each element of each Facility in sufficient detail to allow a competent person to understand all material elements of the construction of each Facility and to maintain, dismantle, reassemble, adjust and operate all Equipment forming the same;

Ashfield/Mansfield Tonnage has the meaning given in paragraph 2.3b of Schedule 6a (Payment Mechanism);

Assets

all assets and rights to enable the Authority or a successor Contractor to own, operate and maintain the Project in accordance with this Contract comprising:

- (a) the Facilities (excluding the Freeth Street Transfer Station);
- (b) the Freeth Street Lease
- (c) **any Equipment;**
- (d) **any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);**
- (e) **any contractual rights** or rights to future or anticipated Third Party Income in relation to any Asset which in each case arise after expiry or termination of the Contract and the Sheffield Contract;
- (f) subject to Clause 125 (Intellectual Property Rights and IT Systems Licences), **any intellectual property rights;**

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

Authority Change

means a change in Works or Services by the Authority which the Contractor is obliged to implement under Clause 107 (Authority and Contractor Changes);

Authority Default

one of the following events:

- (a) **an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Contractor** or of any Sub-Contractor of the first tier **by the Authority or other Relevant Authority;**
- (b) **a failure by the Authority to make payment of any amount of money exceeding an amount equal to one month's Unitary Charge from time to time that is due and payable by the Authority under this Contract within 30 days of service**

of a formal written demand by the Contractor, where that amount fell due and payable two (or more) months prior to the date of service of the written demand;

(c) a breach by the Authority of the Authority's 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 months; or

(d) a breach by the Authority of Clause 133 (Assignment and Sub-Contracting) occurs;

Authority Notice of Change	the notice to be served by the Authority on the Contractor requiring a change in the Works or Services in accordance with Clause 107 (Authority and Contractor Changes);
Authority Policies	such policies of the Authority notified to the Contractor from time to time subject to Clause 65 (Employees). As at the date of this Contract the Authority's Policies are those set out in Schedule 31;
Authority Related Party	any of the following: (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 and their directors, officers, servants, employees or agents acting in that capacity; but excluding in any case the Contractor and any Contractor Related Parties and excluding in any case the WCAs;
Authority Title Warranties	means those warranties set out in Schedule 9 (Authority Title Warranties);
Authority's Area	the administrative area at the date of this Contract of the Authority;
Authority's Representative	the representative appointed by the Authority pursuant to Clause 129 (Representatives);
Authority's Share	the percentage figure corresponding to the amount of Cumulative Capital Expenditure at the relevant time as shown in the table set out in Schedule 33 (Cost Apportionment Table);

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Available	means that a Facility meets the Availability Criteria and Availability shall be construed accordingly;
Availability Criteria	means the criteria for each Facility described in Schedule 22 (Availability);
Availability Payment	has the meaning given in Schedule 6a (Payment Mechanism);
Base Case	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) for the purpose of calculating the Unitary Charge;
Base Unitary Charge	as defined in Schedule 6a (Payment Mechanism);
Basic Design Proposals	the basic design proposals for each Facility (other than the Newark WTS, the Worksop WTS and the Welshcroft Close WTS) set out in Schedule 14 (Basic Design Proposals)
Best Value Assistance and Reporting Method Statement	means the reporting methodology provided in Schedule 25 (Reporting Requirements) and Schedule 2 (Specification)
Best Value Change in Law	means a Change in Law which comprises: (a) an order made by the Secretary of State in the exercise of powers conferred upon him by Section 4 of the Local Government Act 1999 the substance of which amounts to a change in a performance standard or a change in the definition of or details of a performance indicator (as opposed to a change in the description of a performance indicator); (b) a direction made by the Audit Commission in the exercise of powers conferred upon it by Sections 44 and 46 of the Audit Commission Act 1998 which in substance is similar to an order referred to in (a) above; (c) Guidance issued by the Secretary of State or Audit Commission or other Relevant Authority in respect of (a) or (b) above;
Best Value Duty	means the duty imposed on the Authority by Section 3 of the 1999 Act in relation to, inter alia, the Services;
Best Value Inspector	means an officer, agent or employee of the Audit

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Commission or other Relevant Authority empowered to inspect the Authority's compliance with Part 1 of the 1999 Act;

Best Value Performance Indicators (BVPIs) means the Best Value Performance Indicators, Audit Commission Performance Indicators and Local Performance Indicators for the Services as specified in Schedule 2 (Specification) and Schedule 7 (KPIs);

Best Value Performance Plans means the best value performance plans which are required to be published by the Authority in accordance with Section 6 of the 1999 Act;

Best Value Review means the review which is required to be conducted by the Authority in accordance with Section 5 of the 1999 Act;

Best Value Review Date the date or dates for a Best Value Review as the Authority may specify in a Best Value Performance Plan;

Best Value Review Plan has the meaning given to it in Clause 78 (Best Value and Continuous Improvement);

Best Value Service Change Notice has the meaning given to it in Clause 78 (Best Value and Continuous Improvement);

Biodegradable Content means the biodegradable proportion of relevant Waste as a percentage of the total tonnage of such Waste as defined in respect of KPI6 in Schedule 7 (KPIs)

Biodegradable Landfill Diversion ("BMW") Waste shall count as BMW Landfill Diversion if the Waste is Biodegradable Municipal Waste which is not disposed of by way of Landfill and is, therefore, not subject to Landfill Tax (at either the upper or lower rate)

The mass of BMW in ERF Residues that is subsequently landfilled shall be determined and this shall be deducted from the total mass of BMW diverted.

Mass calculations on which the Contractor's performance and payments against the Authority's Waste Recycling, Composting and BMW Landfill Diversion Performance Standards are based shall be subject to the following conditions.

- (i) No allowance shall be made for any moisture added after delivery.

- (ii) Subject to paragraph (iii), no Contract Waste shall be included in the calculation unless it has been weighed and recorded in accordance with Schedule 1 (Specification);
- (iii) In the case of Contract Waste which is subjected to a process of incineration or other thermal treatment,
 - (a) no allowance shall be made for any gas or heat emitted or generated;
 - (b) the mass of BMW consumed by incineration or other thermal treatment shall be taken as the mass of BMW subjected to the process of incineration or other thermal treatment less the mass of BMW in any ash, cinder, non-combusted material or other residual substances resulting from or remaining after that process and of any additives introduced to catalyse the process.

Where any BMW in residual substances resulting from or remaining after the treatment of any Waste is subsequently diverted from Landfill, it shall count towards the Council's BMW Landfill Diversion Performance Standard for the year in which it is diverted; but subject to that, no material (which for this purpose includes both Waste and any product of or residue from it) shall count more than once in the calculation of performance against Waste Recycling and BMW Landfill Diversion Performance Standards;

Biodegradable Waste ("BMW")	Municipal	has the meaning given to it in the Landfill Directive;
Bottom Ash		means solid waste residue (other than APC Residues) remaining after the combustion of Waste at an ERF;
Bring Schemes		means containers provided by or on behalf of the WCAs at locations where members of the public bring and deposit segregated Recyclable Waste to be collected by or on behalf of the WCAs for Recycling;
Business Day		means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
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;
CDM Regulations	means the Construction (Design and Management) Regulations 1994;
Certification Period	means the period of six weeks from the date of this Contract;
Certification Requirements	the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;
Change in Law	the coming into effect after the date of this Contract of: (a) Legislation, other than (in respect of any Change in Law other than a Specific Change in Law) any Legislation which on the Revised BAFO Date 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; (b) any Guidance; or (c) any applicable judgment of a relevant court of law which changes a binding precedent;
Change of Ownership	any event where any single person or group of persons acting in concert (within the meaning of The City Code on Takeovers and Mergers) acquires any direct or indirect interest in the relevant share capital (as defined in Section 198 (2) of the Companies Act 1985) of the Contractor as a result of which that person or group of persons has a direct or indirect interest in more than 25% of the relevant share capital of the Contractor. Change of Ownership shall include any other arrangements that have or may have or which result in the same effect as the previous sentence of this definition of Change in Ownership;
Clause	means a clause forming part of this Contract and any reference to sub-Clause shall be construed accordingly;

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Clinical Waste	has the meaning given in Regulation 1(2) of the Controlled Waste Regulations 1992;
Collateral Warranty Collateral Warranties	or the Collateral Warranty in substantially the form set out in Schedule 18 and under which the obligations of the MRF Construction Sub-Contractor under the MRF Construction Contract and/or the Collateral Warranty in substantially the form set out in Schedule 20 under which the obligations of the Sheffield Contractor and Veolia ES Sheffield Limited under the Sheffield Contract are warranted to the Authority and/or the Collateral Warranty in substantially the form set out in Schedule 20A under which the obligations of the Mansfield and Ashfield Offtake Sub-Contractor under the Mansfield and Ashfield Residual Waste Offtake Contract are warranted to the Authority with in each case any amendments that may be approved by the Authority (such approval not to be unreasonably withheld or delayed);
Commencement Date	means the date of this Contract;
Commercial Waste	has the meaning attributed to it by section 75(7) of the EPA;
Commercially Sensitive Information	means the sub set of Confidential Information listed in column 1 of Schedule 45 (Commercially Sensitive Contractual Provisions) and column 1 of Schedule 46 (Commercially Sensitive Material) in each case for the period specified in column 2 of Schedules 45 and 46 ;
Compensation Date	means either: (a) if paragraph 1.3 of Schedule 44 (Retendering Procedure) applies, the earlier of: (i) the date that the New Contract is entered into; and (ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Contractor; or (b) if paragraph 1.4 of Schedule 44 applies (No Retendering Procedures), the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined;

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Compensation Event	means a breach by the Authority of any of the Authority's obligations under this Contract;
Compliant Tender	means any tender submitted by a Compliant Tenderer that meets the Qualification Criteria notified under paragraph 1.3.3 of Schedule 44;
Compliant Tenderer	means any tenderer who is a Suitable Substitute Contractor;
Compost	means a stable, sanitised material, high in humic substances produced by Composting that satisfies the Government's definition as set out in Best Value Performance Indicator (BVPI) 82b and for the avoidance of doubt the term "Compost" shall relate only to material derived from Contract Waste;
Compostable Waste	discrete fractions of Contract Waste which are delivered by WCAs separately from other waste or separated by the Contractor at HWRCs in each case in accordance with the Service Delivery Plans, and which are compliant with the Composting Facility Input Specification and which can be Composted by the Composting Facility, or other composting facilities used by the Contractor for the Services;
Composting	a process of controlled biological decomposition and stabilisation of organic substrates, that results in the production of Compost and which satisfies the Government's prevailing definition as set out in the BVPI 82b for Composting (and "Composted" shall be interpreted accordingly). For the avoidance of doubt, the Contractor shall be deemed to have satisfied its obligations to Compost Compostable Waste in the event that such Compostable Waste has been sent for Composting as defined by Best Value Performance Indicator BV82b as published at the Commencement Date. The point at which Compostable Waste is 'sent for Composting' shall be deemed to be when Compostable Waste has been accepted by the Contractor as complying with the Composting Facility Input Specification;
Composting Facility	means a Facility to be provided by the Contractor at an Appropriate Site in accordance with Clause 15 (Land Issues) under the Contract where Compostable Waste is Composted;
Composting Facility Service Commencement Date	means the Service Commencement Date in respect of the Composting Facility;

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Composting Services	the Service to be provided by the Contractor pursuant to this Contract in relation to Composting;
Comprehensive Performance Assessment	means any comprehensive performance review of the Authority's services (including the Services) undertaken by the Audit Commission or any other Relevant Authority pursuant to Section 99 of the Local Government Act 2003 or otherwise;
Conduits	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, louvres, cowls and any other ancillary apparatus;
Confidential Information	means: (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 and 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;
Consents	means subject to Clause 16 (Consents) all rights, agreements, approvals, consents, permits, licences, facilities, permissions and certificates including for the avoidance of doubt: (a) all Permits; (b) all Planning Permissions; (c) all Planning Obligations; and (d) the terms by reference to which the waste management licence exemptions are granted. lawfully and necessarily required from any competent regulatory or licensing authority or any other persons whatsoever in connection with the Works or the Services and otherwise for carrying out and completion of the Project in accordance with this Contract as varied from time to time and excluding for the avoidance of doubt any Superior

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		Landlord Consents;
Construction Act		Housing Grants Construction and Regeneration Act 1996;
Construction Completion Certificate		means the completion certificate issued by the Project Manager (as defined in the relevant Sub-Contract) pursuant to Minor Facilities Construction Contract or MRF Construction Sub-Contract or the Newark Construction Contract or the Worksop Construction Contract or the Welshcroft Close Construction Sub-Contract as relevant;
Construction Sub-Contractor		means Norwest Holst Limited or Clugston Construction Limited or Tolent Construction Limited or any other sub-contractor contracting with the Contractor to perform the Works pursuant to Clause 133 (Assignment and Sub-Contracting);
Contingency Arrangements		means the contingency arrangements to be agreed between the Parties within 30 Business Days of the date of this Contract to be incorporated in Schedule 28 (Delivery Points and Contingency Delivery Points);
Contingency Delivery Points		means the Contingency Delivery Points as set out in Schedule 28 (Delivery Points and Contingency Delivery Points);
Contract Capacity		means 600,000 tonnes of Contract Waste in any Contract Year;
Contract Hours		the hours of operation and Availability set out in Schedule 2 (Specification);
Contract Period		means the period from the date of this Contract until the Expiry Date as adjusted in accordance with Clause 11.4 (Option to Extend Contract Period);
Contract Waste		means subject to Clause 44 (Exclusivity): (a) Household Waste; (b) Waste from the household collection rounds for which the WCAs have a duty to collect under section 45 (1) (a) of the EPA; (c) Waste from bulky Household Waste collection, Hazardous Household Waste collection; (d) Waste separately collected from households for Recycling or Composting through kerbside

schemes;

- (e) Commercial Waste which the WCAs have a duty to make arrangements to collect under section 45 (1) (b) of the EPA and do in fact collect;
- (f) Any Industrial Waste which the WCAs are requested to collect and for which the Council has given consent under section 45 (2) of the EPA;
- (g) All Waste delivered to HWRCs in compliance with the relevant Waste Management Licence or PPC permit;
- (h) Waste from the cleansing of all public highways, public areas, footpaths, footways, and other relevant land and the emptying of litter bins as collected by or on behalf of the WCAs and the Council under sections 89 (1) (a) and 89 (2) of the EPA;
- (i) Highways Waste arising from gully emptying and road sweeping under section 89 (2) of the EPA;
- (j) Ad Hoc Waste:

For the avoidance of doubt each limb of this definition shall be construed separately and no one limb of this definition shall apply any limitation in interpreting any other limb.

Contract Year

means:

- (a) the First Contract Year;
- (b) each period within the Contract Period following the expiry of the period in (a) above but before the commencement of the period in (c) below commencing on 1st April and ending on 31st March;
- (c) the Final Contract Year;

Contractor Change

a Change in the Works or Services instigated by the Contractor under Clause 107 (Authority and Contractor Changes);

Contractor Default

means one 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 Service;

- (b) a Persistent Breach occurs;**
- (c) a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;**
- (d) any receiver or manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property 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 1985;**
- (f) an administration order is made;**
- (g) a breach by the Contractor of its obligations in Clause 133.2 (Assignment and Sub-Contracting) occurs;**
- (h) a breach of Clause 135.3 (Change of Ownership) occurs;**
- (i) abandonment of the Works by the Contractor;**

[REDACTED]

- (k) Not used**

[REDACTED]

- (m) a total failure to provide any Residual Waste Treatment and/or Landfill Services for a [REDACTED]; and/or a total failure to provide Composting Services for a [REDACTED]; and/or failure to provide one or more HWRCs in each WCA area meeting the Availability Criteria for a [REDACTED] and/or failure to provide one or more Delivery Points in each WCA area meeting**

the Availability Criteria for a [REDACTED];
and/or a failure to comply with the Availability
Criteria in respect of the MRF for a [REDACTED]
[REDACTED]

- (n) failure to provide one or more Facility meeting the Availability Criteria for [REDACTED] within a Contract Year and a Total Annual Satisfaction Score of less than or equal to 65% in that Contract Year in respect of the Annual Adjustment Scorecard (Schedule 6c);
- (o) a breach by the Contractor of its obligation to take out and maintain Required Insurances;**
- (p) breach by the Contractor of its obligations in relation to the Parent Company Guarantee pursuant to Clause 10.6;
- (q) a Final Performance Default Notice has been served by the Authority pursuant to Schedule 6b (Performance Mechanism);

Contractor New Sites means 4 sites to be introduced to the Project with 2 of those being introduced for intended use as new Transfer Stations, 1 being introduced as an HWRC and Transfer Station and 1 being introduced as a Composting Facility. For the avoidance of doubt, the Welshcroft Close Transfer Station shall not be a Contractor New Site;

Contractor New Site means:
Longstop Date

- A in relation to that Contractor New Site which is intended for use as a compost facility: 17th October 2007
- B in relation to all other Contractor New Sites: 23rd December 2009;

Contractor Notice of Change such notice as the Contractor may serve pursuant to Clause 107 (Authority and Contractor Changes);

Contractor Owned Site means the site described as such in Schedule 8 (Sites and Property Agreements);

Contractor Related Party any of the following:

- (a) an officer, servant, employee or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant, employee or agent of such a

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		person acting in that capacity;
		(b) any contractor or Sub-Contractor or sub-contractor of the Contractor of any tier and any of their directors, officers, servants, employees or agents acting in that capacity;
Contractor's Proposals		the Contractor's proposals for the provision of the Facilities and the Services to satisfy the Specification as set out in Schedules 12 (Works Programme), 13 (Works Delivery Plan), 14 (Basic Design Proposals) and 23 (Service Delivery Plan);
Contractor's Representative		the person to be appointed by the Contractor pursuant to Clause 129;
Contractor's Share		the percentage figure corresponding to the amount of Cumulative Capital Expenditure at the relevant time, as shown in the second column of the table set out in Schedule 33 (Cost Apportionment Table);
Controlled Waste		has the meaning attributed to it under s75(4) of the EPA;
Conversion		means the conversion of the financing of the Project from a corporate finance basis as provided by the Veolia Group to a project finance or non-recourse structure with external senior debt provision by a party outside the Veolia Group;
Corporate Debt		means the Loan as defined in the Initial Financial Agreements;
Corporate Debt Rate		means the Interest in the Initial Financing Agreement being 90bp over LIBOR;
Cumulative Expenditure	Capital	means the aggregate of: (a) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect during the Contract 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 105 (Change in Law); provided that the Newark and Worksop Capital Expenditure shall not be counted as Cumulative Capital Expenditure.

Customer Satisfaction Survey	Satisfaction	has the meaning given in Clause 78 (Best Value and Continuous Improvement);
Customer Satisfaction Survey Date	Satisfaction	means the date to be agreed in accordance with Schedule 7A;
DPA		Data Protection Act 1998
Day		each period of 24 hours from midnight to midnight;
Deemed New Contract		means an agreement on the same terms and conditions as this Contract, as at the Termination Date, but with the following amendments: (a) if this Contract is terminated prior to the Service Commencement Date for any particular aspect of the Services, then the Service Commencement Date (and where applicable any Planned Works Commencement Date or Longstop Date or other programmed date under Schedule 12 (Works Programme)) for that aspect shall be extended by a period to allow a New Contractor to achieve Service Commencement; (b) any accrued Performance Deductions , periods of Unavailability or other past failure to provide the Services and/or warning notices (or non compliances with monthly and annual KPIs to the extent contributing to actual or potential warning notices) shall in all such cases for the purposes of termination only , without prejudice to the rights of the Authority to make Performance Deductions and/or to withhold Availability Payment, be cancelled; (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date; (d) Clause 100A shall not be included in the Deemed New Contract. (e) the inclusion of a provision confirming that in the event that New Contractor Rectification Works are required to enable the New Contractor to achieve Key Performance Targets then provided that the New Contractor complies with the New Contractor Rectification Plan for the Rectification Period the Authority shall not be entitled to exercise its rights to terminate the Contract under Clause 80.2

(Termination for Contractor Default) by reason of any failure to achieve some or all of the Key Performance Targets. Such provision shall for the avoidance of doubt not affect the Authority's entitlement to make Performance Deductions and/or withhold Availability Payment as a result of failure to achieve the KPIs during the Rectification Period;

For the avoidance of doubt, and without prejudice to the generality of the foregoing elements of this definition of Deemed New Contract, the Authority shall be deemed to have procured that the Deemed New Contract will include provision for:-

- (a) each of the Assets to be made available to the New Contractor to the extent that these have been transferred to the Authority or its nominee (including the New Contractor) pursuant to Clause 101 (Exit Provisions on Expiry or Termination); and
- (b) the New Contractor to be granted or assigned (with the consent where appropriate of the Superior Landlord) the Leases or Underleases as appropriate in respect of all the Sites;
- (c) the New Contractor will be granted an underlease of the Welshcroft Site in the form of the Welshcroft Underlease;

Delivery Points	means the delivery points to which the WCAs will deliver Contract Waste as set out in Schedule 28 (Delivery Points) or such other delivery points as the Parties shall agree from time to time;
Direct Losses	means all Losses but, for the avoidance of doubt, excluding Indirect Losses;
Direction	means a direction issued by the Authority to the WCAs pursuant to the EPA and/or the WET Act or any other Legislation from time to time in force and "Directing" shall be construed accordingly;
Design Capacity	means in respect of the MRF the design capacity of the MRF as set out in Schedule 14 (Basic Design Proposals);
Design Data	all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the New

Facilities;

Discriminatory Change in Law a **Change in Law, the terms of which apply expressly to:**

(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;

Dispute Resolution Procedure the procedure for the resolution of disputes set out in Clause 116 (Dispute Resolution);

District Auditor in relation to a local authority, means the auditor appointed under section 13 of the Local Government Finance Act 1982 to audit the accounts of the Authority in accordance with Part III of that Act;

DPA the Data Protection Act 1998;

Eastcroft means the existing energy from waste facility situated at Incinerator Road in the City of Nottingham;

Eastcroft Contingency Arrangements means the Contingency Arrangements to be implemented in the event that the Contractor is required to Handle Eastcroft Waste as the same are set out in Schedule 28 (Contingency Arrangements);

Eastcroft Waste means such tonnage of Waste (having the character of Contract Waste) from within the Authority's Area which is to be delivered for incineration (and which is so delivered and incinerated) to Eastcroft and which shall not exceed

(a) in Contract Years 2013-14; 2014-15; and 2015-16, 68,000 tonnes per Contract Year (pro rated for any part of a Contract Year); and

(b) in Contract Year 2016-17 and any subsequent Contract Year 60,000 tonnes per Contract Year (pro-rated for any part of a Contract Year).

Energy Recovery means the use of Waste to recover heat, power and other energy sources in accordance with the Government's prevailing definition for Energy Recovery as set out in the Best Value Performance Indicator BV82c.

Energy Recovery Facility or means Sheffield ERF or other energy recovery facility

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ERF	utilised by the Contractor in accordance with the terms of the Contract from time to time (including without limitation for the avoidance of doubt pursuant to the Mansfield and Ashfield Residual Waste Offtake Contract);
Environment Agency	the Environment Agency of England and Wales;
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;
EPA	the Environmental Protection Act 1990;
EPR Regulations	means the Environmental Permitting (England and Wales) Regulations 2010;
Equipment	means the Transferred Equipment and the Additional Equipment as set out in Schedule 11 (Equipment List) updated from time to time in accordance with Clauses 62.2.6 and 62.2.7;
Equipment List	means the list detailing all Transferred Equipment and Additional Equipment that is, at the time the list is prepared and updated in accordance with Clauses 62.2.6 and 62.2.7, in the possession, ownership or control of the Contractor;
ERF Facility Input Specification	means the Facility Input Specification in respect of an energy recovery facility as set out in Schedule 30;
ERF Residues	means any ash, cinder, non combusted material or other residual substances (but not including any gaseous substances) resulting from or remaining after incineration, energy recovery and associated emissions treatment and control processes
Estimate	means an estimate which the Authority may require the Contractor to provide pursuant to Clause 107 (Authority and Contractor Changes);
Estimated Change in Project Costs	means in relation to a Clause 36 (Compensation Events), Clause 107 (Authority and Contractor Changes) or Clause 105 (Changes in Law), the aggregate of any estimated increased construction costs, operating costs and financing costs, including any impact on Third Party Income, less the aggregate of any estimated reduced construction costs, operating costs and financing

	costs including any impact on Third Party Income;
Estimated Fair Value of the Contract	means the amount determined in accordance with Clause 1.4 of Schedule 44 (No Retendering Procedure) that a third party would pay to the Authority as the market value of the Deemed New Contract;
EU Status Change	<p>means a Change of Law (effected by any of the means referred to within the definition of Change in Law, or otherwise by the United Kingdom (or any part of it) ceasing to be a member of the European Union or entering into a revised relationship between the United Kingdom and the European Union) which:</p> <p>(a) has no material effect in practice upon the interpretation, application or effect of a piece of Legislation beyond that which is strictly necessary to give effect to the relevant step or steps under (b) below; and which</p> <p>(b) is a direct consequence of any one or combination of the following actions:</p> <p>(i) the taking by the United Kingdom of any step under Article 50 of the Treaty on European Union whether on the behalf of the entirety of the United Kingdom or some part thereof;</p> <p>(ii) the repeal or amendment of the European Communities Act 1972 (or any part thereof) to the extent it is done in purported implementation of the outcome of the referendum held under the European Referendum Act 2015 or any further referendum held under legislation putting in question the United Kingdom's membership of the EU;</p> <p>(iii) translating or implementing any law or legally binding requirement of the European Union to which the United Kingdom or any part of it is subject prior to the United Kingdom, or any part of it, ceasing to be a member of the European Union (including an EU regulation, decision, directive or article of the Lisbon Treaty) directly into equivalent law of the United Kingdom and rendering it (by any means) legally effective.</p>

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Excess Residual Waste	means as defined in Clause 48 (Capacity);
Excess Tonnage	means as defined in Clause 48.2 (Capacity);
Existing Freehold Sites	means those Existing Sites identified as Freeholds in Schedule 8 (Sites and Property Agreements);
Existing Leasehold Sites	means those Existing Sites identified as Leaseholds in Schedule 8 (Sites and Property Agreements);
Existing Licensed Sites	means those Existing Sites identified as held by the Authority under licence only in Schedule 8 (Sites and Property Agreements);
Existing Sites	means together the Existing Freehold Sites and the Existing Leasehold Sites and the Existing Licensed Sites
Expiry Date	31 March 2033 as adjusted in accordance with Clause 11.4 (Option to Extend Contract Period);
Facility	means the buildings and technical infrastructure together with all supporting infrastructure and amenities to be provided and/or operated by the Contractor pursuant to this Contract on the Sites and Facility shall be construed accordingly. For the avoidance of doubt, neither the Ferrybridge ERF nor the Sheffield ERF are Facilities;
Facility Input Specification	the specifications for each Facility set out in Schedule 30 for determining whether Contract Waste is acceptable at a Delivery Point or whether it may be rejected by the Contractor and the terms ERF Facility Input Specification, Street Cleansing Waste Input Specification, MRF Facility Input Specification and Composting Facility Input Specification shall be construed accordingly;
Facility Residues	means such part of Recyclable Waste and/or Compostable Waste having been processed by the Contractor which are not in the reasonable opinion of the Contractor having regard to Good Industry Practice capable of being Recycled and/or Composted;
Fair Value	the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale;
Fees Regulations	means The Freedom of Information and Data

Protection (Appropriate Limit and Fees) Regulations 2004;

Ferrybridge Change in Law means any Qualifying Change in Law (as defined for this purpose under the Mansfield and Ashfield Residual Waste Offtake Contract) to the extent not included in (and without limiting the application of) the foregoing limbs (a) to (e) inclusive of this definition of Qualifying Change in Law;

Ferrybridge ERF means either or both of FM1 or FM2 as defined under the Mansfield and Ashfield Residual Waste Offtake Contract;

Ferrybridge Relief Event means any of the following occurrences in each case arising under the relevant provisions of this Mansfield and Ashfield Residual Waste Offtake Contract ("**MARW Contract**"):

(a) (without prejudice to the provisions of Clause 105 (Change in Law)) a reduction in the Annual Tonnage pursuant to Clause 21.6.2 of the Mansfield and Ashfield Residual Waste Offtake Contract;

(b) (without prejudice to the provisions of Clause 105 (Change in Law)) termination of the Mansfield and Ashfield Residual Waste Offtake Contract pursuant to Clause 21.8.2 of the Mansfield and Ashfield Residual Waste Offtake Contract;

(c) termination of the Mansfield and Ashfield Residual Waste Offtake Contract pursuant to Clause 22.3 of the Mansfield and Ashfield Residual Waste Offtake Contract;

(d) (without prejudice to the provisions of Clause 105 (Change in Law)) termination of the Mansfield and Ashfield Residual Waste Offtake Contract pursuant to Clause 23.2 of the Mansfield and Ashfield Residual Waste Offtake Contract;

Final Contract Year the period from 1 April occurring immediately prior to the end of the Contract Period until the Expiry Date;

Final Equipment List means the final equipment list prepared in accordance with Clause 62 (Equipment);

Final Performance Default Notice means the notice referred to in section 6.2 of Schedule 6b (Performance Mechanism);

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Financial Model the financial model in the Agreed Form incorporated at Schedule 38;

Financial Year 1 April to 31 March;

Financing Agreements means all or any of the agreements or instruments entered into or to be entered into by the Contractor relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the Contractor relating to the rescheduling of their indebtedness);

First Contract Year the period from the date of this Contract to the following 31 March;

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 the occurrence after the date of this Contract of:

- (a) war, civil war, armed conflict or terrorism; or**
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of the actions or breach of the Contractor or its sub-contractors of any tier; or**
- (c) pressure waves caused by devices travelling at supersonic speeds**

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;

Foreseeable means in respect of a Specific Change in Law proposed Legislation which is Foreseeable Waste Management Legislation which becomes Legislation in substantially the same form as so published at the Revised BAFO Date without any amendments or supplements which affect the cost to the Contractor of providing the Works and/or the Services;

Foreseeable Waste means the Foreseeable Specific Changes in Law as

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Management Legislation		at the Revised BAFO Date relating to waste management agreed by the Parties and set out in Schedule 34 (Foreseeable Waste Management Legislation);
Freehold		means a freehold interest in any Site;
Freeth Street Lease		means the lease of the Transfer Station at Freeth Street which may be granted pursuant to Clause 15.8 (Contractor Owned Site) of this Contract in the form set out in Schedule 8 (Sites and Property Agreements);
General Change in Law		a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law or a Best Value Change in Law;
Good Industry Practice		that degree of skill and care 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 Contractor or any Sub-Contractor under the same or similar circumstances;
Greenhouse Emissions	Gas	as defined in KPI 7 in Schedule 7 (Key Performance Indicators)
Group		the Guarantor (or as the case may be, Substitute Guarantor) and its subsidiary undertakings as that term is defined in s258 of the Companies Act 1985;
Guarantor		any party to the Parent Company Guarantee (other than the Authority or the Contractor);
Guidance		any applicable guidance , codes of practice or directions (including without limitation any applicable guidance, codes of practice or directions of the Environment Agency) with which the Contractor is bound to comply;
Handle		means (inter alia and to the extent applicable to the particular facility, Site and type of Contract Waste) weigh, sort, tip, transfer, compact, treat, process, transport, dispose of and recycle and “Handling” and “Handled” shall be construed accordingly;
Hardcore		means rubble (including soil associated with the rubble) deposited at HWRCs;
Hazardous Waste		has the meaning attributed to it by Article 1(4) of Authority Directive 91/689/EEC of 12 December 1991 and the list of hazardous waste cited therein shall be

based on the European Waste Catalogue from time to time. Also, the Hazardous Waste (England) Regulations 2005 and List of Wastes (England) Regulations 2005;

Headleases means the leases granted to the Authority in respect of the Existing Leasehold Sites and any leases that will be granted to the Authority in respect of the New HWRC Sites and/or the MRF Option Site and/or the Contractor New Sites;

Highest Compliant Tender Price **the price offered by the Compliant Tenderer (if any) with the highest tender price and if no Compliant Tenders are received, zero;**

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;

HWRC means a household waste recycling centre

HWRC Refurbishment Works means those minor works to be carried out by the Contractor in respect of the Existing Leasehold Sites as listed in Schedule 23 (Service Delivery Plan);

HWRC Services means the Service to be provided by the Contractor pursuant to this Contract in relation to HWRCs;

Inactive Waste means materials being or derived from the Contract Waste listed in column 2 of the schedule to The Landfill Tax (Qualifying Material) Order 1996 and which does or will satisfy any conditions listed in column 3 of that schedule;

Index as defined in Clause 3 (Indexation) and Schedule 6a (Payment Mechanism) and "Indexed" shall be construed accordingly;

Indirect Losses means any costs, claims, loss, damage or expense which:

- (i) is a pure economic loss (save for economic loss included in any third party claims); or
- (ii) as a matter of English law would be too remote or unforeseeable to be recovered as damages for breach of contract;

Industrial Waste has the meaning given in Section 75(6) of the EPA;

Information has the meaning given under Section 84 of the

Freedom of Information Act 2000;

Initial Agreement	Financing	means the Financing Agreement put in place upon signature of this Contract as set out in Schedule 42;
Insurance Term		means any terms and/or conditions required to be included in a policy of insurance by Clause 122 (Uninsurable Risks) and/or Schedule 36 (Required Insurance) but excluding any risk;
Insurance Undertaking		has the meaning given in the rules from time to time of the Financial Services Authority;
Intellectual Property Rights		any and all patents, trade marks, service marks, copyright in a design, know-how, confidential information and all or any other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world relating to the Project;
Intended Use		means in the case of a Contractor New Site for the uses set out in the definition of Contractor New Site, in the case of a New HWRC Site use as a HWRC and in the case of the MRF Option Site use as a MRF;
Interface Plan		means the plan referred to in Schedule 23a (Interface Plan);
Interface Obligations	Service	has the meaning given in KPI 10 in Schedule 7 (Key Performance Indicators);
IRR		internal rate of return;
Joint Insurance Account		means the joint bank account in the names of the Authority and the Contractor, details to be notified within 60 Business Days of the date of this Contract;
Judicial Review Challenge		means proceedings brought under Part 54 of the Civil Procedure Rules or by any party other than the Contractor under section 288 the Planning Act;
Kerbside Schemes	Collection	comprise the arrangements made by Waste Collection Authorities for the separate collection of Recyclable Waste or Compostable Waste from households in accordance with Section 45A as amended by the Household Waste Recycling Act 2003. The Kerbside Schemes in place as at the date of this Contract are set out in Schedule 29 (WCA

	Baseline);
Key Performance Indicator (KPIs)	means those Performance Standards set out in the (Schedule 7) (KPIs) for monitoring and assessment of Performance Deductions in accordance with Schedule 6b (Performance Mechanism);
Key Performance Targets	means the Key Performance Indicators defined in Schedule 7 (KPIs) and Availability Criteria defined in Schedule 22;
Key Works	means the Works relating to the MRF;
Landfill	means: (a) for the purposes of BMW Landfill Diversion has the meaning given to it in the Waste Emissions Trading Act 2003; and (b) for the purposes of Landfill Tax has the meaning attributed to it by Section 65(1) of the Finance Act 1996, and 'Landfilled' and "Landfilling" shall be interpreted accordingly;
Landfill Allowance	any landfill allowances authorising the sending of Biodegradable Municipal Waste to Landfill introduced pursuant to the Waste Emissions and Trading Act 2003 or any similar allowance or permit to Landfill Waste introduced by any other Legislation;
Landfill Allowance Trading Scheme	means the scheme implemented by the Government pursuant to the Waste and Emissions Trading Act 2003;
Landfill Directive	has the meaning given in Authority Directive 1999/31/EC;
Landfill Tax	has the meaning set out in Section 39(1) of the Finance Act 1996;
Lease	means a lease of an Existing Site granted on the date of this Contract or (as the case may be): a) a lease of a New HWRC Site to be granted pursuant to clause 15.5 of this Contract; or b) a lease of a Contractor New Site to be granted pursuant to clause 15.6 of this Contract;

and in substantially the form previously agreed set out in Schedule 8 (Sites and Property Agreements)

Lease Expiry Date means those respective dates described as such as set out in Schedule 8 (Sites and Property Agreements);

Leasehold means a leasehold interest in any Site other than the Welshcroft Site;

Legislation means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;

Liquid Market means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts or contracts for the provision of services (in each case the same as or similar to the Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value;

Longstop Dates means for the Key Works the long-stop date set out in Schedule 24 (Contractual Dates) as the same may be extended in accordance with the provisions of Clauses 36 (Compensation Events and 104 (Relief Events) and any other express provision of this Contract;

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 judgements, proceedings, internal costs or demands;

Maintenance Programme has the meaning given in Clause 66 (Planned Maintenance);

Mansfield and Ashfield Administrative Area means the administrative areas of Mansfield District Council and Ashfield District Council;

Mansfield and Ashfield Offtake Sub-Contractor means VES UK or any of its successors or assigns from time to time;

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Mansfield and Ashfield Residual Waste Offtake Contract		means the Sub-Contract entered into with VES UK for the disposal of Residual Waste Handled at the Welshcroft Close Transfer Station on the Mansfield and Ashfield Variation Date set out in the Agreed Form in Schedule 26 (Mansfield and Ashfield Residual Waste Offtake Contract);
Mansfield and Ashfield Variation Date		means 30th November 2016;
Market Test		means a market test conducted in accordance with Clause 79.1 (Benchmarking and Market Testing) and "Market Testing" and "Market Tested" shall be construed accordingly;
Market Tested Residual Waste		has the meaning given in paragraph 2.3 Part B of Schedule 6a (Payment Mechanism);
Market Value Availability Deduction Amount		for any month or part of a month, an amount equal to the Availability Payment withheld from the Unitary Charge in the month immediately preceding the Termination Date, less an amount equal to any Availability Payment withheld in respect of a Facility which was Unavailable at the Termination Date but which has subsequently become Available whether as a result of the Authority incurring Rectification Costs or otherwise;
Maximum Annual Satisfaction Score	Annual	has the meaning given in Schedule 6a (Performance Scorecard);
Maximum Monthly Satisfaction Score	Monthly	has the meaning given in Schedule 6 (Payment Mechanism);
Maximum Unitary Charge		means, in respect of a month, the Unitary Charge payable during that month before any deductions under Schedule 6 (Payment and Performance Mechanism) but allowing for Indexation under Clause 3 (Indexation);
Minor Facilities Construction Contract		means the construction contract for the Works (other than the works for the MRF and HWRC Refurbishment Works or the Welshcroft Close WTS Works) in substantially the form set out in Schedule 17 (Construction Contracts) with any amendments that may be approved by the Authority such approval not to be unreasonably withheld or delayed;
Month		means a calendar month;

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Monthly Deductible Payment	has the meaning given in Schedule 6a (Payment Mechanism);
Monthly Performance Scorecard	has the meaning given in Schedule 6a (Payment Mechanism);
Monthly Satisfaction Score	has the meaning given in Schedule 6a (Payment Mechanism);
MRF	the materials recovery facility to be provided by the Contractor pursuant this Contract;
MRF Construction Contract	the construction contract to be entered into between the Contractor and the Construction Contractor relating to the Works in respect of the MRF set out in Schedule 17 (Construction Contracts) with any amendments that may be approved by the Authority such approval not to be unreasonably withheld or delayed;
MRF Construction Contractor	means the counter party to the MRF Construction Contract;
MRF Facility Input Specification	means the Facility Input Specification in respect of MRF set out in Schedule 30;
MRF Option	means the option agreement for the MRF set out in Schedule 8;
MRF Option Site	means the site identified as such in Schedule 8 (Sites and Property Agreements);
MRF Underlease	means an underlease of the MRF Option Site to be granted pursuant to Clause 15.7 of this Contract;

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Newark and Worksop Capital Expenditure	means in respect of the Newark WTS and the Worksop WTS respectively any additional Capital Expenditure incurred as a result of any Change in Law arising prior to the issue of the Construction Completion Certificate relating to the Newark Construction Contract or the Worksop Construction Contract as applicable;
Newark Construction Contract	means the Construction Contract in Agreed Form for the Works in respect of the Newark WTS in the form set out in Schedule 17A (Newark Construction Contract);
Newark WTS	means the WTS located at Newark WTS, Brunel Drive, Northern Road Industrial Estate, Newark, NG24 2DZ;
New Contract	an agreement on the same terms and conditions as this Contract as at the Termination Date, but with the following amendments: (a) if this Contract is terminated prior to the Service Commencement Date for any particular aspect of the Services, then the Service Commencement Date (and where applicable any Planned Works Commencement Date or Longstop Date or other programmed date under Schedule 12 (Works Programme)) for that aspect shall be extended by a period to allow a New Contractor to achieve Service Commencement; (b) any accrued Performance Deductions , periods of Unavailability or other past failure to provide the Services and/or warning notices (or non compliances with monthly and annual KPIs to the extent contributing to actual or potential warning notices) shall in all such cases for the purposes of termination only , without prejudice to the rights of the Authority to make Performance Deductions and/or to withhold Availability Payment, be cancelled; (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date; (d) Clause 100A shall not be included in the New Contract;

- (e) the inclusion of a provision confirming that in the event that New Contractor Rectification Works are required to enable the New Contractor to achieve Key Performance Targets then provided that the New Contractor complies with the New Contractor Rectification Plan for the Rectification Period the Authority shall not be entitled to exercise its rights to terminate the Contract under Clause 80.2 (Termination for Contractor Default) by reason of any failure to achieve some or all of the Key Performance Targets. Such provision shall for the avoidance of doubt not affect the Authority's entitlement to make Performance Deductions and/or withhold Availability Payment as a result of failure to achieve the KPIs during the Rectification Period;
- (f) any other amendments which do not adversely affect the Contractor;

For the avoidance of doubt, and without prejudice to the generality of the foregoing elements of this definition of New Contract, the Authority shall procure that the New Contract will include provision for:-

- (a) each of the Assets to be made available to the New Contractor to the extent that these have been transferred to the Authority or its nominee (including the New Contractor) pursuant to Clause 101 (Exit Provisions on Expiry or Termination); and
- (b) the new Contractor to be granted or assigned (with the consent where appropriate of the Superior Landlord) the Leases or Underleases as appropriate in respect of all the Sites;
- (c) the New Contractor will be granted an underlease of the Welshcroft Site in the form of the Welshcroft Underlease.

New Contractor

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

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 systems as shall be required to enable the New Contractor to achieve the Key Performance

Targets;

New HWRC Site		means a site acquired by the Authority as referred to in Clause 15.5.1;
New Recyclable Waste		means as defined in Clause 47.3 (New Recyclable Waste);
New WTS Works		means the Works envisaged by the Newark Construction Contract, the Worksop Construction Contract and the Welshcroft Close Construction Contract;
NNDR		means National Non-Domestic Rates (or successor or replacement thereof) as contained in the Local Government Finance Act 1988;
Non Contract Waste		means Waste other than Contract Waste;
Non Contract Protocol	Waste	means the protocol so described set out in Schedule 6a (Payment Mechanism);
Notice Date		means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the parties pursuant to Clause 1.4 of Schedule 44 (No Retendering Procedure);
Off-Take Contracts		means any contract for the sale of Recyclable Waste, Facility Residues or Compost entered into by the Contractor;
Operational Environmental Performance	and	means the set of performance indicators comprising KPI 8 as defined in Schedule 7 (Key Performance Indicators);
Parent Guarantee	Company	the parent company guarantee in the Agreed Form as set out in Schedule 5 (Parent Company Guarantee);
Parties		the Authority and the Contractor and “Party” shall mean any of them;
Payment Period		a Month during the period commencing on the date of this Contract and ending on the earlier of the Expiry Date or date of early termination of this Contract (including any incomplete Month at the beginning or end of the aforementioned period);
Performance Deduction Cap		means the annual cap as defined in section 4.1 (Calculation of Total Deductions) of the Payment Mechanism;

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Performance Deductions	has the meaning given in Schedule 6 (Payment and Performance Mechanism);
Performance Default Notice	means a notice issued under section 6.1 of Schedule 6b (Performance Mechanism);
Performance Monitoring Programme	has the meaning given in Schedule 6b (Performance Mechanism);
Performance Monitoring Report	has the meaning given in Schedule 6b (Performance Mechanism);
Performance Scorecard	the performance scorecard incorporated into the Payment and Performance Mechanism at Schedule 6c;
Performance Standards	as described Schedule 6c (Performance Scorecard) and Schedule 7 (KPIs);
Permits	means (a) a Waste Management Licence; and/or (b) a permit to be granted pursuant to the EPR Regulations;
Persistent Breach	means a breach for which a Final Warning Notice referred to in Clause 88 (Persistent Breach) has been issued which has continued or recurred two or more times within 6 months after the date on which such final Warning Notice referred to in Clause 88.2 (Termination for Persistent Breach) is served on the Contractor;
Personal Data	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;
PFI	the Government's Private Finance Initiative or any similar or replacement initiative;
PFI Contractor	a person that has contracted with the Government or local authority or other public or statutory body to provide Services under the PFI;
Physical Damage Policies	the insurance policies referred to as such in Clause 120 (Insurance);
Planned Landfill Tonnage	means the amount of Contract Waste as further defined in paragraph 2.8 (Landfill Tax) in Schedule 6a

	(Payment Mechanism);
Planned Maintenance	the planned maintenance requirements described in Clause 66 (Planned Maintenance) as varied from time to time in accordance with this Contract;
Planned Service Commencement Date	means for each of the Services the date on which Service Commencement is planned to occur in accordance with Schedule 24 (Contractual Dates) or such other date that the Parties may agree;
Planned Works Commencement Date	means for the Key Works the date on which Works commencement is planned to occur in accordance with Schedule 24 (Contractual Dates) or such other date that the Parties may agree;
Planning Act	the Town and Country Planning Act 1990;
Planning Permission	means any planning permission being in every case either: (a) detailed planning permission; or (b) outline planning permission together with such approvals of reserved matters in every case granted by the Planning Authority the Secretary of State or an inspector appointed by him for that purpose;
Post Termination Service Amount	for the purposes of Clause 1.3 of Schedule 44 (Retendering Procedure) an amount equal to the whole or any part of the month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Unitary Charge which would have been payable in that month under the Contract had the Contract not been terminated plus the amount of Third Party Income actually received by the Authority or any Authority Related Party in that month, less an amount equal to the aggregate of: (a) the Market Value Availability Deduction Amount for that month; (b) the Rectification Costs incurred by the Authority in that month; and (c) (where relevant) the amount by which the Post Termination Service Amount was less than zero

less (for the avoidance of doubt but with no double counting)

(d) all costs of (and depreciation and other charges) in generating Third Party Income in that Month;

Prescribed Rate three per cent. above the base rate from time to time of the Bank of England;

Price Base Date 1st April 2005 save as otherwise expressly provided in Schedule 6 (Payment Mechanism);

Prohibited Act (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:

(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:

(i) under the Prevention of Corruption Acts 1889-1916; or

(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; or

(d) defrauding or attempting to defraud or conspiring to defraud the Authority;

Project 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 Documents means the following documents:

the Mansfield and Ashfield Residual Waste Offtake Contract;

the Minor Facilities Construction Contract;

the MRF Construction Contract;

the Newark Construction Contract;

the Sheffield Contract;

the Welshcroft Close Construction Contract; and

the Worksop Construction Contract;

in each case once entered into pursuant to Clause 22;

Project IRR means the post tax nominal project IRR calculated as set out in the Base Case;

Projected Tonnages means such tonnages of Residual Waste meeting (where relevant) the Facility Input Specification for the Facility in question (not exceeding the Design Capacity of each relevant Facility) as shall be identified as to be delivered to each relevant Facility and to the Sheffield Contract and the Mansfield and Ashfield Residual Waste Offtake Contract in Schedule 23(a) (Interface Plan) for the Contract Year in question;

Property Documents means all final acquisition documentation negotiated between either:-

- a) the Contractor and the vendor of a Property Interest in any Contractor New Site; or
- b) the Authority and the vendor of any Property Interest in a New HWRC Site;

Property Interest means a good Freehold or Leasehold title (for a term equal to or in excess of the Contract Period) to a property with vacant possession and free from

encumbrances which would prevent or fetter in any way the Intended Use which in the case of a leasehold title shall include the issue of any necessary Superior Landlord's Consents;

Proposed Acquisition

means the proposed acquisition of any Property Interest pursuant to the Property Documents;

Qualification Criteria

the criteria which the Authority requires tenderers to meet as part of the Tender Process, which shall be:

- (a) the tender criteria used in selecting the Contractor;**
- (b) the financial ability of the tenderers to pay the capital sum;**
- (c) a requirement to pay one tender price in a lump sum on signature of the New Contract;**
- (d) that the tenderer is experienced in providing services similar to the Services;**
- (e) that the tenderer and its solution are capable of delivering the Services; and**
- (f) any other tender criteria agreed by the Contractor and the Authority;**

Qualifying Change in Law

- (a) Discriminatory Change in Law;**
- (b) a Specific Change in Law;**
- (c) a General Change in Law which comes into effect following the second anniversary of the Commencement Date and which involves Capital Expenditure;**
- (d) a Best Value Change in Law;**
- (e) a Sheffield Change in Law;**
- (f) a Ferrybridge Change in Law,**

which in the case of limbs (a), (c) and (d) of this definition only was not foreseeable at the Revised BAFO Date but in each case excluding any Change in Law to the extent that it is an EU Status Change;

Quality Manual

the quality manual in force from time to time reflecting

a quality management system in relation to the Services or any aspect thereof provided in accordance with Clause 60;

Rectification Costs

for the purposes of any Termination Date that occurs during the Service Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular month or part of a month in ensuring that the Services are available;

Rectification Period

means such period not exceeding 24 months from the date of the New Contract as is reasonable to allow the New Contractor to carry out New Contractor Rectification Works as shall be agreed by the Parties or in default of agreement determined pursuant to Clause 116 (Dispute Resolution);

Recyclable Waste

means the types of waste which are listed in the MRF Facility Input Specification or the Street Cleaning Facility Input Specification respectively which shall be Recycled by the Contractor in the event that they are:

- 1) delivered separately from other waste to agreed Delivery Points by the WCAs in accordance with the Service Delivery Plan in a form which is compliant with the relevant Facility Input Specification; or
- 2) separated by the Contractor at HWRCs in accordance with the Service Delivery Plans.

Recycled Waste

Contract Waste is to be regarded as Recycled Waste if it has been sent for recycling as set out in the Best Value Performance Indicator BV 82a as published at the Commencement Date;

Recycling

has the meaning set out in the Best Value Performance Indicator BV 82a for Recycling as published at the Commencement Date and Recycle and Recycled shall be construed accordingly;

For the avoidance of doubt, the Contractor shall be deemed to have satisfied its obligations to Recycle Recyclable Waste in the event that such Recyclable Waste has been sent for recycling as defined in Best Value Performance Indicator BV 82a as published at the Commencement Date;

Regulations

means the Transfer of Undertakings (Protection of Employment) Regulations 1981;

Relevant Assumptions	means the assumptions that the sale of the Contractor is on the basis that there is no default by the Authority, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, but that otherwise the actual state of affairs of the Contractor and the Project is taken in account;
Relevant Authority	any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
Relevant Discharge Terms	the terms referred to in Schedule 43 (Relevant Discharge Terms) which shall apply in the circumstances set out in that Schedule;
Relevant Person	means a Shareholder and any of its Affiliates;
Relevant Termination Amount	means the amount of the Loan from time to time as defined in the Initial Financing Agreements;
Relevant Transfer	means a relevant transfer for the purposes of the Regulations;
Relief Event	any of the following: (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) the carrying out of works by or failure by any statutory undertaker, utility company, local authority or other like body (other than the Authority acting in its capacity as WDA) or other like body to carry out works or provide services; (c) any accidental loss or damage to the Sites or Facilities or Equipment or any roads servicing them; (d) any failure or shortage of power, fuel or transport (other than an interruption under an interruptible supply arrangement to which the Contractor or its Sub-Contractors is a party); (e) any blockade or embargo which does not

constitute a Force Majeure Event;

(f) any:

(i) official or unofficial strike,

(ii) lock out,

(iii) go slow or

(iv) other dispute (“industrial action”)

generally affecting the construction, the steel manufacture, the road haulage or waste management industries in England **or a significant sector of either of them**, but not including industrial action specific to the Sites or industrial action which affects only the employees of the Contractor or its Sub-Contractors;

(g) a Ferrybridge Relief Event;

(h) the discovery of any human remains, fossils, antiquities and/or unexploded ordinance at any Site;

(i) the delivery to any Facility of munitions, Hazardous Waste or human remains on the basis set out in Schedule 22 (Availability);

(j) the existence of ground conditions at any Existing Site which were not identified by the Contractor, despite taking reasonable steps as were practicable prior to the date of this Contract in accordance with Good Industry Practice prior to the date of this Contract;

unless any of the events listed in paragraphs (a) to (j) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act or of the Contractor or any of its Sub-Contractors (of any tier);

Reporting Failure Deduction

means a deduction in payments made to the Contractor resulting from a Reporting Failure calculated in accordance with Schedule 6b (Performance Mechanism)

Reporting Failure

means an error or misrepresentation (but not an omission) in a Monthly Report or Annual Report submitted pursuant to Schedule 25 which the Authority becomes aware of after it has made a

payment or levied (or not levied) a Performance Deduction or reduced payment due to Unavailability, in each case in reliance on the information which is subsequently found to be incorrect PROVIDED THAT:

- (a) a Reporting Failure may not be claimed by the Authority in respect of a Monthly Report or an Annual Report more than 12 months after the submission of that Monthly Report or Annual Report; and
- (b) in respect of Monthly or an Annual Report only one Reporting Failure Deduction (as shown in Table 4.1) may be made in respect of each of the reporting areas set out in Table 4.1 to which a separate Reporting Failure Deduction applies notwithstanding that there may be more than one error or misrepresentation in respect of each such reporting area;

Requests for Information shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant;


Required Insurances as described in Schedule 36 (Required Insurances);

Residual Waste means all Contract Waste (not including Hardcore) which the Contractor is entitled to have delivered to it or delivered at its direction under Clause 44.1 (Exclusivity) (including for the avoidance of doubt Contract Waste received at HWRCs) which is not Recycled or Composted or Re-Used;

Residual Waste Treatment and/or Landfill Disposal Services means the disposal whether by way of Landfill or other diversion (with Landfill as a contingency service) of such Residual Wastes as are identified in paragraph 4 (Residual Waste Treatment and/or Landfill Services) of Schedule 32 (Benchmarking and Market Testing);

Restrictions all matters (whether arising before or after the date of this Contract) affecting a Site 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 or its use served or made by any local or other competent authority or otherwise arising under any Legislation;

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Retention Fund Account	as defined in Clause 99 (Surveys on Termination and Retention Fund);
Re-Use	means to use for its original purpose Waste, which has been accepted by the Contractor at a Facility and weighed in accordance with the Specification (Schedule 2), such that it is not processed for Recycling, Composting, or BMW Landfill Diversion or disposed to Landfill. Waste which is Re-Used shall not count towards the Recycling and Composting or BMW Landfill Diversion Performance Standards;
Review Procedure	the procedure contained in Schedule 16 (Review Procedure);
Reviewable Design Data (RDD)	the plans, drawings, documents and information relating to the Works (but not the New WTS Works) listed in Schedule 15 (Reviewable Design Data) which the Authority may review in accordance with Clause 16 (Review Procedure);
Revised BAFO Date	means 5 May 2005;
Revised Project	the Project as varied by the Revised Project Plan;
Revised Project Costs	the adjustment to the Unitary Charge calculated in accordance with the provisions of Clause 107 (Authority and Contractor Changes);
Royalty Payment	
RPP Date	means 24th February 2015;
Schedule	means the documents numbered 1 to 47 which are incorporated into the Contract;
Schedule Request	a request under Schedule 4 of the PPC Regulations;
Service Commencement	means the commencement of the Services;
Service Commencement Date	means for each of the Services the date on which Service Commencement occurs in accordance with the terms of this Contract;
Service Delivery Plan	the Contractor's Service Delivery Plan as set out in Schedule 23;

Service Period means for each of the Services **the period specified in Clause 11 (Commencement and Duration);**

Service Standards in relation to an obligation such standard as complies in all respects with the requirements of this Contract including but without limitation the Performance Framework and where to the extent that no requirements are expressly stated the standard shall be Good Industry Practice in compliance with all Legislation;

Service Users means a reasonably representative sample of those users who benefit from the relevant element of the Services

Services means each and every one of the services to be provided by the Contractor to the Authority under this Contract as described in Schedule 2 (Specification) and the Service Delivery Plan;

Shareholders means any person from time to time holding share capital in the Contractor;

Sheffield Change in Law

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sheffield Contract means the Sub-Contract entered into with the Sheffield Contractor and Veolia ES Sheffield Limited for the Handling of the Sheffield Waste from the Sheffield Start Date set out in Agreed Form in Schedule 19 (Sheffield Contract);

Sheffield Contractor means Sheffield Environmental Services Limited (Company Registration Number 3727031) whose

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registered office is at 210 Pentonville Road, London, N1 9JY;

Sheffield Fee means the Gate Fee from time to time as defined under the Sheffield Contract;

Sheffield ERF means the energy recovery facility referred to in the Sheffield Contract;

Sheffield Start Date means 1st June 2015;

Sheffield Tolerance



Sheffield Waste means such Annual Planned Sheffield Tonnage which is to be handled from the Sheffield Start Date under the Sheffield Contract as provided for in Part 2, Section 3 (Part B - Residual Waste Management and Disposal Services) of the Service Delivery Plan and subject to the terms of and in the amounts provided for in Schedule 6 (Payment Mechanism) and Schedule 7 (KPIs);

Site Conditions means the conditions of the Sites including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;

Sites means together the Existing Sites, the Contractor New Sites, the New HWRC Sites, the Welshcroft Site and the MRF Option Site;

Small Works means any change to the Works requested by the Authority having an individual cost not exceeding £1000 (Indexed), or as otherwise agreed from time to time, except for any request which will (if implemented) increase the likelihood of the Service not complying with the Service Standards or materially and adversely affect the Contractor's ability to perform its obligations under this Contract;

Snagging Items means minor defects, deficiencies or omissions of a snagging nature which do not prevent the issue of the Acceptance Certificate in accordance with the terms of Clause 40;

Specific Change in Law means any Change in Law which specifically refers to the provision of services or works the same as the Services or Works or the holding of

shares in companies whose main business is providing Services the same as or similar to the Services but not including any Change in Law which is Foreseeable;

Specification the requirements of the Authority in respect of the Project set out in Schedule 2 (Specification);

Stakeholder Satisfaction Survey has the meaning given in Clause 78.4 to 78.8 (Stakeholder Satisfaction Survey)

Stakeholder Satisfaction Survey Date” the date 9 months after the Commencement Date and each anniversary thereof during the Contract Period

Stakeholder Satisfaction Survey Questionnaire the questionnaire set out in Schedule 25;

Street Cleansing Waste means Waste from the mechanical cleansing of all public highways, public areas, footpaths, footways, and other relevant land as collected by or on behalf of the WCAs and the Authority under sections 89(1)(a) and 89(2) of the EPA and Highways Waste arising from gully emptying and road sweeping under section 89(2) of the EPA and in a form which is compliant with the Street Cleaning Waste Input Specification);

Sub-Contractors means, where relevant, each of Norwest Holst Limited or Clugston Construction Limited or the Sheffield Contractor or Veolia ES Sheffield Limited or Tolent Construction Limited or VES UK 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);

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

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

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

(ii) any expenditure incurred in anticipation

of the provision of Services or the completion of Works in the future;

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

(iv) redundancy payments; and

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and

(c) the Contractor and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

Sub-Contracts

means the contracts entered into between the Contractor and the contracts entered into by Sub-Contractors;

Suitable Contractor

Substitute

means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:

(a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Contract; and

(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;

Superior Landlord

means any landlord of any one or more of the Headleases (including its successors in title as landlord of any one or more of the Headleases from time to time) and any mediate or intermediate superior landlord which may be in existence from time to time together with any licensor of the Existing Licensed Sites;

Superior Consent

Landlord's

means any necessary consent of any Superior Landlord required in order to

- (a) allow the Authority to grant an Underlease pursuant to this Contract Provided That the terms of such consent shall not impose any greater obligation on the Contractor than the Contractor owes to the Authority either pursuant to the relevant Underlease or this Contract;
- (b) allow the Authority to give the Contractor the right of access use and occupation of Existing Licensed Sites as referred to in Clause 15.1.1.2 Provided That the terms of such consent shall not impose any greater obligation on the Contractor than the Contractor owes to the Authority pursuant to this Contract;
- (c) allow the Contractor to carry out the HWRC Refurbishment Works at the Existing Leasehold Sites or the Existing Licensed Sites or any further minor works that the Contractor may require to be carried out at a New HWRC Site and any part of the Works relating to construction of the MRF (Key Works) Provided That the terms of such consent shall not impose any greater obligation on the Contractor than the Contractor owes to the Authority either pursuant to the relevant Underlease or this Contract;

Sustainability Performance means the set of performance indicators comprising KPI 9 as defined in Schedule 7 (Key Performance Indicators);

Tax 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 whether imposed by a local governmental or other Relevant Authority in the United Kingdom or elsewhere;

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

Tender Process the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider, in accordance with Clause 1.3 of Schedule 44 (Retendering Procedure);

Tender Process Monitor	means a third party appointed by the Contractor pursuant to paragraph 1.3.5 of Schedule 44;
Termination Date	means any date of early termination of this Contract in accordance with Part Five (Termination);
Termination Discount Rate	Date means a discount rate expressed as $[(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A})^* (1+i) - 1]$ where "real base case project IRR" is the real pre-tax project IRR as set out in the Base Case; "i" is the agreed assumed forecast rate of increase in the Inflation Index set out in the Contract which, for the avoidance of doubt, is equal to the Bank of England's prevailing long term inflation target; "Gilt A" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Corporate Debt as shown in the Base Case at the date of this Contract; and "Gilt B" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Corporate Debt as shown in the Base Case as on the date of Termination;
Termination Sum	means any compensation payable by the Authority to the Contractor on an early termination of the Contract under Part Five (Termination) (excluding the Adjusted Highest Compliant Tender Price);
Third Party Consents	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:- (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;

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)

Third Party Income

means the Contractor and/or Sub-Contractor's income from third parties (other than the Authority under the Contract) associated with the Project including without limitation that derived from the sale of Recyclable Waste and Compostable Waste less (without any double counting) the costs directly incurred in generating such income PROVIDED THAT save as otherwise provided in Schedule 40 (Unitary Charge Adjustment Protocol) neither (a) the income of the Sheffield Contractor and/or Veolia ES Sheffield Limited associated with the Handling of Sheffield Waste nor (b) the income of VES UK and/or any provider of Disposal Arrangements (as defined in the Mansfield and Ashfield Residual Waste Offtake Contract) associated with the Handling of Residual Waste under the Mansfield and Ashfield Residual Waste Offtake Contract

shall be included in the definition of Third Party Income.

Tipping Away Payments

means any liability calculated in accordance with Schedule 6a (Payment Mechanism) and properly incurred by the Authority to any WCA in respect of the cost of transportation of Contract Waste to the relevant Facilities or to any temporary facilities established by the Contractor in the event of one or more Facilities being Unavailable, which arise from such Facilities or temporary facilities being located outside the designated collection area for the relevant WCA as set out in Schedule 28 (Delivery Points);

Title Deeds

means all the deeds and documentation necessary to prove title to a Site;

Transfer Station

means the transfer stations to which collected Contract Waste is delivered, reloaded and distributed to the appropriate Facility pursuant to this Contract and the term shall include Existing and New Transfer Stations;

Transferred Equipment

means the moveable plant and equipment and any other items as at the date of the Contract which is transferred to the Contractor by the Authority in accordance with Clause 62 (Equipment) as set out in Schedule 11 (Equipment List);

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Turnaround Time as defined in KPI 1 in Schedule 7 (Key Performance Indicators)

Unavailable/Unavailability means that a Facility fails to meet one or more of the Availability Criteria as further defined in Schedule 22;

Underlease means an underlease of an Existing Site granted on the date of this Contract or (as the case may be):

- a) a lease of a New HWRC Site to be granted pursuant to clause 15.5 of this Contract; or
- b) a lease of a Contractor New Site to be granted pursuant to clause 15.6 of this Contract

in substantially the form previously agreed set out in Schedule 8 (Sites and Property Agreements) with any necessary changes to convert such document into an underlease but for the avoidance of doubt not including a covenant to perform the covenants in any superior leases.

Uninsurable in relation to a risk, either that:

- (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 risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;**

Unitary Charge means the payment calculated in accordance with Schedule 6a (Payment Mechanism) as may be amended from time to time in accordance with Schedule 40 (Unitary Charge Adjustment Protocol);

Unitary Charge Adjustment Protocol means the unitary charge adjustment protocol for determining any amendments to the Unitary Charge arising from an Adjustment Event as set out in Schedule 40 (Unitary Charge Adjustment Protocol);

VAT means any Value Added Taxes;

Vendor means a vendor of any Property Interest;

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Veolia Group	means any persons within the group of companies of which the holding company is Veolia Environment S.A.;
VES UK	means Veolia ES (UK) Limited a company registered in England and Wales with registered number 02481991, whose registered office is at 210 Pentonville Road, London, N1 9JY;
Waste	has the meaning ascribed to it in section 75 of the EPA;
Waste Hierarchy	means the Waste Hierarchy as set out in Waste Strategy 2000;
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;
Waste Collection Authority ("WCA")	a Waste Collection Authority as defined by Section 30 of the EPA within the Authority's Area;
WCA Agreement	means the agreement entered or to be entered into at the Authority's sole discretion by the Authority and the WCAs whereby the WCAs agree to deliver Contract Waste to the Contractor in accordance with Schedule 28 (Delivery Points) and Schedule 30 (Facility Input Specifications);
WCA Baseline	means: (a) the categories of Household Waste which the Parties agree the WCAs shall withhold from Contract Waste to be delivered to the Contractor for the WCAs' own Recycling; (b) the parameters governing the WCA collection activities; and (c) the Collection Methodology set out in Schedule 29 (WCA Baseline)
WCA Claims	means any claim by any WCA arising from the consequences of any failure by the Contractor to meet its Key Performance Targets;
WDA	a Waste Disposal Authority as defined by Section 30 of the EPA;

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Welshcroft Capital Expenditure	means in respect of the Welshcroft WTS any additional Capital Expenditure incurred as a result of any Change in Law arising prior to the issue of the Construction Completion Certificate relating to the Welshcroft Close Construction Contract;
Welshcroft Close Construction Contract	means the Sub-Contract relating to Works to be carried out at the Welshcroft Site entered into on 2nd September 2016 with the Welshcroft Close Construction Sub-Contractor in the form set out in Clause 17C (Welshcroft Close Construction Contract);
Welshcroft Close Construction Contractor	means Tolent Construction Limited;
Welshcroft Close Transfer Station	means the WTS situated at the Welshcroft Site;
Welshcroft Close WTS Works	means the Works more particularly described in the Welshcroft Close Construction Contract;
Welshcroft Collateral Agreement	means a collateral agreement in respect of the Welshcroft Site entered into on 2 September 2016 between the Welshcroft Landlord, the Authority, the Contractor and the Welshcroft Tenant in the form attached at Schedule 8 (Sites and Property Agreements);
Welshcroft Break	means the option to determine the Welshcroft Site Headlease contained in clause 15 thereof;
Welshcroft Asset Notice	has the meaning given in Clause 100A (Treatment of the Welshcroft Site on Expiry Date);
Welshcroft Landlord	means Bolsover Properties Limited, a company incorporated under the laws of England and Wales with registered number 0877920, whose registered office is at Portland Estates Office, Cavendish House, Welbeck, Worksop, Nottinghamshire S80 3LL together with its successors and assigns;
Welshcroft Site	means the land located at Welshcroft Close, Kirkby-in-Ashfield, Nottinghamshire more particularly described in the Welshcroft Site Headlease;
Welshcroft Site Headlease	means the lease between the Welshcroft Landlord and the Welshcroft Tenant entered into on 2 September 2016 in respect of the Welshcroft Site in the form attached at Schedule 8 (Sites and Property Agreements);

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Welshcroft Tenant		means Veolia ES (UK) Limited, a company incorporated under the laws of England and Wales with registered number 02481991, whose registered office is at 210 Pentonville Road, London N1 9JY together with its successors and assigns;
Welshcroft Underlease		means the underlease between the Welshcroft Tenant and the Contractor entered into on 2 September 2016 in the form attached at Schedule 8 (Sites and Property Agreements);
Works		means the Works (including design and works necessary for obtaining access to any applicable Site) to be undertaken by the Contractor in accordance with the Contract to satisfy the Specification and in accordance with the Works Delivery Plan;
Works Commencement Date		means for each of the Key Works the date on which Works commence;
Works Delivery Plan		part of the Contractor's Proposals as set out in Schedule 13;
Works Period		means for each of the Works the period specified in Clause 11 (Commencement and Duration);
Worksop Construction Contract		means the Construction Contract in Agreed Form for the Works in respect of the Worksop WTS in the form set out in Schedule 17B (Worksop Construction Contract);
Worksop WTS		means the WTS located at Worksop WTS, Dukeries House, Claylands Avenue, Worksop, Nottinghamshire, S81 7DJ;
Year		the 12 month period from and including a day to (but not including) the day bearing the same number in the same month of the following year (or, in the case only of a period commencing on 29 February, ending on the next following 28 February).