

**PART C: PROJECT AGREEMENT & SCHEDULES**

**45. SCHEDULE 45:**

**DIRECT AGREEMENT**

## **Authority Direct Agreement**

**Cambridgeshire County Council**

**and**

**Donarbon Waste Management Limited**

**and**

**Bank of Ireland**

relating to the Cambridgeshire County Council Waste PFI  
project

- 2008

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**THIS AGREEMENT** is made on [●] 2008

**BETWEEN:**

- (1) **CAMBRIDGESHIRE COUNTY COUNCIL** (the "**Authority**");
- (2) **THE GOVERNOR AND THE COMPANY OF THE BANK OF IRELAND** in its capacity as facility agent and security trustee for the Finance Parties under the Credit Agreement (the "**Agent**");
- (3) **DONARBON WASTE MANAGEMENT LIMITED** (a company incorporated in England and Wales with registered number 6054499), whose registered office is at Ely Road, Waterbeach, Cambridge, Cambridgeshire CB25 9PG (the "**Contractor**").

**RECITALS:**

- (A) The Authority and the Contractor have entered into the Project Agreement.
- (B) The Contractor, the Agent, the Finance Parties and others have entered into the Credit Agreement.
- (C) The entry into this deed is a condition precedent to Financial Close.

**IT IS AGREED AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

In this agreement, unless the context otherwise requires:

**"Affiliate"** means, in relation to any person, another person that controls, is controlled by or is under common control with such person;

**"Appointed Representative"** means a Representative that has assumed The Contractor's rights under the Project Agreement under clause 5.1 (Step-In);

**"Authority Documents"** means the Project Agreement and the Ancillary Documents listed in Schedule 44 of the Project Agreement;

**"Certification Period"** means the period of six weeks from the date of the Project Agreement;

**"Certification Requirements"** means the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;

**"Contractor Default"** has the meaning given in the Project Agreement;

**"Credit Agreement"** means the credit agreement entered into on or about the date of this agreement between the Contractor, Donarbon Services Limited, the financial institutions named therein as arrangers, the financial institutions named therein as lender and the Agent;

**"Discharged Obligations"** has the meaning given under clause 8.4(a);

**"Discharged Rights"** has the meaning given under clause 8.4(c);

**"Event of Default"** has the meaning given under the Credit Agreement;

**"Fair Value"** means 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 liquidation or sale;

**"Liquid Market"** has the meaning given in the Project Agreement;

**"Project Agreement"** means the agreement between the Authority and the Contractor dated on or about the date of this agreement together with the Schedules incorporated therein;

**"Representative"** means:

- (a) the Agent, any Lender (as defined in the Credit Agreement) and/or any of their Affiliates;
- (b) an administrator, administrative receiver, receiver or receiver and manager of the Contractor appointed under the Security Documents;
- (c) a person directly or indirectly owned or controlled by the Agent, and/or any of the Lenders; or
- (d) any other person approved by the Authority (such approval not to be unreasonably withheld or delayed);

**"Required Period"** means, subject to clause 3.3 (Further Notification) and clause 4 (No Liquid Market), the period starting on the date of a Termination Notice and

- a) until the Full Service Commencement Date, ending 120 days later; or
- b) thereafter, ending 90 days later

**"Response Notice"** means a notice given by the Authority to the Agent under clause 3.2 (Response Notice);

**"Senior Debt Discharge Date"** means the date on which all indebtedness of the Contractor owing to the Senior Finance Parties under the Finance Documents has been irrevocably paid and discharged in full;

**"Step-In Date"** means the date on which a Representative is to assume rights under the Authority Documents in accordance with clause 5.1 (Step-In);

**"Step-In Notice"** means a notice given by the Agent to the Authority under clause 5.2 (Notice);

**"Step-In Period"** means the period from the Step-In Date up to and including the earlier of:

- (a) the Step-Out Date;
- (b) the date of any transfer under clause 8 (Novation);
- (c) the date of any termination of the Authority Documents for breach under clause 6.2 (Permitted Termination);
- (d) the date of expiry of the Project Agreement;

**"Step-Out Date"** means the date specified as such in a Step-Out Notice and which shall be a date falling not less than 30 days after the date on which the Step-Out Notice is delivered to the Authority;

**"Step-Out Notice"** means a notice given by an Appointed Representative or the Agent to the Authority in accordance with 7.1 (Step-Out Notice);

**"Suitable Substitute Contractor"** 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 Authority Documents; 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 Authority Documents;

**"Third Party"** has the meaning given under clause 18.1;

**"Termination Notice"** means a notice given by the Authority to the Agent under clause 3.1 (Termination Notice);

**"Unrestricted Assets"** means those Handback Facilities, Assets and Authority Sites, excluding any revenues or cash balances or claims outstanding at the date of transfer under any Sub-Contract, which are required by the Authority or its nominee or any replacement of the Contractor for the purposes of the construction, operation or maintenance of the Facilities and provision of the Services following termination assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Project Agreement.

## 1.2 **Other References**

In this agreement, unless a contrary intention appears:

- (a) capitalised terms defined in the Project Agreement or the Credit Agreement have the same meaning in this agreement;
- (b) a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors and permitted assignees or transferees;
- (c) references to clauses and schedules are references to, respectively, clauses of and schedules to this agreement;
- (d) a reference to (or to any specified provision of) any agreement or document (including the Finance Documents) is to be construed as a reference to that agreement or document (or that provision) as it may be amended from time to time, (but excluding for this purpose any amendment which is made contrary to any provision of any Finance Document except where such amendment has been consented to by the Agent);
- (e) a reference to a statute, statutory instrument or accounting standard or any provision thereof is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision thereof, as it may be amended or re-enacted from time to time;
- (f) a time of day is a reference to London time;
- (g) the index to and the headings in this agreement are inserted for convenience only and are to be ignored in construing this agreement; and
- (h) words importing the plural shall include the singular and vice versa.

## 2. **CONSENTS AND ACKNOWLEDGEMENTS**

### 2.1 **Acknowledgement of Security**

The Authority acknowledges notice of, and consents to, the security interest granted over the Contractor's rights under the Authority Documents effected by the Contractor in favour of the Agent under the Security Documents.

### 2.2 **No Other Security**

The Authority confirms that it has not received notice of any other security interest granted over the Contractor's rights under the Authority Documents.

### 2.3 **Payments**

The Authority confirms that until it is notified to the contrary by the Agent it will pay all amounts payable by it under the Authority Documents to the Proceeds Account. The Contractor and the Authority agree that at any time following the occurrence of an Event of Default which is continuing, if so directed in writing by the Agent upon giving reasonable notice, the Authority shall pay any sum which it is obliged to pay to the Contractor under the Authority Documents to such other bank account specified by the Agent.

### 2.4 **HoldCo Security**

Without prejudice to the provisions of clause 133 (Change of Ownership of Contractor) of the Project Agreement, the Authority acknowledges notice of and consents to the security interest granted by HoldCo in favour of the Agent over the entire issued share capital of the Contractor.

## 3. **NOTICE OF TERMINATION AND EXISTING LIABILITIES**

### 3.1 **Termination Notice**

Subject to clause 6.2 (Permitted Termination), the Authority shall not terminate or give notice terminating the Authority Documents on the grounds of Contractor Default unless it has given to the Agent a notice (the "**Termination Notice**") stating:

- (a) the proposed date of termination (which shall be not earlier than the last day of the Required Period);
- (b) the grounds for termination in reasonable detail.

### 3.2 **Response Notice**

No later than the date falling 30 days after the date of a Termination Notice or (if earlier) the date falling 30 days after the date on which the Agent informs

the Authority that an Event of Default has occurred, the Authority shall provide the Agent a notice (the "**Response Notice**") stating:

- (a) details of all amounts as owed by the Contractor to the Authority under the Authority Documents of which the Authority is aware (having made reasonable enquiries) and which the Authority (acting reasonably) is able to ascertain which:
  - (i) are accrued and outstanding at the date of the Response Notice; and/or
  - (ii) will become due on or prior to the end of the Required Period; and
- (b) details of any other existing liabilities or unperformed obligations (including any material claim (whether actual or threatened) made by a third party for which the Contractor may be liable to indemnify the Authority) under the Authority Documents of which the Authority is aware (having made all reasonable enquiry) which:
  - (i) are accrued and outstanding as at the date of the Response Notice; and/or
  - (ii) will become due on or prior to the end of the Required Period.

### 3.3 **Further Notification**

If at any time following the date upon which the Authority first notifies the Agent of any matter in accordance with clause 3.2 but prior to the Step-In Date the Authority becomes aware of any amount, liability or obligation of the nature described in clause 3.2 of which it was previously unaware (having made reasonable enquiry or was previously unable to ascertain) it shall promptly provide the Agent with details thereof and the Required Period shall be extended by 10 days.

## 4. **NO LIQUID MARKET**

### 4.1 **No Liquid Market Notice**

At any time during the Required Period the Agent may issue a written notice (the "**No Liquid Market Notice**") to the Authority setting out the reasons why the Agent does not believe that a Liquid Market exists.

### 4.2 **Reply**

On or before the date falling 14 days after the date on which a No Liquid Market Notice is received by the Authority the Authority shall notify the Agent of its opinion as to whether or not a Liquid Market exists. Where the

Authority believes that a Liquid Market does exist, such notice shall set out the reasons for the Authority's belief. If the Authority and the Agent do not agree whether or not a Liquid Market exists, then either party may refer the dispute to be determined in accordance with clause 113 (Dispute Resolution) of the Project Agreement.

#### 4.3 **Termination**

If the Authority and the Agent agree or it is determined in accordance with clause 113 (Dispute Resolution) of the Project Agreement that no Liquid Market exists, the Project Agreement shall automatically terminate and the provisions of clause 92.4 (No Re-tendering Procedure) of the Project Agreement shall apply.

#### 4.4 **Disputes**

If any dispute relating to this clause 4 is determined under clause 113 (Dispute Resolution) of the Project Agreement, the Required Period shall be extended by the period of time spent determining such dispute under clause 113 (Dispute Resolution) of the Project Agreement.

### 5. **REPRESENTATIVE**

#### 5.1 **Step-In**

Without prejudice to the Agent's rights under the Security Documents and to the Authority's rights under the Project Agreement (including without limitation clause 108 (Authority Step-In) therein), at any time:

- (a) whilst an Event of Default is subsisting (whether or not a Termination Notice has been served); or
- (b) during the Required Period,

the Agent may procure that a Representative assumes, jointly and severally with the Contractor, all of the Contractor's rights under the Authority Documents.

#### 5.2 **Notice**

The Agent shall give the Authority five days prior notice of any action to be taken by it under clause 5.1 and shall in that notice give details of the proposed Representative.

## 6. **STEP-IN PERIOD**

### 6.1 **No Termination**

Without prejudice to clause 3.1 (Termination Notice) but subject to clause 6.2, the Authority shall not terminate the Authority Documents during the Step-In Period on grounds:

- (a) that the Agent has taken any action referred to in clause 5 (Representative) or enforced any Security Document; or
- (b) arising prior to the Step-In Date of which the Authority is aware (having made reasonable enquiry) and whether or not continuing at the Step-In Date unless:
  - (i) the grounds arose prior to the Full Service Commencement Date, and construction is not completed on or before the date falling 12 months after the date on which the Authority would have been entitled to terminate the Project Agreement for non-completion; or
  - (ii) the grounds arose following the Full Service Commencement Date and neither the Appointed Representative nor the Contractor is using all reasonable endeavours (including implementation of any remedial programme) to remedy any breach of the Authority Documents that:
    - (A) arose prior to the Step-In Date; and
    - (B) is continuing (and capable of remedy); and
    - (C) would have entitled the Authority to terminate the Authority Documents; or
- (c) arising solely in relation to the Contractor.

### 6.2 **Permitted Termination**

The Authority shall be entitled to terminate the Authority Documents by notice to the Contractor and the Appointed Representative:

- (a) if any amount notified pursuant to clause 3.2(a)(i) (Termination Notice) has not been paid to the Authority on the Step-In Date;
- (b) if any amount notified pursuant to clause 3.2(a)(ii) (Termination Notice) or clause 3.3 (Further Notification) pursuant to an earlier Termination Notice has not been paid to the Authority on or before the last day of the Required Period;

- (c) if amounts of which the Authority was not aware (having made reasonable enquiry) at the time of the Termination Notice or the Event of Default and which were not notified or required to be notified under clause 3.3 (Further Notification) subsequently become payable by the Contractor to the Authority under the Authority Documents and are not discharged on or before the date falling 30 days after the date on which the liability for these amounts is notified to the Appointed Representative; or
- (d) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement *provided* that, for the purposes of termination under the Authority Documents, Warning Notices and/or Deductions and/or Performance Points that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but shall be taken into account after the Step-Out Date.

### 6.3 **Dealing with Appointed Representative**

The Authority shall deal with the Appointed Representative and not the Contractor during the Step-In Period.

## 7. **STEP-OUT**

- 7.1 The Appointed Representative will, on 10 days prior written notice from the Agent or the Appointed Representative to the Authority, be released from all of its obligations and liabilities to the Authority under the Project Agreement arising prior to the Step-Out Date and rights of the Appointed Representative against the Authority will be cancelled.
- 7.2 The Contractor shall continue to be bound by the terms of the Project Agreement notwithstanding the occurrence of the Step-Out Date.

## 8. **NOVATION**

### 8.1 **Transfer of Rights and Obligations**

Subject to clause 8.2, at any time:

- (a) During which an Event of Default is subsisting; or
- (b) during the Step-In Period,

the Agent may, on 30 days' prior written notice to the Authority and any Appointed Representative, procure the transfer of the Contractor's rights and liabilities under the Authority Documents to a Suitable Substitute Contractor in accordance with the provisions of this clause 8. The Agent shall in such notice given details of the proposed Suitable Substitute Contractor.

## 8.2 Acceptance of Suitable Substitute Contractor

The Authority shall notify the Agent as to whether any person to whom the Agent proposes to transfer the Contractor's rights and liabilities under the Authority Documents is a Suitable Substitute Contractor, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Contractor.

## 8.3 Consent

The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor. It shall be a reasonable ground for withholding such consent that the proposed transferee has not agreed to a condition of the novation that any unpaid amounts owed to the Authority by the Contractor are satisfied in full

### No Response

If the Authority fails to respond to a notice given in accordance with clause 8.1 within the relevant period it shall be deemed to have accepted the proposed transferee as a Suitable Substitute Contractor.

## 8.4 Effect of Transfer

On any transfer referred to in clause 8.1 becoming effective:

- (a) Subject to clause 8.5 below, the Contractor and the Authority shall be released from their obligations under the Authority Documents to each other (the "**Discharged Obligations**");
- (b) the Suitable Substitute Contractor and the Authority shall assume obligations towards each other which differ from the Discharged Obligations only insofar as they are owed to or assumed by the Suitable Substitute Contractor instead of the Contractor;
- (c) the rights of the Contractor against the Authority under the Authority Documents and vice versa (the "**Discharged Rights**") shall be cancelled;
- (d) the Suitable Substitute Contractor and the Authority shall acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Contractor instead of the Contractor;
- (e) any accrued Warning Notices and/or Deductions and/or Performance Points incurred under the Project Agreement shall, for the purposes of

termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled;

- (f) any then subsisting ground for termination of the Authority Documents by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked; and
- (g) the Authority shall enter into a direct agreement with the persons providing senior debt facilities to the Suitable Substitute Contractor (or an agent on their behalf) on substantially the same terms as this agreement.

8.5 Clause 8.4 (a) shall be without prejudice to clause 136 (Continuation of Obligations) of the Project Agreement save that the Authority shall not owe a continuing right to the Contractor where that right has transferred to the Suitable Substitute Contractor and the Authority shall not suffer any double jeopardy.

9. **NOT USED**

10. **INSURANCE PROCEEDS**

10.1 **Application**

Subject to clause 10.2 but otherwise notwithstanding the other provisions of this agreement and the terms and conditions of the Finance Documents, the Agent shall only permit amounts to be released from the Joint Insurance Account in accordance with the requirements of clause 119 (Reinstatement after Insured Event) of the Project Agreement and shall not exercise any rights under the Finance Documents or to take any other steps to prevent amounts being released from the Joint Insurance Account in accordance with clause 119 (Reinstatement after Insured Event) of the Project Agreement.

10.2 **Economic Reinstatement Test**

- (a) If the MBT Facility is destroyed or substantially destroyed in a single event, and the Insurance Proceeds relating to such event (when taken together with any other funds available to the Contractor) are equal to or greater than the amount required to repair, reinstate or replace the MBT Facility, then the Contractor shall calculate the Loan Life Cover Ratio (LLCR) as used in the Base Case on the assumption that:
  - (i) the MBT Facility is repaired, reinstated or replaced in accordance with clause 119 (Reinstatement after Insured Event) of the Project Agreement

- (b) If the calculation of the LLCR referred to in clause 10.2(a) (above) shows that the Loan Life Cover Ratio is greater than or equal to 1.10 the Contractor shall be subject to the procedure set out in clause 119 (Reinstatement after Insured Event) of the Project Agreement.
- (c) Subject to clause 10.2 (e) If the calculation referred to in clause 10.2(a) above shows that the Loan Life Cover Ratio is less than 1.10 then an amount equal to the lesser of:
  - (i) the Insurance Proceeds relating to such event; and
  - (ii) the Base Senior Debt Termination Amount (as defined in the Project Agreement) or, if any Additional Permitted Borrowing has been advanced, the Revised Senior Debt Termination Amount (as defined in the Project Agreement),

shall be released from the Joint Insurance Account to the Compensation Account.

- (d) if, pursuant to clause 10.2 (c), insurance proceeds are released from the Joint Insurance Account the Contractor shall be in breach of its obligations under the Project Agreement and shall not, pursuant to clause 104 (*Relief Events*) of the Project Agreement, be relieved of its obligations unless it can demonstrate to the satisfaction of the Authority, that it can carry out the works necessary to repair, reinstate or replace the MBT Facility in accordance with clause 119 (*Reinstatement after Insured Event*) and within a reasonable timescale.
- (e) Where clause 10.2 (c) applies, the Contractor shall notify the Authority that the Loan Life Cover Ratio is less than 1.10. The Authority may within twenty (20) Business Days of receiving such notice elect to implement the following provisions, in which case clause 10.2 (c) shall cease to apply:-
  - (i) The Contractor shall be subject to the procedure set out in clauses 119 (*Reinstatement after Insured Event*);
  - (ii) The Authority shall provide relief from appropriate provisions of the Project Agreement (on such terms as are agreed with the Contractor as appropriate) to the extent required to ensure that the Loan Life Cover Ratio is equal to 1.10 (on the basis that the Contractor receives the insurance proceeds it would have been entitled to receive had such relief not been granted) until the earlier of:

- (A) The date on which the MBT Facility is repaired or instated in accordance with the Reinstatement Plan; or
- (B) The date on which the MBT Facility is scheduled to be repaired or reinstated in accordance with the Reinstatement Plan.

## 11. COVENANTS

### 11.1 Further Assurance

The Authority shall, at the Contractor's expense, take whatever action the Agent, an Appointed Representative or a Suitable Substitute Contractor taking a transfer in accordance with clause 8.1 may require for perfecting any transfer or release under clause 5 (Representative), clause 7 (End of Step-In Period) or clause 8 (Novation), including the execution of any transfer or assignment, the giving of any notice, order or direction and the making of any registration which, in each case, the Agent, Appointed Representative or Suitable Substitute Contractor reasonably requires.

### 11.2 Acknowledgements

The Authority acknowledges and agrees that, except with the prior consent of the Agent, the Contractor shall not be entitled to:

- (a) make or agree to any amendment or waiver of any term of the Authority Documents;
- (b) exercise any right to terminate the Authority Documents;
- (c) respond to any Authority Notice of Change (as defined in the Project Agreement);
- (d) deliver any Contractor Notice of Change (as defined in the Project Agreement);
- (e) propose any variation to the Contractor's Proposals (as defined in the Project Agreement);

provided that any failure of the Contractor to obtain such consent shall not affect or diminish the terms of the Project Agreement or Authority Documents or their effectiveness and shall not result in any liability on the part of the Authority to the Agent or obligation on the Authority towards the Agent.

### 11.3 Attendance at Meetings

The Authority shall permit a representative of the Agent and/or any adviser to attend any progress or review meeting or any dispute resolution proceeding

between the Authority and the Contractor conducted pursuant to the Authority Documents if the Agent so requests.

**11.4 Copies of Notices**

The Authority agrees to deliver to the Agent (at the same time as it is delivered to the Contractor) a copy of any Warning Notice delivered by the Authority pursuant to clause 88 (Termination for Persistent Breach) or notice of a Force Majeure Event delivered by the Authority pursuant to clause 89.3 of the Project Agreement provided that failure to deliver the same to the Agent shall not affect or diminish the terms of the Project Agreement or their effectiveness and shall not result in any liability on the part of the Authority to the Agent.

**11.5 No Winding-Up**

The Authority shall not take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Contractor.

**11.6 Notification by Agent**

The Agent, in respect of paragraphs (a), (b) and (c), and the Contractor, in respect of paragraph (d), shall notify the Authority of:

- (a) the occurrence of any Event of Default in respect of which it has taken or is likely to take any action under clause 20.25 (Acceleration) under the Credit Agreement;
- (b) the date referred to in clause 11.6(a) on or before the date falling 30 days after its occurrence;
- (c) the details and amount of any proposed Additional Permitted Borrowing, including:
  - (i) the circumstances giving rise to it and reasons for it; and
  - (ii) the terms on which it will be borrowed; and
- (d) on the first Business Day of each calendar month during which any Additional Permitted Borrowing is, or may be, outstanding, the principal amount outstanding under the Finance Documents (as the same may be amended (whether or not with the approval of the Authority)), and, to the extent it is aware (having made reasonable enquiry):
  - (i) the amount of any Distribution (as defined in the Project Agreement) made by the Contractor during the preceding calendar month; and

- (ii) the amount standing to the credit of any Project Account of the Contractor.

#### 11.7 **Contractor Acknowledgement**

The Contractor joins in this agreement to acknowledge and consent to the arrangements set out herein and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this agreement.

#### 11.8 **Payment by Instalments**

If the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount element or Revised Senior Debt Termination Amount element of any Termination Sum in instalments in accordance with clause 101.2 of the Project Agreement, the Authority shall not exercise any right of set off or make any deduction from any instalment or interest relating thereto save to the extent that after such amount has been set off, the termination payment made would be an amount equal to or greater than the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be at the time.

#### 11.9 **Compensation on Termination**

Where the retendering procedure described in Clause 92.3 (Retendering Procedure) of the Project Agreement applies, the Authority's obligation to pay the Contractor pursuant to clause 92.3.1 and/or clause 92.3.12 of the Project Agreement shall be extinguished and replaced by an obligation of the Authority to pay to the Agent an amount equal to the Adjusted Highest Compliant Tender Price no later than (to the extent that clause 92.3.12 of the Project Agreement applies) the date falling twenty (20) Business Days after the date of determination or (to the extent that clause 92.3.12 of the Project Agreement applies) the date falling twenty (20) Business Days after the date of the New Contract. The Authority shall, where instructed to do so by the Agent, direct the successful bidder to pay directly to the Agent an amount equal to the lesser of the Highest Compliant Tender Price and the Adjusted Highest Compliant Tender Price. The irrevocable payment of such amount by the successful bidder directly to the Agent shall discharge, but only to the extent of such amount, the Authority's obligation to pay the Agent pursuant to this clause 11.9.

#### 11.10 **Compensation on Termination**

- (a) The Authority shall pay all amounts in relation to the Base Senior Debt Termination Amount described, or referred to, in clause 93 (Compensation on Voluntary Termination) of the Project Agreement directly to the Agent on behalf of the Finance Parties.

- (b) For the purposes of clause 101.2.2 of the Project Agreement the parties have agreed that in any circumstances in which the Authority has elected to pay amounts by instalments pursuant to clause 101.2 of the Project Agreement the instalments will be paid in the amounts as described pursuant to clause 101.2.1.1(a) of the Project Agreement and will be paid directly to the Agent on behalf of the Finance Parties.
- (c) In any circumstances in which the Contractor would be entitled to give notice pursuant to clause 101.5 of the Project Agreement it is agreed that such notice may be given by the Agent to the Authority, and any payment then due pursuant to clause 101.5 will be made directly to the Agent on behalf of the Finance Parties.

## 12. **ASSIGNMENT**

### 12.1 **Assignments and Transfers**

No party to this agreement may assign or transfer any part of its rights or obligations under this agreement, save that:

- (a) each of the Agent may assign or transfer its rights and obligations under this agreement to a successor Agent in accordance with the terms of the Finance Documents;
- (b) any Lender may assign or transfer its rights under the Finance Documents in accordance with the terms of the Finance Documents; and
- (c) the Authority may assign or transfer its rights and obligations to any permitted assignee or transferee in accordance with the terms of the Project Agreement.

### 12.2 **New Direct Agreements**

If clause 12.1(a) applies then the Authority shall enter into a direct agreement with the new Agent and the other parties hereto on substantially the same terms as this agreement. If clause 12.1(c) applies, the Authority shall procure that the assignee or transferee shall enter into a direct agreement with the other parties hereto on substantially the same terms as this agreement.

## 13. **SUBORDINATION**

- 13.1 Notwithstanding any provision in the Collateral Warranties and associated Subcontracts to the contrary, the Authority agrees that, subject to Clauses 13.2 and 13.3, it will not, in respect of any particular Collateral Warranty or Subcontract, exercise or seek to exercise any of its step-in rights or other rights under such agreement until the earlier of:

- (a) the Senior Debt Discharge Date; or
  - (b) the date on which the Agent has given its written consent to such exercise; or
  - (c) the time when in respect of any such Collateral Warranties or associated Subcontracts the Agent has confirmed in writing to the Authority (following any request from the Authority for such confirmation, to which the Agent shall be obliged to respond promptly) that it does not intend to exercise any of its own rights under the relevant Security Document or that it has no further claim thereunder;
- 13.2 Except in accordance with the provisions of Clause 13.1 the Authority shall not, prior to the Senior Debt Discharge Date:
- (a) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Collateral Warranties or associated Subcontracts in respect of a loss for which a sub-contractor or relevant counterparty is also liable to the Senior Lenders;
  - (b) take any action to wind-up, appoint an administrator, seek an interim order appointee (under paragraph 3(b) Schedule B1 of the Insolvency Act 1986 (as amended)), or sanction a voluntary arrangement (or similar) in relation to the Contractor; or
  - (c) save with the prior written consent of the Agent, compete on grounds (whether in whole or in part) relating to the Project (by virtue of a claim under any of the Collateral Warranties or Subcontracts, the Contract or any other Project Document or otherwise) with the rights of the Senior Lenders on any formal insolvency of any sub-contractor, any counterparty to any Subcontract or the Contractor, nor claim to be subrogated to any rights of any Senior Lenders.
- 13.3 The Authority agrees and undertakes that if it receives any amount in contravention of the provisions of Clause 13.2 (a) or (c) above, it will promptly turn the same over to the Agent and pending such payment, hold the same on trust for the Agent and the Senior Lenders.
- 13.4 Notwithstanding the terms of the Finance Documents , the Agent agrees that the Authority may exercise its rights to have transferred to it or its nominee any Unrestricted Assets following the Termination Date or Expiry Date and the Agent will not exercise or seek to exercise any security, enforcement rights, trust for sale, lien or encumbrance and shall, on or before the date any Unrestricted Assets are transferred to the Authority or its nominee, as the case may be, release all security and encumbrances over them.

- 13.5 Notwithstanding any terms of the Financing Documents and save in respect of insurance proceeds payable to third parties, the Parties agree and shall, to the extent it is within their power, direct that all insurance proceeds receivable or received by the Contractor under the insurances referred to in Clause 118 (Insurance) of the Project Agreement shall be paid directly into the Joint Insurance Account in accordance with Clause 119 (Reinstatement after Insured Event) and applied in accordance with the Contract.
- 13.6 This clause 13 is without prejudice to the Authorities rights pursuant to clause 108 (Authority Step-In) of the Project Agreement.

14. **ENTIRE AGREEMENT**

This agreement and the Authority Documents constitute the entire agreement between the parties hereto in connection with the subject matter of this agreement. No party has relied upon any representation save for any representation expressly set out in this agreement or the Authority Documents.

15. **MISCELLANEOUS**

15.1 **Counterparts**

This agreement may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

15.2 **Conflict**

For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this agreement and the Authority Documents, the provisions of this agreement shall prevail.

15.3 **Notices**

Each of the Agent agrees on behalf of itself and the Lenders that the provisions of clause 127 (Notices) of the Project Agreement shall apply mutatis mutandis to this agreement and for this purpose the address and facsimile number of the Agent are as set out in the signature pages of this agreement (or, as the case may be, in the instrument or transfer by which it became a party hereto).

#### 15.4 **Obligations Binding**

The obligations of the parties who have executed this agreement shall not be affected by the fact that not all of the parties hereto have validly executed this agreement and such obligations shall be binding inter se.

#### 15.5 **Remedies and Waivers**

- (a) No failure or delay on the part of any party in exercising any right, power or privilege under this agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of any other right, power or privilege.
- (b) The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.
- (c) A waiver given or other consent granted by any party under this agreement shall be effective only if given in writing and then only in the instance and for the purposes for which it is given.

#### 15.6 **Partial Invalidity**

If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

#### 15.7 **Term**

This agreement shall remain in effect until the earlier of:

- (a) the date on which all amounts which may be or become owing by the Authority to the Contractor under clauses 92 (Compensation on Termination for Contractor Default), 93 (Compensation on Voluntary Termination), 94 (Compensation on Termination for Authority Default), 95 (Compensation on Termination for Authority for Corrupt Gifts and Fraud and Refinancing), and 96 (Compensation on Termination for Force Majeure) of the Project Agreement have been irrevocably paid in full, whereupon the Agent agrees on behalf of itself and the Lenders to release any security granted in their favour over the Assets; and
- (b) the date of transfer of the Contractor's rights and liabilities under the Authority Documents to a Suitable Substitute Contractor pursuant to clause 8 (Novation).

15.8 **Survival**

- (a) The provisions of clause 13 (Subordination), 11.5 (No Winding-Up), this clause 15.8 and clause 16 (Confidentiality) shall survive termination of this agreement.
- (b) The termination of any provision of this agreement shall be without prejudice to any rights and obligations which have accrued thereunder prior to termination.

16. **CONFIDENTIALITY**

The Agent shall not cause the Contractor to breach its obligations set out in clause 121 (Freedom of Information and Confidentiality) of the Project Agreement in relation to information obtained from the Authority in connection with the Project.

17. **THE LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

- 17.1 The Certification Requirements are intended to be satisfied by the Authority with respect to this agreement and the Project Agreement before the end of the Certification Period relating to each such agreement.
- 17.2 The Agent hereby consents to the issue by the Authority of a certificate under Section 3 of the Local Government (Contracts) Act 1997 which relates to this Agreement.
- 17.3 The parties to this agreement agree that the relevant discharge terms as applied by and in accordance with clause 9 (Authority Vires: Local Government (Contracts) Act 1997) of the Project Agreement and schedule 5 (Relevant Discharge Terms) of the Project Agreement shall apply to this agreement and the Project Agreement.

18. **THIRD PARTY RIGHTS**

18.1 **Third Parties**

Any person (other than the parties to this agreement) who is given any rights or benefits under clause 6 (Step-In Period), clause 7 (End of Step-In Period), clause 8 (Novation), clause 11 (Covenants), clause 13 (Subordination) or clause 15 (Miscellaneous) (a "**Third Party**") shall be entitled to enforce those rights or benefits against the parties in accordance with the Contracts (Rights of Third Parties) Act 1999.

18.2 **Rights of Third Parties**

Save as provided in clause 18.1 above the operation of the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

18.3 **Amendments**

The parties may amend, vary or terminate this agreement in such a way as may affect any rights or benefits of any Third Party which are directly enforceable against the parties under the Contracts (Rights of Third Parties) Act 1999 without the consent of such Third Party.

19. **AGENT TO BE PROMPT AND TO ACT IN GOOD FAITH**

While always acknowledging that the Agent acts in the interests of the Finance Parties, the Agent undertakes to the Authority to respond promptly and pass requests for consent or agreement to the Finance Parties in good faith

20. **GOVERNING LAW**

This agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of in any way relating to this agreement or its formation) shall be governed by and construed in accordance with English law.

**IN WITNESS** whereof this agreement has been executed and delivered on the date first above written.

## SIGNATORIES

### AUTHORITY

THE COMMON SEAL of **CAMBRIDGESHIRE** )  
**COUNTY COUNCIL** was hereunto affixed )  
in the presence of )

.....  
Authorised Signatory

### AGENT

SIGNED as a deed by **THE GOVERNOR AND** )  
**COMPANY OF THE BANK OF IRELAND** )  
acting by its attorney )

.....  
Attorney

In the presence of:

.....  
Witness

Witness name: )  
Address: )  
 )  
 )  
Occupation: )

### CONTRACTOR

SIGNED as a deed by **DONARBON WASTE** )  
**MANAGEMENT LIMITED** by two directors )  
or a director and the company secretary )

.....  
Director

.....  
Director/Company Secretary