

**SCHEDULE 16**

**Direct Agreement**

This is Schedule 16 comprising the Direct Agreement referred to in the Project Agreement for the provision of waste services to Cumbria

between

**CUMBRIA COUNTY COUNCIL**

and

**SHANKS CUMBRIA LIMITED**

DATED \_\_\_\_\_ 2009

CUMBRIA COUNTY COUNCIL

and

SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED (AS AGENT)

and

SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED (AS SECURITY TRUSTEE)

and

SHANKS CUMBRIA LIMITED

DIRECT AGREEMENT

relating to the Waste Management Strategic Partnership Project

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THIS AGREEMENT dated

2009 is made BETWEEN:-

- (1) CUMBRIA COUNTY COUNCIL whose principal premises are at The Courts, Carlisle, Cumbria, CA3 8NA (the "Authority");
- (2) SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED as agent for the Finance Parties (the "Agent")
- (3) SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED as trustee for the Secured Parties (the "Security Trustee"); and
- (4) SHANKS CUMBRIA LIMITED (company registered number 06799850) whose registered office is at 4 Dunedin House, Auckland Park, Mount Farm, Bletchley, Milton Keynes, Buckinghamshire, MK1 1BU (the "Contractor"),

each a "Party" and together the "Parties".

WHEREAS:-

- (A) Under the Senior Financing Agreements dated on or around today's date, the Lenders have agreed to make available certain credit facilities to the Contractor.
- (B) Under the Project Agreement, the Authority and the Contractor have agreed the terms on which the Contractor will carry out inter alia the Works, the maintenance of the Waste Management Facilities and the management and operation of the Services.
- (C) This Agreement sets out certain agreements between the Authority, the Agent and the Security Trustee.

IT IS AGREED as follows:-

1. **INTERPRETATION**

1.1 In this Agreement the following expressions have the following meaning:-

- |                            |   |
|----------------------------|---|
| "Accrued Rights"           | has the meaning given to that term in clause 10.12 (Authority Rights);  |
| "Accrued Rights Value"     | means each of the Construction Accrued Rights Liquidated Damages Value, the Constructions Accrued Rights Value, the Operating Accrued Rights Termination Value, the Operating Accrued Rights Value, the Hanson Sub-Contractor's Liquidated Damages Value, the Ecodeco Barrow Sub-Contractor Accrued Rights Value, the Ecodeco Barrow Accrued Rights Liquidated Damages Value, the Ecodeco Hespian Wood Accrued Rights Liquidated Damages Value, the Ecodeco Hespian Wood Accrued Rights Value, the Offtake Accrued Rights Termination Value and the Offtake Accrued Rights Value; |
| "Appointed Representative" | means a Representative that has assumed the Contractor's rights under the Project Agreement under clause 5.1 (Representative);  |
| "Authority Construction"   | means the Collateral Warranty between (1) the Authority, (2) the  |

Collateral Warranty”	Contractor and (3) the Building Contractor;
“Authority Construction Liability Cap”	means the Building Contractor Liability Cap less the Construction Accrued Rights Value;
“Authority Construction Liquidated Damages Cap”	means the Building Contractor’s Liquidated Damages Cap less the Construction Accrued Rights Liquidated Damages Value;
“Authority Ecodeco Barrow Sub-Contractor’s Liability Cap”	means the Ecodeco Barrow Sub-Contractor Liability Cap less the Ecodeco Barrow Sub-Contractor Accrued Rights Value;
“Authority Ecodeco Barrow Sub-Contractor’s Liquidated Damages Cap”	means the Ecodeco Barrow Sub-Contractor’s Liquidated Damages Cap less the Ecodeco Barrow Accrued Rights Liquidated Damages Value;
“Authority Ecodeco Collateral Warranty”	means the Collateral Warranty between (1) the Authority, (2) the Contractor, (3) the Ecodeco Contractor, (4) Shanks Waste Management Limited and (5) EcoDeco Srl;
“Authority Ecodeco Hespín Wood Sub-Contractor Liability Cap”	means the Ecodeco Hespín Wood Sub-Contractor Liability Cap less the Ecodeco Hespín Wood Sub-Contractor Accrued Rights Value;
“Authority Ecodeco Hespín Wood Liquidated Damages Cap”	means the Ecodeco Hespín Wood Sub-Contractor’s Liquidated Damages Cap less the Ecodeco Hespín Wood Accrued Rights Liquidated Damages Value;
“Authority Hanson Sub-Contractor Collateral Warranty”	means the Collateral Warranty between (1) the Authority (2) Shanks Waste Management Limited and (3) the Hanson Sub-Contractor;
“Authority Hanson Sub-Contractor’s Liquidated Damages Cap”	means the Hanson Sub-Contractor’s Liquidated Damages Cap less the Hanson Accrued Rights Liquidated Damages Value;
“Authority Operating Collateral Warranty”	means the Collateral Warranty between (1) the Authority, (2) the Contractor and (3) the Operating Contractor;
“Authority Operating Liability Cap”	means the Operating Contract Annual Cap for the Relevant Year less the Operating Accrued Rights Value;
“Authority Operating Termination Cap”	means the Operating Contractor Termination Cap less the Operating Accrued Rights Termination Value;
“Building Contract”	means the Building Contract as defined in the Project Agreement and/or any novation thereof pursuant to the Authority Construction Collateral Warranty;
“Building Contractor Default”	has the meaning given to it in the Building Contract;

“Building Contractor Liability Cap”	has the meaning given to it in the Building Contract;
“Building Contractor's Liquidated Damages Cap”	means the cap on the Building Contractor’s liability to pay liquidated damages to the Contractor set out in clause 20.7 of the Building Contract;
“Certificate of Payment”	has the meaning given to it in the Building Contract;
“Construction Accrued Rights Liquidated Damages Value”	means the amounts that would count against the Building Contractor's Liquidated Damages Cap upon realisation of the Accrued Rights based on the assessment notified to the Authority under clause 10.19, as the same may be adjusted in accordance with clause 20 (Dispute Resolution);
“Construction Accrued Rights Value”	means the amounts that would count against the Building Contractor Liability Cap upon realisation of the Accrued Rights based on a reasonable assessment notified to the Authority under clause 10.19 as the same may be adjusted in accordance with clause 20 (Dispute Resolution);
“Ecodeco Barrow Accrued Rights Liquidated Damages Value”	means the amounts that would count against the Ecodeco Barrow Sub-Contractor's Liquidated Damages Cap upon realisation of the Accrued Rights based on the assessment notified to the Authority under clause 10.19, as the same may be adjusted in accordance with clause 20 (Dispute Resolution);
“Ecodeco Barrow Interim Payment”	means any payment made pursuant to clause 30 of the Ecodeco Barrow Sub-Contract;
“Ecodeco Barrow Sub-Contract”	means the Principal Building Sub-Contract between the Building Contractor and the Ecodeco Sub-Contractor in respect of the Site at Barrow-in-Furness as more accurately defined in the Project Agreement and/or any novation thereof pursuant to the Ecodeco Collateral Warranty;
“Ecodeco Barrow Sub-Contractor Accrued Rights Value”	means the amounts that would count against the Ecodeco Barrow Sub-Contractor’s Liability Cap upon realisation of the Accrued Rights based on a reasonable assessment notified to the Authority under clause 10.19 as the same may be adjusted in accordance with clause 20 (Dispute Resolution);
“Ecodeco Barrow Sub-Contractor Default”	means the occurrence of any of those events listed in clause 40.2 of the Ecodeco Barrow Sub-Contract;
“Ecodeco Barrow Sub-Contractor’s Liability Cap”	means the liability cap referred to in clause 37.2 of the Ecodeco Barrow Sub-Contract;
“Ecodeco Barrow Sub-Contractor’s Liquidated Damages Cap”	means the liquidated damages cap referred to in clause 24.2 of the Ecodeco Barrow Sub-Contract;
“Ecodeco Hespian Wood	means the amounts that would count against the Ecodeco

Accrued Rights Liquidated Damages Value”	Hespin Wood Sub-Contractor's Liquidated Damages Cap upon realisation of the Accrued Rights based on the assessment notified to the Authority under clause 10.19, as the same may be adjusted in accordance with clause 20 (Dispute Resolution);
“Ecodeco Hespin Wood Interim Payment”	means any payment made pursuant to clause 30 of the Ecodeco Hespin Wood Sub-Contract;
“Ecodeco Hespin Wood Sub-Contract”	means the Principal Building Sub Contract between the Building Contractor and the Ecodeco Sub-Contractor in respect of the Site at Hespin Wood as defined in the Project Agreement and/or any novation thereof pursuant to the Authority Ecodeco Collateral Warranty;
“Ecodeco Hespin Wood Sub-Contractor Accrued Rights Value”	means the amounts that would count against the Ecodeco Hespin Wood Sub-Contractor’s Liability Cap upon realisation of the Accrued Rights based on a reasonable assessment notified to the Authority under clause 10.19 as the same may be adjusted in accordance with clause 20 (Dispute Resolution);
“Ecodeco Hespin Wood Sub-Contractor Default”	means the occurrence of any of those events listed in clause 40.2 of the Ecodeco Hespin Wood Sub-Contract;
“Ecodeco Hespin Wood Sub-Contractor’s Liability Cap”	means the liability cap referred to in clause 37.2 of the Ecodeco Hespin Wood Sub-Contract;
“Ecodeco Hespin Wood Sub-Contractor’s Liquidated Damages Cap”	means the liquidated damages cap referred to in clause 24.2 of the Ecodeco Sub-Contract;
“Ecodeco Sub-Contractor”	means Sistema Ecodeco;
“Expert”	means an expert appointed pursuant to clause 20 (Dispute Resolution) to determine a dispute relating to this Agreement;
“Final Account and Final Statement”	has the meaning given to it in the Building Contract;
“Hanson Accrued Rights Liquidated Damages Value”	means the amounts that would count against the Hanson Sub-Contractor’s Liquidated Damages Cap upon realisation of the Accrued Rights based on the assessment notified to the Authority under clause 10.19, as the same may be adjusted in accordance with clause 20 (Dispute Resolution);
“Hanson Interim Payment”	means a payment to the Hanson Sub-Contractor pursuant to clause 58 of the Hanson Sub-Contract;
“Hanson Sub-Contract”	means the Principal Building Sub-Contract between the Building Contractor and the Hanson Sub-Contractor or any novation thereof pursuant to the Authority Hanson Sub-Contractor

	Collateral Warranty;
“Hanson Sub-Contractor”	means Hanson;
“Hanson Sub-Contractor Default”	means the occurrence of any of those events listed in clause 40.2 of the Hanson Sub-Contract;
“Hanson Sub-Contractor’s Liquidated Damages Cap”	means the liquidated damages cap referred to in clause 45.4 of the Hanson Sub-Contract;
“Interim Payment”	has the meaning given to it in the Building Contract;
“Invoiced Amounts”	has the meaning given to it in the SRF Offtake Contract;
“Notice of Expert Determination”	has the meaning given to it in clause 20.3;
“Offtake Accrued Rights Termination Value”	means the amounts that would count against the Offtake Contract Termination Cap upon realisation of the Accrued Rights based on a reasonable assessment of the entitlement in relation to such Accrued Rights, as the same may be adjusted in accordance with the Dispute Resolution Procedure;
“Offtake Accrued Rights Value”	means the amount that would count against the Offtaker Annual Liability Cap upon realisation of the Accrued Rights based on a reasonable assessment of the entitlement in relation to such Accrued Rights, as the same may be adjusted in accordance with the Dispute Resolution Procedure;
“Offtaker Annual Liability Cap”	has the meaning given to it in the SRF Offtake Contract;
“Offtaker Contract Termination Cap”	means the applicable cap on termination set out in clause 15.1.2 of the SRF Offtake Contract;
“Offtaker Event of Default”	has the meaning given to it in the SRF Offtake Contract;
“Operator Default”	has the meaning given to it in the Operating Agreement;
“Operator Monthly Unitary Charge”	has the meaning given to it in the Operating Agreement;
“Operating Accrued Rights Termination Value”	means the amounts that would count against the Operating Contractor Termination Cap upon realisation of the Accrued Rights based on a reasonable assessment of the entitlement in relation to such Accrued Rights, as the same may be adjusted in accordance with the Dispute Resolution Procedure;
“Operating Accrued Rights Value”	means the amount that would count against the Operating Contract Annual Cap upon realisation of the Accrued Rights based on a reasonable assessment of the entitlement in relation to such Accrued Rights, as the same may be adjusted in

	accordance with the Dispute Resolution Procedure;
“Operating Agreement”	means the Operating Agreement as defined in the Project Agreement and/or any novation thereof pursuant to the Authority Operating Collateral Warranty;
“Operating Contract Annual Cap”	has the meaning given to it in the Operating Agreement;
“Operating Contractor Termination Cap”	means the liability cap referred to in clause 50.16.3 of the Operating Agreement;
“Payment Mechanism”	means the payment mechanism in Schedule 5 of the Project Agreement;
“Project Agreement”	means the project agreement dated on or about the date of this Agreement between the Authority and the Contractor;
“Relevant Required Insurances”	means the Required Insurances described in paragraph 2 of Part 1 and paragraph 3 of Part 2 of Schedule 12 (Insurances) of the Project Agreement;
“Relevant Sub-Contractor”	means a sub-contracting party to a Works/Services Contract;
“Relevant Year”	means the Contract Year in which the Termination Date occurs;
“Representative”	means:- <ul style="list-style-type: none"> <li>(a) the Agent, the Security Trustee, any Secured Party and/or any of their Affiliates;</li> <li>(b) an administrator, administrative receiver, receiver or receiver and manager of the Contractor appointed under the Security Documents;</li> <li>(c) a person directly or indirectly owned or controlled by the Agent, the Security Trustee and/or any Secured Party; or</li> <li>(d) any other person approved by the Authority (such approval not to be unreasonably withheld or delayed);</li> </ul>
“Required Period”	means subject to clause 4 (No Liquid Market) the period starting on the date of a Termination Notice and:- <ul style="list-style-type: none"> <li>(a) on or prior to the final Service Availability Date, ending one hundred and twenty (120) days after the date of the Termination Notice; and</li> <li>(b) after the final Service Availability Date, ending ninety (90) days after the date of the Termination Notice,</li> </ul> <p>or, in either case, ending on such earlier date as the Agent may specify by written notice to the Authority;</p>

“Senior Debt Discharge Date”	means the date on which all amounts which may be or become owing by the Contractor to each Secured Party under the Senior Financing Agreements have been irrevocably paid in full;
“SRF Offtake Contract”	means the SRF Offtake Contract as defined in the Project Agreement and/or any novation thereof pursuant to the SRF Offtake Contract Direct Agreement;
“SRF Offtake Contract Direct Agreement”	means the SRF Offtake Contract Direct Agreement as defined in the Project Agreement;
“Step-In Date”	means the date on which the Agent takes any action under clause 5.1 (Representative);
“Step-In Period”	means the period from the Step-In Date up to and including the earlier of:- <ul style="list-style-type: none"> <li>(a) the Step-Out Date;</li> <li>(b) the date of any transfer and assignment under clause 8 (Novation);</li> <li>(c) the date of any termination for breach under clause 6 (Step-In Period); and</li> <li>(d) the date of expiry of the Project Agreement;</li> </ul>
“Step-Out Date”	has the meaning given to it in clause 7.1 (Step-Out);
“Suitable Substitute Contractor”	means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:- <ul style="list-style-type: none"> <li>(a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Project Agreement;</li> <li>(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 Project Agreement; and</li> <li>(c) being a Suitable Third Party;</li> </ul>
“Termination Notice”	means a notice given by the Authority to the Agent under clause 3.1 (Notice of Termination and Existing Liabilities);
“Unrestricted Assets”	means those Assets, excluding any revenues or cash balances or rights accrued as at the Termination Date or the Expiry Date, as the case may be under, or pursuant to or in connection with any of the Required Insurances and/or any Works/Services Contract and/or Project Document, 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 Waste Management Facilities following termination or expiry assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Project Agreement;

“Warning Notice” means a formal warning notice served by the Authority under clause 29.5 (Termination for Persistent Breach) of the Project Agreement;

“Works/Services Contract” means a contract relating to the provision of Works or Services which is the subject of a Collateral Warranty or the SRF Offtake Contract.

1.2 The following terms have the meaning given to them in the Project Agreement:-

“Additional Permitted Borrowing”

“Adjusted Estimated Fair Value of the Contract”

“Affiliate”

“Assets”

“Base Senior Debt Termination Amount”

“Building Contractor”

“Certification Requirements”

“Collateral Warranty”

“Contract Year”

“Deduction”

“Dispute Resolution Procedure”

“Distribution”

“Expiry Date”

“Final Warning Notice”

“Hanson”

“Holdco”

“Joint Insurance Account”

“Lease”

“Liquid Market”

“Monthly Unitary Charge”

“Operating Contractor”  
“Physical Damage Policies”  
“Principal Building Sub-Contracts”  
“Project Documents”  
“Project”  
“Required Insurances”  
“Revised Senior Debt Termination Amount”  
“Senior Debt”  
“Senior Financing Agreements”  
“Service Availability Date”  
“Services”  
“Sistema Ecodeco”  
“Suitable Third Party”  
“Termination Date”  
“Termination Sum”  
“Waste Management Facility”  
“Working Day”  
“Works”

1.3 The following terms shall have the meaning given to them in the Senior Financing Agreements:-

“Direct Agreement”  
“Event of Default”  
“Finance Parties”  
“Lender”  
“Proceeds Account”  
“Secured Parties”  
“Security Document”

## 1.4 **Interpretation**

In this Agreement except where the context otherwise requires:-

- 1.4.1 the masculine includes the feminine and vice-versa;
- 1.4.2 the singular includes the plural and vice-versa;
- 1.4.3 a reference to any clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
- 1.4.4 save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.4.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- 1.4.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.4.7 headings are for convenience of reference only; and
- 1.4.8 words preceding include, includes, including and included shall be construed without limitation by the words which follow those words.

## 2. **CONSENT TO SECURITY**

- 2.1 The Authority acknowledges notice of, and consents to, the security interests granted over the Contractor's rights under the Project Documents and the Required Insurances effected by the Contractor in favour of the Security Trustee under the Security Documents.
- 2.2 The Authority confirms that it has not received notice of any other security interest granted over the Contractor's rights under the Project Documents and the Required Insurances.
- 2.3 Without prejudice to the provisions of clause 59.3 (Change of Ownership) of the Project Agreement the Authority acknowledges notice of and consents to the security interest granted by Holdco in favour of the Security Trustee over the entire issued share capital of the Contractor.
- 2.4 Notwithstanding the terms of the Senior Financing Agreements, where required by clause 52.1 (Joint Account) of the Project Agreement the Parties agree and shall direct that all insurance proceeds paid under the Physical Damage Policies shall be paid into the Joint Insurance Account except as otherwise agreed by the Agent and the Authority and shall be applied in accordance with the Project Agreement.
- 2.5 Subject to clause 2.4 (Consent to Security) the Contractor and the Agent hereby instruct the Authority (and the Authority agrees) to pay all sums payable by the Authority to the Contractor under the Project Documents into the Proceeds Account. Following the occurrence of an Event of Default, if so directed by the Security Trustee upon giving

reasonable notice, the Authority shall, subject to clause 2.4 (Consent to Security), pay any sum which it is obliged to pay to the Contractor under the Project Documents to a bank account specified by the Security Trustee.

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

3.1 The Authority shall not terminate or give notice terminating the Project Agreement pursuant to clause 29.3 (Termination on Contractor Default) of the same without giving to the Agent at least the Required Period of prior written notice stating:-

3.1.1 the proposed Termination Date; and

3.1.2 the grounds for termination in reasonable detail.

3.2 Not later than the date falling twenty (20) Working Days after the date of a Termination Notice and (if earlier) the date falling twenty (20) Working Days after the date on which the Agent informs the Authority that an Event of Default has occurred, the Authority shall give the Agent a notice containing details of any amount owed by the Contractor to the Authority, and any other existing liabilities or unperformed obligations of which the Authority is aware (having made reasonable enquiry):-

3.2.1 at the time of the Termination Notice or the notification of an Event of Default; and/or

3.2.2 (if relevant) which will fall due on or prior to the end of the Required Period, under the Project Documents.

3.3 The Authority shall notify the Security Trustee in writing as soon as reasonably practicable of:-

3.3.1 any change in the amounts of liabilities or obligations referred to in clause 3.2 (Notice of Termination and Existing Liabilities); and

3.3.2 any further amounts, liabilities or obligations falling due and payable to the Authority but unpaid or falling due for performance or discharge by the Contractor and unperformed or not discharged (as the case may be),

in each case, of which the Authority is or becomes aware before the earlier of the Step-In Date and (if relevant) the expiry of the Required Period but after the date of a notice given under clause 3.2 (Notice of Termination and Existing Liabilities) and, if such details are provided within the last ten (10) Working Days of the Required Period, then the Required Period shall be extended by ten (10) Working Days.

### 4. **NO LIQUID MARKET**

4.1 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 On or before the date falling fourteen (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 Parties do not agree whether or not a Liquid Market exists, then any Party may refer the dispute to be determined in accordance with clause 20 (Dispute Resolution).

- 4.3 If the Parties agree or it is determined in accordance with clause 20 (Dispute Resolution) that no Liquid Market exists, the Project Agreement shall automatically terminate and the provisions of clause 37.3 (No Retendering Procedure) of the Project Agreement shall apply.
- 4.4 If any dispute relating to this clause 4 (No Liquid Market) is determined under clause 20 (Dispute Resolution), the Required Period shall be extended by the period of time spent determining such dispute pursuant to such clause.

## 5. **REPRESENTATIVE**

- 5.1 Without prejudice to the Security Trustee's rights under the Security Documents, at any time:-
- 5.1.1 during which an Event of Default is subsisting (whether or not a Termination Notice has been served); or
- 5.1.2 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 Project Documents.
- 5.2 The Agent shall give the Authority five (5) Working Days prior written notice of any action to be taken by it referred to in this clause 5 (Representative).

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

- 6.1 Without prejudice to clause 3 (Notice of Termination and Existing Liabilities), but subject to clause 6.2 (Step-In Period), the Authority shall not terminate the Project Agreement during the Step-In Period on grounds:-
- 6.1.1 that the Agent has taken any action referred to in clause 5 (Representative) or the Security Trustee has enforced any Security Document(s); or
- 6.1.2 arising on or 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); or
- 6.1.3 arising solely in relation to the Contractor, unless, in the case of clause 6.1.2 above:-
- (a) the grounds arose prior to the final Service Availability Date and construction is not completed on or before the date falling twelve (12) months after the date on which the Authority would have been entitled to terminate the Project Agreement for non completion; or
- (b) the grounds arose after the final Services Availability 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 Project Agreement that:-
- (i) arose prior to the Step-In Date; and

- (ii) is continuing (and capable of remedy); and
- (iii) would have entitled the Authority to terminate the Project Agreement.

6.2 The Authority shall be entitled to terminate the Project Agreement by written notice to the Contractor and the Appointed Representative:-

- 6.2.1 if permitted by clause 6.1 (Step-In Period);
- 6.2.2 if any amount referred to in clause 3.2.1 above has not been paid to the Authority on or before the Step-In Date;
- 6.2.3 if any amount referred to in clause 3.2.2 has not been paid on or before the last day of the Required Period;
- 6.2.4 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, subsequently become payable and are not discharged on or before the date falling twenty (20) Working Days after the date on which the liability for these amounts is notified to the Agent or, if later, the end of the Required Period; or
- 6.2.5 on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement provided that, subject to clause 7.3 (Step-Out), for the purposes only of termination under the Project Agreement (and without prejudice to the rights of the Authority to make Deductions pursuant to Schedule 5 (Payment Mechanism) of the Project Agreement) any Deductions, Warning Notices and Final Warning Notices 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 The Authority shall deal with the Appointed Representative and not the Contractor during the Step-In Period.

6.4 Any payment to the Authority by the Appointed Representative of any sums due under the Leases or performance by the Appointed Representative of any other of the Contractor's obligations under the Leases shall comprise good discharge of the Contractor's payment obligations and other obligations under the relevant Leases.

## 7. **STEP-OUT**

7.1 The Appointed Representative will on the earlier of:-

- 7.1.1 the date specified in a written notice from the Agent or the Appointed Representative to the Authority (which date shall be at least twenty (20) Working Days after such notice is received by the Authority); and
- 7.1.2 on the expiry of the Step-In Period

(such date being the "Step-Out Date") be released from all of its obligations and liabilities to the Authority under the Project Documents 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 Documents, notwithstanding the occurrence of the Step-Out Date.

7.3 If following the Step-Out Date the Authority is satisfied (acting reasonably) that the circumstances giving rise to the Agent electing to exercise its rights under clause 5 (Representative) have been remedied in full then for the purposes of termination of the Project Agreement only, and without prejudice to the rights of the Authority to make Deductions pursuant to the Payment Mechanism, any Deductions, Warning Notices and Final Warning Notices that arose prior to the Step-In Date shall be immediately cancelled provided that where, during the Step-In Period, the Contractor has substituted or replaced the defaulting Operating Contractor or defaulting Building Contractor, or a defaulting sub-contractor to the Operating Contractor or the Building Contractor, and has elected to exercise its rights under clause 57.6 (Replacement of Subcontractors) of the Project Agreement, the provisions of clause 57 (Assignment and Subcontracting) of the Project Agreement will apply from the date of substitution or replacement of that Operating Contractor or Building Contractor or sub-contractor to that Operating Contractor or Building Contractor.

## 8. **NOVATION**

8.1 Subject to clause 8.2 (Novation) at any time:-

8.1.1 during which an Event of Default is subsisting; or

8.1.2 during the Step-In Period,

the Agent may, on at least twenty (20) Working Days prior written notice to the Authority and any Appointed Representative, procure;

8.1.3 the transfer of the Contractor's rights and liabilities under the Project Documents (with the exception of the Leases) to a Suitable Substitute Contractor; and

8.1.4 at the same time as the transfer referred to in clause 8.1.3 above, the Suitable Substitute contractor shall take an assignment of the Leases in place of the Contractor and shall assume any rights and obligations that accrue on or after the date of assignment.

8.2 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 Project Documents (with the exception of the Leases) and assign the Leases is a Suitable Substitute Contractor, on or before the date falling twenty (20) Working 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 The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee (in respect of the Project Documents other than the Leases) and assignee (in respect of the Leases) is a Suitable Substitute Contractor.

8.4 On any transfer (in respect of the Project Documents other than the Leases) and assignment (in respect of the Leases) referred to in clause 8.1 (Novation) becoming effective:-

8.4.1 the Contractor and the Appointed Representative shall be released from any obligations arising under or in connection with this Agreement and the Project Documents (with the exception of the Leases) from that date and the new Contractor shall become liable for obligations arising on or after that date;

- 8.4.2 the Contractor and the Appointed Representative shall be released from any obligations arising under or in connection with the Leases from that date and the new Contractor shall become liable for obligations arising on or after that date;
- 8.4.3 any Deductions, Warning Notices and Final Warning Notices incurred under the Project Agreement shall, for the purposes of termination of the Project Agreement only, and without prejudice to the rights of the Authority to make Deductions pursuant to the Payment Mechanism, be cancelled;
- 8.4.4 any then subsisting ground for termination of the Project Agreement by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked; and
- 8.4.5 the Authority shall enter into a direct agreement with the agent and the security trustee of the finance parties providing senior debt financing to the new contractor on substantially the same terms as this Agreement.

## 9. **INSURANCE PROCEEDS**

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Financing Agreements, the Agent shall only permit amounts to be released from the Joint Insurance Account in accordance with the requirements of clause 52 (Reinstatement and Change of Requirement after Insured Event) of the Project Agreement and the Agent agrees for itself and on behalf of the Secured Parties that it shall not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Joint Insurance Account in accordance with clause 52 (Reinstatement and Change of Requirement after Insured Event) of the Project Agreement.

## 10. **AUTHORITY RIGHTS**

10.1 Notwithstanding any provision in the Collateral Warranties and the SRF Offtake Contract Direct Agreement to the contrary (but subject to clauses 37.2.3(a) and 37.2.3(b) of the Project Agreement), and without prejudice to Clause 10.13, the Authority agrees that it will not exercise or seek to exercise any of its step-in rights or other rights under or in respect of any Collateral Warranty or the SRF Offtake Contract Direct Agreement prior to termination of the Project Agreement until the earlier of:-

10.1.1 the Senior Debt Discharge Date; and

10.1.2 the date on which the Agent has given its written consent to such exercise following a request from the Authority or otherwise.

10.2 Subject to clause 10.3 (Authority Rights), the Authority shall not, prior to the Senior Debt Discharge Date:-

10.2.1 do anything pursuant to the Collateral Warranties, the SRF Offtake Contract Direct Agreement or the Works/Services Contracts following the Termination Date (including any act which gives rise to any cross claim, counterclaim, set off, variation or waiver) to prejudice the Accrued Rights relating to the Works/Services Contracts;

10.2.2 claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amounts (including any costs, claims, damages, losses and liabilities) to which

the Accrued Rights relate under, pursuant to or in connection with the Collateral Warranties, the SRF Offtake Contract Direct Agreement and/or the Works/Services Contracts;

- 10.2.3 take any action to wind-up, dissolve, appoint an administrator, trustee, receiver (of any type), compulsory manager or similar officer, seek an administration order (under paragraph 12 of Schedule B1 to the Insolvency Act 1986 (as amended)), or sanction a voluntary arrangement or scheme of arrangement (or similar) in relation to the Contractor or take any other similar or analogous step relating to the insolvency of the Contractor;
- 10.2.4 take any action to wind-up, dissolve, appoint an administrator, trustee, receiver (of any type), compulsory manager or similar officer, seek an interim order appointee (under Schedule B1 of the Insolvency Act 1986 (as amended)), or sanction a voluntary arrangement or scheme of arrangement (or similar) in relation to any Relevant Sub-Contractor or any of their respective guarantors or take any other similar or analogous step relating to the insolvency of any such person in each case on grounds (whether in whole or in part) relating to the Project;
- 10.2.5 save with the prior written consent of the Agent, compete with the rights of the Secured Parties on grounds (whether in whole or in part) relating to the Project (by virtue of a claim under any of the Collateral Warranties, the SRF Offtake Contract Direct Agreement, the Project Agreement or any other Project Document or otherwise) on any formal insolvency of the Contractor, any Relevant Sub-Contractor or any of their respective guarantors, nor claim to be subrogated to any rights of any of the Secured Parties.

10.3 The Parties agree that:-

- 10.3.1 the request by the Authority that a Relevant Sub-Contractor accept the instructions of the Authority to the exclusion of the Contractor pursuant to and in accordance with the relevant Collateral Warranty and/or the SRF Offtake Contract Direct Agreement; and
- 10.3.2 the exercise by the Authority of its rights pursuant to and in accordance with:-
  - (a) clauses 10.5.1 and 10.5.2 to make deductions, retention or set-off against the Operator Monthly Unitary Charge under and in accordance with the Operating Agreement;
  - (b) clause 10.5.3 to terminate and claim termination compensation under and in accordance with the Operating Agreement;
  - (c) clauses 10.6.1, 10.6.2 and 10.6.4 to make deductions or withholdings against an Interim Payment under and in accordance with the Building Contract;
  - (d) clause 10.6.3 to terminate and claim compensation under and in accordance with the Building Contract;
  - (e) clauses 10.7.1 and 10.7.2 to make deductions, or withholdings against the monthly payment and/or final certificate under and in accordance with the Hanson Sub-Contract;

- (f) clause 10.7.3 to terminate and claim termination compensation under and in accordance with the Hanson Sub-Contract;
- (g) clause 10.9.1, 10.9.2 and 10.9.4 to make deductions or withholdings against an Ecodeco Hespín Wood Interim Payment under and in accordance with the Ecodeco Hespín Wood Sub-Contract;
- (h) clause 10.9.3 to terminate and claim termination compensation under and in accordance with the Ecodeco Hespín Wood Sub-Contract,
- (i) clause 10.10.1, 10.10.2 and 10.10.4 to make deductions or withholdings against an Ecodeco Barrow Interim Payment under and in accordance with the Ecodeco Barrow Sub-Contract;
- (j) clause 10.10.3 to terminate and claim compensation under and in accordance with the Ecodeco Barrow Sub-Contract;
- (k) clause 10.11.1 and 10.11.2 to make deductions or withholdings against the Invoiced Amounts under and in accordance with the SRF Offtake Contract;
- (l) clause 10.11.3 to terminate and claim compensation under and in accordance with the SRF Offtake Contract;

shall not prejudice the Accrued Rights.

10.4 The Authority agrees and undertakes that if it claims, recovers, retains or receives any amount in contravention of the provisions of clauses 10.2, 10.5, 10.6, 10.7, 10.9, 10.10 and/or 10.11 it will promptly turn the same over to the Agent and pending such payment, hold the same on trust for the Agent and the Secured Parties.

10.5 In addition to its rights under clause 10.1 (Authority Rights), and subject to clauses 10.2 (Authority Rights) and 10.3 (Authority Rights) where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority Operating Collateral Warranty, provided that:-

10.5.1 the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority Operating Collateral Warranty and/or the Operating Agreement other than the making of deductions, retention, or set-off against (and only up to the amount of) each Operator Monthly Unitary Charge under and in accordance with clause 26 and Schedule 5 (SWM Payment Mechanism) of the Operating Agreement in respect of services provided following the Termination Date;

10.5.2 if and to the extent that realisation of the Accrued Rights would count against the Operating Contract Annual Cap in the Relevant Year, the Authority shall only be entitled to make deductions, retention or set-off in the Relevant Year pursuant to clause 10.5.1 to the extent such deductions, retention or set-off do not exceed the Authority Operating Liability Cap;

10.5.3 if and to the extent that realisation of the Accrued Rights would count against the Operating Contractor Termination Cap, the Authority shall only be entitled to exercise its rights to terminate the Operating Agreement pursuant to clause 29.3 (Termination on Operating Contractor Default) thereof and to claim termination

compensation pursuant to clause 35 (Compensation on Termination) up to a maximum limit of the aggregate of the Operator Monthly Unitary Charge in respect of services provided following the Termination Date, less deductions, retentions or set-off referred to in clause 10.5.1 to the extent that such compensation does not exceed the Authority Operating Termination Cap;

- 10.5.4 if the Authority and the Agent do not agree the Operating Accrued Rights Value:-
- (a) then either Party may refer the dispute to be determined in accordance with clause 20 (Dispute Resolution); and
  - (b) pending agreement or determination of the Operating Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority Operating Collateral Warranty subject always to clause 10.4; and
- 10.5.5 the Authority shall not be entitled to exercise its rights under the Authority Operating Collateral Warranty unless permitted by clause 10.16 (Authority Rights) where the event giving rise to termination of the Project Agreement is an event of Operator Default.
- 10.6 In addition to its rights under clause 10.1 (Authority Rights), and subject to clauses 10.2 (Authority Rights) and 10.3 (Authority Rights), where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority Construction Collateral Warranty, provided that:-
- 10.6.1 the Authority may not claim, recover, retain or receive (or seek to claim recover, retain or receive) an amount under, pursuant to or in connection with the Authority Construction Collateral Warranty and/or the Building Contract other than the making of deductions or withholdings against (and only up to the amount of) each Certificate of Payment and/or Final Account and Final Statement under and in accordance with clauses 26 and 27 of the Building Contract in respect of works carried out following the Termination Date;
  - 10.6.2 if and to the extent that realisation of the Accrued Rights would count against the Building Contractor Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to clause 10.6.1, to the extent that such deductions or withholdings, when aggregated with any termination compensation claimed pursuant to clause 10.6.3, do not exceed the Authority Construction Liability Cap;
  - 10.6.3 if and to the extent that realisation of the Accrued Rights would count against the Building Contractor Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the Building Contract pursuant to clause 29.3 thereof and to claim termination compensation pursuant to clause 35 (Compensation on Termination), up to a maximum limit of the aggregate of the Interim Payments in respect of works carried out following the Termination Date, less deductions, retentions or set-off referred to in clause 10.6.1 to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to clause 10.6.1, does not exceed the Authority Construction Liability Cap;

- 10.6.4 if and to the extent that realisation of the Accrued Rights would count against the Building Contractor's Liquidated Damages Cap, the Authority shall only be entitled to make deductions or withholdings pursuant to clause 10.6.1 which relate to the Building Contractor's Liquidated Damages Cap to the extent that such deductions or withholdings do not exceed the Authority Construction Liquidated Damages Cap;
- 10.6.5 if the Authority and the Agent do not agree the Construction Accrued Rights Value:-
- (a) then either the Authority or the Agent may refer the dispute to be determined by clause 20 (Dispute Resolution); and
  - (b) pending agreement or determination of the Construction Accrued Rights Value the Authority shall be entitled to exercise its rights under the Authority Construction Collateral Warranty subject always to clause 10.4; and
- 10.6.6 unless permitted by clause 10.16 the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority Construction Collateral Warranty where the event giving rise to termination of the Project Agreement is an event of Building Contractor Default.
- 10.7 In addition to its rights under clause 10.1, and subject to clauses 10.2 and 10.3, where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority Hanson Sub-Contractor Collateral Warranty, provided that:-
- 10.7.1 the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority Hanson Sub-Contractor Collateral Warranty and or Hanson Sub-Contract other than the making of deductions or withholdings against (and only to the amount of) each monthly payment and/or final certificate under and in accordance with clause 58.11 of the Hanson Sub-Contract in respect of Works carried out following the Termination Date;
- 10.7.2 if and to the extent that realisation of the Accrued Rights would count against the Hanson Sub-Contractor's Liquidated Damages Cap, the Authority shall only be entitled to make deductions or withholdings pursuant to clause 10.7.1 which relate to the Hanson Sub-Contractor's Liquidated Damages Cap to the extent that such deductions or withholdings do not exceed the Authority Hanson Sub-Contractor's Liquidated Damages Cap;
- 10.7.3 unless permitted by clause 10.16, the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority Hanson Sub-Contractor Collateral Warranty where the event giving rise to termination of the Project Agreement is an event of Hanson Sub-Contractor Default.
- 10.8 Not used.
- 10.9 In addition to its rights under clause 10.1, and subject to clauses 10.2 and 10.3, where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority Ecodeco Collateral Warranty provided that:-

- 10.9.1 the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority Ecodeco Collateral Warranty and or Ecodeco Hespín Wood Sub-Contract other than the making of deductions or withholdings against (and only to the amount of) each monthly payment and/or Final Certificate under and in accordance with clause 30.3 and 30.11 of the Ecodeco Hespín Wood Sub-Contract in respect of works carried out following the Termination Date;
- 10.9.2 if and to the extent that realisation of the Accrued Rights would count against the Ecodeco Hespín Wood Sub-Contractor's Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to clause 10.9.1, to the extent that such deductions or withholdings, when aggregated with any termination compensation claims pursuant to clause 10.9.3 do not exceed the Authority Ecodeco Hespín Wood Sub-Contractor Liability Cap;
- 10.9.3 if and to the extent at realisation of the Accrued Rights would count against the Ecodeco Hespín Wood Sub-Contractor's Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the Ecodeco Hespín Wood Sub-Contract (pursuant to clause 40 thereof) and to claim termination compensation (pursuant to clause 40 thereof), up to a maximum limit of the aggregate of Ecodeco Hespín Wood Interim Payments in respect of works carried out following the Termination Date, less deductions or withholdings referred to in clause 10.9.1 to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to clause 10.9.1, does not exceed the Authority Ecodeco Hespín Wood Sub-Contractor Liability Cap;
- 10.9.4 if and to the extent that realisation of the Accrued Rights would count against the Ecodeco Hespín Wood Sub-Contractor's Liquidated Damages Cap, the Authority shall only be entitled to make deductions or withholdings pursuant to clause 10.7.1 which relate to the Ecodeco Hespín Wood Sub-Contractor's Liquidated Damages Cap to the extent that such deductions or withholdings do not exceed the Authority Ecodeco Hespín Wood Liquidated Damages Cap;
- 10.9.5 if the Authority and the Agent do not agree the Ecodeco Hespín Wood Sub-Contractor Accrued Rights Value:-
- (a) either of the Authority or the Agent may refer the dispute for resolution in accordance with clause 20 (Dispute Resolution); and
  - (b) pending agreement or determination of the Ecodeco Hespín Wood Sub-Contractor Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority Ecodeco Collateral Warranty subject always to clause 10.4; and
- 10.9.6 unless permitted by clause 10.16, the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority Ecodeco Collateral Warranty where the event giving rise to termination of the Project Agreement is an event of Ecodeco Hespín Wood Sub-Contractor Default.
- 10.10 In addition to its rights under clause 10.1, and subject to clauses 10.2 and 10.3, where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority Ecodeco Collateral Warranty provided that:-

- 10.10.1 the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority Ecodeco Collateral Warranty and or Ecodeco Barrow Sub-Contract other than the making of deductions or withholdings against (and only to the amount of) each monthly payment and/or Final Certificate under and in accordance with clause 30.3 and 30.11 of the Ecodeco Barrow Sub-Contract in respect of Works carried out following the Termination Date;
- 10.10.2 if and to the extent that realisation of the Accrued Rights would count against the Ecodeco Barrow Sub-Contractor's Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to clause 10.10.1, to the extent that such deductions or withholdings, when aggregated with any termination compensation claims pursuant to clause 10.10.3 do not exceed the Authority Ecodeco Barrow Sub-Contractor's Liability Cap;
- 10.10.3 if and to the extent at realisation of the Accrued Rights would count against the Ecodeco Barrow Sub-Contractor's Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the Ecodeco Barrow Sub-Contract (pursuant to clause 40 thereof) and to claim termination compensation (pursuant to clause 40 thereof), up to a maximum limit of the aggregate of Ecodeco Barrow Interim Payments in respect of works carried out following the Termination Date, less deductions or withholdings referred to in clause 10.10.1 to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to clause 10.10.1, does not exceed the Authority Ecodeco Barrow Sub-Contractor's Liability Cap;
- 10.10.4 if and to the extent that realisation of the Accrued Rights would count against the Ecodeco Barrow Sub-Contractor's Liquidated Damages Cap, the Authority shall only be entitled to make deductions or withholdings pursuant to clause 10.10.1 which relate to the Ecodeco Barrow Sub-Contractor's Liquidated Damages Cap to the extent that such deductions or withholdings do not exceed the Authority Ecodeco Barrow Sub-Contractor's Liquidated Damages Cap;
- 10.10.5 if the Authority and the Agent do not agree the Ecodeco Barrow Sub-Contractor Accrued Rights Value:-
- (a) either of the Authority or the Agent may refer the dispute for resolution in accordance with clause 20 (Dispute Resolution); and
  - (b) pending agreement or determination of the Ecodeco Barrow Sub-Contractor Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority Ecodeco Collateral Warranty subject always to clause 10.4; and
- 10.10.6 unless permitted by clause 10.16, the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority Ecodeco Collateral Warranty where the event giving rise to termination of the Project Agreement is an event of Ecodeco Barrow Sub-Contractor Default.
- 10.11 In addition to its rights under clause 10.1 (Authority Rights), and subject to clauses 10.2 (Authority Rights) and 10.3 (Authority Rights) (but without prejudice to clauses 37.2.3(a) and 37.2.3(b) of the Project Agreement) where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of

its step-in rights or other rights under or in respect of the SRF Offtake Contract Direct Agreement, provided that:-

- 10.11.1 the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the SRF Offtake Contract Direct Agreement and/or the SRF Offtake Contract, other than the making of deductions, retention, or set-off against (and only up to the amount of) each Invoiced Amount under and in accordance with clause 9 of the SRF Offtake Contract in respect of services provided following the Termination Date;
  - 10.11.2 if and to the extent that realisation of the Accrued Rights would count against the Offtaker Annual Liability Cap in the Relevant Year, the Authority shall only be entitled to make deductions, retention or set-off in the Relevant Year pursuant to clause 10.11.1 to the extent such deductions, retention or set-off do not exceed the Offtaker Annual Liability Cap;
  - 10.11.3 if and to the extent that realisation of the Accrued Rights would count against the Offtaker Contract Termination Cap, the Authority shall only be entitled to exercise its rights to terminate the SRF Offtake Contract pursuant to clause 13.1 (Termination) thereof and to claim termination compensation pursuant to clause 15.1.1 (Indemnities and Caps on Liability) up to a maximum limit of the aggregate of the Invoiced Amounts in respect of services carried out following the Termination Date, less deductions, retentions or set-off referred to in clause 10.11.1 to the extent that such compensation does not exceed the Offtaker Contract Termination Cap;
  - 10.11.4 if the Authority and the Agent do not agree the Offtake Accrued Rights Value:-
    - (a) then either Party may refer the dispute to be determined in accordance with clause 20 (Dispute Resolution); and
    - (b) pending agreement or determination of the Offtake Accrued Rights Value, the Authority shall be entitled to exercise its rights under the SRF Offtake Contract Direct Agreement subject always to clause 10.4; and
  - 10.11.5 the Authority shall not be entitled to exercise its rights under the SRF Offtake Contract Direct Agreement unless permitted by clause 10.16 (Authority Rights) where the event giving rise to termination of the Project Agreement is an event of Offtaker Event of Default.
- 10.12 Notwithstanding the terms of the Collateral Warranties, the SRF Offtake Contract Direct Agreement or any other provisions of this clause 10 (Authority Rights), each of the Relevant Sub-Contractors, together with any guarantors thereof, shall remain responsible, and be liable, to the Contractor and the Secured Parties in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Works/Services Contracts, or the Security Documents and Direct Agreements relating thereto, in respect of the period prior to and including the Termination Date and the Contractor and the Secured Parties (and the Agent and/or the Security Trustee acting on behalf of the Contractor and/or the Secured Parties) shall retain the benefit of all their respective rights to all such costs, claims, damages, losses and liabilities (the "Accrued Rights").

- 10.13 In addition to its other rights under this clause 10 (Authority Rights), where, following the service of a Termination Notice but before expiry of the Required Period, a Relevant Sub-Contractor has served a notice of termination, discontinuance or suspension on its contracting counterparty (whether the Contractor or otherwise) in accordance with the terms of the relevant Works/Services Contract, the Authority may pay directly, or undertake to make a payment directly to, the Relevant Sub-Contractor, amounts properly due, payable and undisputed (whether as a result of counterclaim, set-off or otherwise) under or pursuant to the relevant Works/Services Contract and may set off such sums after they have been paid against any amounts payable by the Authority to the Contractor under the Project Agreement, so as to satisfy them pro tanto, provided that the Authority shall not be able to exercise its rights pursuant to this clause 10.13 (Authority Rights) in circumstances where the Secured Parties:-
- 10.13.1 have stepped-in to, or otherwise, directly or indirectly, taken control over, the relevant Works/Services Contract and not stepped out of it or otherwise relinquished control; or
  - 10.13.2 are seeking to preserve continuity of the service or build obligation (as relevant) under the relevant Works/Services Contract or otherwise with reasonable diligence.
- 10.14 To the extent that the Authority makes a payment under clause 10.13 (Authority Rights) above, the Authority shall not be entitled to make double recovery by making a Deduction from the Monthly Unitary Charge under the Project Agreement in respect of performance failure by the Relevant Sub-Contractor without making an equivalent deduction against the payment made direct by the Authority to the Relevant Sub-Contractor.
- 10.15 On early termination of the Project Agreement for any reason the Authority shall be entitled to set-off any payments made to Relevant Sub-Contractors under clause 10.13 (Authority Rights) above (to the extent not previously set-off in accordance with that clause) against any payments made under the Project Agreement (subject to clause 11.7 of this Agreement clause 41.2 (Set-Off on Termination) of the Project Agreement and clause 11 (Miscellaneous) below).
- 10.16 Without prejudice to clauses 37.2.3(a) and 37.2.3(b) of the Project Agreement, the Authority may exercise its rights under the relevant Collateral Warranty and/or the SRF Offtake Contract Direct Agreement without restriction where:-
- 10.16.1 the Secured Parties have confirmed pursuant to clause 10.17 that they do not have any Accrued Rights in respect of the Relevant Sub-Contractor; or
  - 10.16.2 all claims which may arise from any Accrued Rights in respect of the Relevant Sub-Contractor have been settled or written-off by the Finance Parties or become exhausted; or
  - 10.16.3 the Agent has failed to comply with clause 10.17 (Authority Rights) below.
- 10.17 The Agent shall notify the Authority as soon as claims arising from the Accrued Rights are settled or written off by the Secured Parties, or become exhausted
- 10.18 On and after the earlier of:-
- 10.18.1 the Senior Debt Discharge Date; and

10.18.2 the date on which the Agent has given its written consent,

the Authority shall be entitled to exercise its rights under the Collateral Warranties in connection with the Building Contract, the Operating Agreement or other Works/Services Contracts in accordance with the Collateral Warranties and/or exercise its rights under the SRF Offtake Contract Direct Agreement without restriction.

10.19 Following termination of the Project Agreement, the Agent shall, within twenty (20) Working Days of receipt of a written request from the Authority, provide to the Authority written details of all Accrued Rights of which it is aware, having made enquiry of the Contractor and the Secured Parties:-

10.19.1 that the Contractor may claim against the Relevant Sub-Contractor; and

10.19.2 that any Secured Party may claim against the Relevant Sub-Contractor,

together with an indicative non-binding assessment of the Operating Accrued Rights Value, the Operating Accrued Rights Termination Value, the Construction Accrued Rights Value, the Construction Accrued Rights Liquidated Damages Value, the Hanson Sub-Contractor Accrued Rights Value, the Hanson Sub-Contractor's Liquidated Damages Value, the Ecodeco Barrow Sub-Contractor Accrued Rights Value, the Ecodeco Barrow Accrued Rights Liquidated Damages Value, the Ecodeco Hespian Wood Sub-Contractor Accrued Rights Value, the Ecodeco Hespian Wood Accrued Rights Liquidated Damages Value, the Offtake Accrued Rights Termination Value and the Offtake Accrued Rights Value.

10.20 Prior to the Senior Debt Discharge Date but following termination of the Project Agreement, where the Security Trustee has enforced the security created by the Security Documents and a receiver appointed by the Security Trustee or on behalf of the Secured Parties has made a prescribed part of the Contractor's net property available for the satisfaction of unsecured debts (under section 176A of the Insolvency Act 1986) the Authority may, claim as an unsecured creditor against the Contractor for a share of such prescribed part.

10.21 Notwithstanding the terms of the Project Agreement and the Security Documents, the Agent agrees that the Authority may exercise its rights pursuant to clauses 11.2 or 11.3 to have transferred any Unrestricted Assets to the Authority or its nominee following the Expiry Date or Termination Date (as the case may be) and neither the Agent nor the Security Trustee shall exercise, or seek to exercise, any enforcement rights and shall, on or before the date any Unrestricted Assets are transferred to the Authority or its nominee, as the case may be, release its security over them.

10.22 Notwithstanding the terms of the Project Agreement, and subject to clause 10.23 (Authority Rights), the Authority agrees that it will not exercise or seek to exercise any of its rights to require a transfer of any revenues or cash balances or rights accrued as at the Termination Date under or pursuant to or in connection with any Relevant Required Insurances, Works/Services Contract or any Project Document comprised in the Assets to the Authority or its nominee on or following the Termination Date until the Senior Debt Discharge Date.

10.23 The Authority may, at its option, and subject to agreement of the value of any such revenues, cash balances, or claims by the Agent in its absolute discretion, and payment of such sum to the Agent, require a transfer of any revenues or cash balances or rights accrued as at the Termination Date under, pursuant to or in connection with any

Works/Services Contract comprised in the Assets to the Authority or its nominee on or following the Termination Date.

## 11. **MISCELLANEOUS**

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

11.2 Subject always to the continuing obligations of the Parties under clause 1 (Interpretation), clause 2.5 (Consent to Security), clause 10 (Authority Rights), clause 11 (Miscellaneous) and clauses 12 (Assignment), to 20 (Dispute Resolution), inclusive, and such other provisions as are necessary for the operation or interpretation of such clauses, this Agreement shall remain in effect until:-

11.2.1 the date on which all amounts which may be or become owing by the Authority to the Contractor under Part 7 (Compensation on Termination) of the Project Agreement have been irrevocably paid in full; or

11.2.2 in the event that the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Senior Debt element of any Termination Sum in instalments in accordance with clause 42.2 (Instalments) of the Project Agreement, the date on which such election is made,

whereupon the Security Trustee agrees on behalf of itself and the Secured Parties to release any security granted in their favour over the Unrestricted Assets.

### 11.3

11.3.1 On the Expiry Date the Facility Agent or Security Trustee (as relevant), acting on behalf of itself and the Secured Parties, shall release any security granted in its favour over any Unrestricted Assets which have not previously been assigned to the Authority;

11.3.2 On the Senior Debt Discharge Date the Facility Agent or Security Trustees (as relevant) acting on behalf of itself and the Secured Parties, shall release any security granted in its favour over any Assets which have not previously been assigned to the Authority and this Agreement shall terminate in full.

11.4 The Agent, in respect of clauses 11.4.1, 11.4.2 and 11.4.3, and the Contractor in respect of clause 11.4.4, shall promptly notify the Authority of:-

11.4.1 any decisions to accelerate the maturity of any amounts owing by the Contractor to the Lenders under the Senior Financing Agreements and/or demand repayment;

11.4.2 the Senior Debt Discharge Date on or before the date falling twenty (20) Working Days after its occurrence;

- 11.4.3 the details and amount of any proposed Additional Permitted Borrowing, including:-
- (a) the circumstances giving rise to it and reasons for it; and
  - (b) the terms on which it will be borrowed; and
- 11.4.4 on the first Working Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Financing Agreements (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 and proper enquiry):-
- (a) the amount of any Distribution made by the Contractor; and
  - (b) the amount of any credit balance on any account of the Contractor.
- 11.5 The Contractor joins in this Agreement to acknowledge and consent to the arrangements set out in this Agreement and to give the direction referred to in clause 2.5 (Consent to Security) and agrees not knowingly to do or omit to do anything that may prevent any Party from enforcing its rights under this Agreement.
- 11.6 For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of this Agreement shall prevail.
- 11.7 If the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Senior Debt element of any Termination Sum in instalments in accordance with clause 42.2 (Instalments) of the Project Agreement, the Authority shall not subsequently set off against or make any deduction from any instalment or interest relating thereto in respect of any claim or liability of which the Authority becomes aware after the Termination Sum has been finally agreed or determined, save to the extent that after such amount has been set off or deducted, the termination payment made (excluding interest payable pursuant to clause 41.2 (Instalments) of the Project Agreement) would be an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be at the time.

## 12. **ASSIGNMENT**

- 12.1 No Party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement, save as provided in clauses 12.2 (Assignment) to 12.4 (Assignment) (inclusive) below.
- 12.2 The Agent may assign or transfer its rights and obligations under this Agreement to a successor agent in accordance with the Senior Financing Agreements without the consent of the Authority.
- 12.3 Any Secured Party may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements.
- 12.4 The Authority shall assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any public body to which the Authority assigns, novates or otherwise transfers its rights and/or obligations under the Project Agreement in accordance with clause 57.1 (Restrictions on the Authority) of the Project Agreement.

12.5 If clause 12.2 (Assignment) applies then the Authority shall enter into a direct agreement with the new facility agent or security trustee (as relevant) on substantially the same terms as this Agreement.

13. **THIRD PARTY RIGHTS**

A person who is not a Party to this Agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

14. **ENTIRE AGREEMENT**

Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject, matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

15. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

16. **WAIVER**

16.1 **Waiver to be Written**

No term or provision of this Agreement shall be considered as waived by any Party unless a waiver is given in writing by that Party.

16.2 **Extent of Waiver**

No waiver under clause 16.1 (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

17. **SEVERABILITY**

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

18. **NOTICES**

18.1 **Form and Service of Notices**

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, or leaving the same at:-

18.1.1 **Authority**

Address:- The Courts  
Carlisle  
Cumbria  
CA3 8NA

Fax:- 01228 607605  
Attention:- *NAME REDACTED*

18.1.2 The Agent

Address:- 99 Queen Victoria Street  
London  
EC4V 4EH  
Fax:- 0207 786 1994  
Attention:- Project Finance Agency Officer

18.1.3 The Security Trustee

Address:- 99 Queen Victoria Street  
London  
EC4V 4EH  
Fax:- 0207 786 1994  
Attention:- Project Finance Agency Officer

18.1.4 Contractor

Address:- 4 Dunedin House  
Auckland Park  
Mount Farm  
Bletchley  
Milton Keynes  
Buckinghamshire  
MK1 1BU  
Fax:- 01768 892 620  
Attention:- Company Secretary

18.2 **Change of Details**

A Party to this Agreement may change its nominated address or facsimile number by prior notice to the other Parties.

18.3 **Notices by Post**

Notices given by post shall be effective upon the earlier of actual receipt and five (5) Working Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:-

18.3.1 within two (2) hours after sending, if sent on a Working Day between the hours of 9am and 4pm; or

18.3.2 by 11 am on the next following Working Day, if sent after 4pm on a Working Day but before 9am on that next following Working Day.

## 19. **LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

- 19.1 The Certification Requirements are intended to be satisfied by the Authority with respect to this Agreement before the end of the period within which the Certification Requirements must be satisfied for this Agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997 (the "Act").
- 19.2 The Agent, the Security Trustee and the Contractor hereby consent to the issue by the Authority of a certificate under Section 3 of the Act in respect of this Agreement.
- 19.3 The Parties acknowledge that the failure by the Authority to issue a certificate in accordance with Clause 19.2 (Local Government (Contracts) Act 1997) shall, pursuant to clause 76.3 (Failure to Issue a Certificate) of the Project Agreement, give rise to a right for the Contractor to terminate the Project Agreement and an entitlement for the Contractor to be paid compensation by the Authority. No additional compensation shall be payable by the Authority pursuant to this Agreement in such circumstances.
- 19.4 The relevant discharge terms within the meaning of Section 6 of the Act are set out in Schedule 20 (Relevant Discharge Terms) of the Project Agreement. Where such terms apply and the Contractor is entitled to compensation pursuant to the Project Agreement, the Parties acknowledge that no additional compensation shall be payable by the Authority pursuant to this Agreement.

## 20. **DISPUTE RESOLUTION**

- 20.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 20.
- 20.2 If a dispute arises in relation to any aspect of this Agreement, the Parties shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.
- 20.3 Without prejudice to clause 20.2, and subject to clause 20.4 either of the Authority or the Agent (or, if relevant, the Security Trustee) may give the other notice of its intention to refer the dispute to an Expert for determination (the "Notice of Expert Determination"). The Notice of Expert Determination shall include a brief statement of the issue to be referred and the redress sought.
- 20.4 If a dispute arises in relation to determination of any Accrued Rights Value in accordance with clause 10.19 (Authority's Rights), either of the Authority or the Agent (or, if relevant, the Security Trustee) may refer the dispute directly to the courts of England and Wales for final resolution. If such a reference is made the Parties shall not (unless they agree otherwise) be required to comply with the dispute resolution procedure set out in the remainder of this clause 20.
- 20.5 The Authority and the Agent (or, if relevant, the Security Trustee) shall attempt to agree the identity of the Expert within five (5) Working Days of the date of issue of the Notice of Expert Determination. In the event that the Authority and the Agent (or, if relevant, the Security Trustee) cannot agree the identity of the Expert within such period, either of them may request the President for the time being of the Chartered Institute of Arbitrators to nominate a suitable individual, and such individual shall be the Expert for the purposes of this clause 20. The Expert shall (unless otherwise agreed) be an

independent individual with knowledge of and experience in Private Finance Initiative education projects. The Party giving the Notice of Expert Determination (the “Referring Party”) shall send a copy of the Notice of Expert Determination to the Expert as soon as he has been appointed.

- 20.6 Within five (5) Working Days of the service of the Notice of Expert Determination, or as soon thereafter as the Expert is appointed, the Referring Party shall serve its statement of case (the “Referral Notice”) on the Expert and the other party (the “Responding Party”). The Referral Notice shall include a copy of this Agreement, details of the circumstances giving rise to the dispute as set out in the Notice of Expert Determination, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.
- 20.7 The Responding Party shall serve its statement of case (the “Response”) on the Expert and the Referring Party within a period of time to be directed by the Expert. The Response shall include any arguments in response to the Referral Notice and any additional evidence on which the Responding Party relies.
- 20.8 The Expert shall have absolute discretion as to how to conduct resolution of the dispute, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. He shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Parties shall comply with any request or direction of the Expert in relation to resolution of the dispute.
- 20.9 The Expert shall provide to the Authority and the Agent (or, if relevant, the Security Trustee) his written decision on the dispute within ten (10) Working Days after the date of receipt of the Referral Notice (or such other period as the parties may agree). The Expert shall state the reasons for his decision. Unless and until revised, cancelled or varied by the courts of England and Wales, the Expert’s decision shall be binding on all Parties who shall forthwith give effect to the decision.
- 20.10 The Expert’s costs shall be borne as the Expert shall specify or, in default, equally by the Authority and the Agent (or, if relevant, the Security Trustee). Each Party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.
- 20.11 All information, data or documentation disclosed or delivered by a Party to the Expert in consequence of or in connection with his appointment as Expert shall be treated as confidential. The Expert shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Expert’s work.
- 20.12 Either of the Authority or the Agent (or, if relevant, the Security Trustee) may within ninety (90) days of receipt of the Expert’s decision give notice to the other of its intention to refer the dispute to the courts of England and Wales for final determination.
- 20.13 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 20 and shall give effect forthwith to every decision of the Expert and the courts delivered under this clause 20.

21. **GOVERNING LAW**

21.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to clause 20 (Dispute Resolution Procedure), the courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof this agreement has been duly executed as a deed on the date first above written.

EXECUTED for and on behalf of )  
SUMITOMO MITSUI BANKING )  
CORPORATION EUROPE LIMITED by )  
an authorised signatory pursuant to a )  
power of attorney dated )

Attorney

Witness

Name

Address

EXECUTED for and on behalf of )  
SUMITOMO MITSUI BANKING )  
CORPORATION EUROPE LIMITED by )  
an authorised signatory pursuant to a )  
power of attorney dated )

Attorney

Witness

Name

Address

THE COMMON SEAL of CUMBRIA )  
COUNTY COUNCIL was affixed in the )  
presence of:- )

Authorised Signatory

Authorised Signatory

EXECUTED AS A DEED by SHANKS )  
CUMBRIA LIMITED acting by )  
a director of )  
SHANKS CUMBRIA LIMITED in the )  
presence of:- )

Witness

Name

Address