

Schedule 31 (Authority Policies)

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

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

Schedule 32 (Benchmarking and Market Testing)

1. GENERAL

1.1 The following definitions shall in addition to the definitions in Schedule 1 (Definitions) be used for the interpretation of this Schedule 32 (Benchmarking and Market Testing):

1.1.1 "Ad Hoc Waste Market Testing Date" has the meaning given in paragraph 5.4;

1.1.2 "Ad Hoc Waste Rate" has the meaning given in paragraph 5.1;

1.1.3 "Benchmarking" means the process described in paragraph 2 of this Schedule 32 (Benchmarking and Market Testing) to compare prices for the HWRC Services and the term "benchmarked" shall be construed accordingly;

1.1.4 "Benchmarking Exercise" has the meaning given in paragraph 2.1;

1.1.5 "HWRC Benchmarking Date" has the meaning given in paragraph 2.3;

1.1.6 "HWRC Benchmarking Final Proposals" has the meaning given in paragraph 2.6;

1.1.7 "HWRC Benchmarking Proposals" has the meaning given in paragraph 2.4.4;

1.1.8 "HWRC Benchmarking Schedule" has the meaning given in paragraph 2.5;

1.1.9 "HWRC Services Review" has the meaning given in paragraph 2.4;

1.1.10 "Landfill Market Testing Date" has the meaning given in paragraph 4.1;

1.1.11 "Landfill Market Testing Proposals" has the meaning given in paragraph 4.2;

1.1.12 "Landfill Services Proposal" has the meaning given in paragraph 4.13;

1.1.13 "Latest Services Element" has the meaning given in paragraph 2.9;

1.1.14 "Market Costs" has the meaning given in paragraph 2.9;

- 1.1.15 "Market Testing" means the process described in paragraph 3 of this Schedule 32 (Benchmarking and Market Testing) to competitively test prices for the Landfill Services and the term "market tested" shall be construed accordingly;
 - 1.1.16 "Market Testing Proposal" means the draft proposal, as agreed by the Parties, or as determined, in either case in accordance with this Schedule 32 (Benchmarking and Market Testing);
 - 1.1.17 "Market Testing Review Date" means the Landfill Market Testing Date or the relevant Ad Hoc Waste Market Testing Date as applicable;
 - 1.1.18 "Market Tested Services" means the Landfill Service and the Management of Ad Hoc Waste;
 - 1.1.19 "Municipal Waste Management Strategy" or "MWMS" has the meaning given in paragraph 2.4.3;
 - 1.1.20 "Successful Tenderer" has the meaning given in paragraph 4.17;
 - 1.1.21 "Tender" means the tender submitted by a Tenderer;
 - 1.1.22 "Tender Documents" has the meaning given in paragraph 3.4.4 and paragraph 5.5 (as the case may be); and
 - 1.1.23 "Tenderer" means those of the prospective tenderers selected to submit Tenders in accordance with paragraph 3.4.3 of this Schedule 32 (Benchmarking and Market Testing).
- 1.2 The HWRC Services shall be subject to Benchmarking throughout the Service Period as set out in this Schedule 32 (Benchmarking and Market Testing).
- 1.3 The following Services shall be subject to Market Testing throughout the Service Period as set out in this Schedule 32 (Benchmarking and Market Testing):
- 1.3.1 Landfill Services; and
 - 1.3.2 Management of Ad Hoc Waste.

2. HWRC SERVICES: BENCHMARKING

- 2.1 The Contractor shall undertake a benchmarking exercise (the "Benchmarking Exercise") at its own cost in relation to the HWRC Services in accordance with the procedure and on the dates identified in this Schedule 32 (Benchmarking and Market Testing).
- 2.2 Each Benchmarking Exercise will be undertaken to ascertain the relative quality and competitiveness of the HWRC Services in question. The Benchmarking Exercise will be undertaken in good faith by the Contractor and so far as reasonably practicable on the basis of an objective and like for like comparison by comparing the standards and prices of the HWRC Services in question and the costs of providing them with the standards and prices of equivalent services and the costs of providing them provided by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the HWRC Services in question.
- 2.3 The first HWRC Benchmarking Date shall be 1st April 2011. Thereafter HWRC Benchmarking Dates shall occur every five (5) Years, unless otherwise agreed by the Parties.
- 2.4 The Contractor's annual Service Delivery Plan for the Contract Year immediately preceding the Contract Year which begins on the HWRC Benchmarking Date shall include a review of the HWRC Services being provided (the "HWRC Services Review"), including without limitation:
- 2.4.1 a comparison of the levels of performance, by reference to KPIs 3, 4, 5, 6, 7, 8 and 9, achieved by the Contractor compared to:
- (a) those achieved nationally;
 - (b) those achieved in all immediately adjacent WDAs;
 - (c) those WDAs assessed by CIPFA to be most comparable to Nottinghamshire;
- 2.4.2 an analysis of the HWRC Services, comparing the cost of delivering each element of the HWRC Services including, without limitation, details of:
- (a) the quantity of Contract Waste handled;
 - (b) the Recycling and Composting performance;
 - (c) the Contract Waste BMW Landfill Diversion performance; and

- (d) the BMW Landfill Diversion performance;
- 2.4.3 a comparison of the HWRC Services with the Authority's Municipal Waste Management Strategy (the "MWMS") extant at the next forthcoming HWRC Benchmarking Date and other applicable Authority Policies; and
- 2.4.4 the Contractor's indicative proposals (the "HWRC Benchmarking Proposals") for improving the HWRC Services to achieve higher levels of performance, improved cost effectiveness and compatibility with the Authority's MWMS, including indicative costs (compared to the prevailing HWRC Services) and revised KPIs.
- 2.5 Based on the HWRC Services Review, the Authority shall provide to the Contractor, no less than thirty-nine (39) weeks before the HWRC Benchmarking Date, a schedule (the "HWRC Benchmarking Schedule") setting out the revised scope of HWRC Services which the Authority proposes the Contractor shall provide from the HWRC Benchmarking Date.
- 2.6 No less than twenty-six (26) weeks before the HWRC Benchmarking Date, the Contractor shall provide the Authority with its proposals for implementing the revised scope of HWRC Services set out in the HWRC Benchmarking Schedule, including without limitation:
 - 2.6.1 rates, prices, and charges for the revised scope of HWRC Services to be provided from the HWRC Benchmarking Date and details of the specific elements of the Financial Model which are subject to change as a result of this revised scope of HWRC Services and the amendments required as provided within Schedule 40 (Unitary Charge Adjustment Protocol).
 - 2.6.2 a revised Service Delivery Plan for the HWRC Services to be provided from the HWRC Benchmarking Date. This shall clearly identify the KPIs which would form the basis of assessing the effectiveness and value for money of the revised HWRC Services compared with previous HWRC Services. For the avoidance of doubt, any such proposals shall only be made in relation to KPIs 3, 4, 5, 6, 7, 8 and 9;
 - 2.6.3 justification that the rates, prices and charges made by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the HWRC Services represent good value for money when compared with services which are comparable to the HWRC Services with comparable KPIs being delivered in other comparable WDA areas, together such proposals to be referred to as the "HWRC Benchmarking Final Proposals".

- 2.7 The Authority shall request such additional information as it may require to assess the Contractor's HWRC Benchmarking Final Proposals within four (4) weeks of receipt by the Authority of the HWRC Benchmarking Final Proposals. The Contractor shall provide any such additional information within four (4) weeks of request by the Authority.
- 2.8 No less than thirteen (13) weeks before the HWRC Benchmarking Date, the Authority shall either:
- 2.8.1 by giving written notice to the Contractor, accept the Contractor's HWRC Benchmarking Final Proposals for undertaking HWRC Services from the HWRC Benchmarking Date, in which case such revised HWRC Services shall commence from the HWRC Benchmarking Date;
 - 2.8.2 by giving written notice to the Contractor, accept the Contractor's HWRC Benchmarking Final Proposals in respect of the revised HWRC Services which shall commence from the HWRC Benchmarking Date, but refer the rates, prices and charges for determination in accordance with Clause 116 (Dispute Resolution), in which case the Adjudicator's decision shall be binding; or
 - 2.8.3 by giving written notice to the Contractor, reject the Contractor's HWRC Benchmarking Final Proposals, in which case the prevailing Services, KPIs, rates, prices and charges shall continue beyond the HWRC Benchmarking Date.
- 2.9 Following the acceptance of the HWRC Benchmarking Proposal by the Authority or determination in accordance with paragraphs 2.8.1 or 2.8.2 above, the rates, prices and charges in Schedule 6a (Payment Mechanism) paragraph 2.4 Part C Household Waste Recycling Centre Services in CPR_t shall be amended to reflect the revised rate as a result of the Benchmarking exercise and any changes to the Unitary Charge will be made in accordance with Schedule 40 (Unitary Charge Adjustment Protocol).

3. MARKET TESTING

- 3.1 The Contractor shall manage the Market Testing tendering process in accordance with the Market Testing Proposal agreed or determined in accordance with this Schedule 32 (Benchmarking and Market Testing).
- 3.2 Market Testing shall be carried out at the Contractor's own cost.
- 3.3 For the avoidance of doubt, the Contractor shall bear only its own costs, fees and expenses associated with the Market Testing.
- 3.4 Where this Contract requires Market Testing, as soon as reasonably practicable before each Market Testing Review Date (subject to paragraph 4.2 in respect of Landfill Services and in any event prior to thirty-nine (39) weeks before the Market Testing Review Date) the Parties shall endeavour to agree:
- 3.4.1 any changes required to the relevant Market Tested Service;
 - 3.4.2 the appropriate manner of advertising the Market Tested Services required;
 - 3.4.3 the number and identity of prospective Tenderers that will be invited to prepare and submit Tenders for the Market Tested Services in question. Notwithstanding any provision in this Schedule 32 (Benchmarking and Market Testing), where practicable and subject to availability no less than three (3) Tenderers will be invited to prepare and submit Tenders provided that any prospective Tenderer shall possess an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Tested Services in question (and any dispute as to the selection of a prospective Tenderer shall be determined in accordance with the Dispute Resolution); and
 - 3.4.4 the form and contents of the Tender documents to be delivered to prospective Tenderers (the "Tender Documents") which shall include:
 - (a) a statement of the Tender validity period;
 - (b) details of the Tender evaluation criteria;
 - (c) the terms and conditions under which the Market Tested Services will be contracted;
 - (d) information relating to employees and their conditions of employment;

- (e) the information that Tenderers are required to provide;
- (f) how many Tenders are required for the Market Testing to be valid; and
- (g) the Operational Services Specification.

4. **LANDFILL SERVICES: MARKET TESTING**

- 4.1 The first Landfill Market Testing Date shall be 1st June 2011. Thereafter Landfill Market Testing Dates shall occur every five (5) years, unless otherwise agreed by the Parties.
- 4.2 No less than thirty-nine (39) weeks before the Landfill Market Testing Date, the Contractor shall prepare and submit to the Authority its proposals for Market Testing of Landfill Services (the "Landfill Market Testing Proposals") describing in detail the Contractor's proposed Tenderers and the Tender Documents.
- 4.3 The Landfill Market Testing Proposals shall include, without limitation:
 - 4.3.1 a list of those Landfill operators from which the Contractor proposes to seek bids. Unless otherwise agreed, this shall include all Landfill operators within thirty (30) miles of any Delivery Point and (where practicable) a minimum of three (3) Landfill operators in respect of all parts of the Contract Area;
 - 4.3.2 a proposed specification and sub-contract terms, which shall be in all material respects consistent with the provisions of this Contract, including but not limited to Schedule 2 (Specification) and Schedule 6b (Performance Mechanism); and
 - 4.3.3 a schedule setting out the proposed tonnages it is proposed to Landfill in the period up to the next Landfill Market Testing Date.
- 4.4 The Authority shall either:
 - 4.4.1 comment on the Contractor's Landfill Market Testing Proposals within fourteen (14) days, in which case the Contractor shall take into account the Authority's comments in the Tenders it seeks; or
 - 4.4.2 not offer comment on the Contractor's Landfill Market Testing Proposals within fourteen (14) days in which case the Contractor shall proceed to invite Tenders as proposed.
- 4.5 No less than twenty-six (26) weeks before the Landfill Market Testing Date, the Contractor shall commence conducting the Market Testing

of Landfill Services in accordance with the Landfill Market Testing Proposals.

- 4.6 The Contractor shall be responsible for compiling the list of prospective Tenderers and selecting the Tenderers from the list of prospective Tenderers.
- 4.7 The Contractor shall issue the Tender Documents to prospective Tenderers.
- 4.8 The Authority shall have the right to object to the selection of a Tenderer where the Tenderer has committed a Prohibited Act by notifying the Contractor of such objection in writing and such Tenderer shall not be selected.
- 4.9 The Contractor shall provide to the Authority as soon as reasonably practicable a copy of the Tender Documents and each response to the Tender Documents.
- 4.10 Subject to paragraph 4.11, following the expiry of the Tender period for the return of responses to the Tender Documents (which shall be no later than twenty (20) weeks before the Landfill Market Testing Date) the Contractor shall determine, following consultation with the Authority, which Tender to select, if any, in respect of the Landfill Services.
- 4.11 No less than sixteen (16) weeks before the relevant Market Testing Review Date, the Contractor shall select:
 - 4.11.1 in respect of Tenders for the provision of an individual Market Tested Service, the most economically advantageous Tender received in respect of the provision of that Market Tested Service; and
 - 4.11.2 in respect of Tenders for the provision of more than one (1) Market Tested Services, the most economically advantageous Tender in respect of the provision of those Market Tested Services, provided that in respect of Landfill Services only nothing in this Schedule 32 (Benchmarking and Market Testing) shall oblige the Contractor to accept the lowest priced Tender.
- 4.12 On making this determination, the Contractor shall supply to the Authority a copy of its Tender evaluation, together with sufficient supporting information concerning the Tender evaluation to enable the Authority to analyse and understand the basis for the Contractor's determination.
- 4.13 If the Authority does not agree with the Contractor's determination, the Authority may, within fifteen (15) Business Days of being provided with the Tender evaluation, dispute such determination and, if the

Parties do not resolve such dispute within a further fifteen (15) Business Days, the dispute shall be dealt with in accordance with Clause 116 (Dispute Resolution).

- 4.14 The Contractor shall provide any prospective Tenderer which is unsuccessful in being selected with an explanation of the reasons behind its non-selection, if so requested by the person in question.
- 4.15 No less than eight (8) weeks before the Landfill Market Testing Date, the Contractor shall provide the Authority with its proposals for providing Landfill Services (the "Landfill Services Proposal") up to the next Landfill Market Testing Date.
- 4.16 The Landfill Services Proposal shall include without limitation:
 - 4.16.1 all rates, prices and charges received;
 - 4.16.2 the Contractor to provide details of calculation, including transport costs and Tipping Away Payments, and rates for the Landfill Services to be provided from the HWRC Benchmarking Date;
 - 4.16.3 a revised Service Delivery Plan for the Landfill Services to be provided from the Landfill Market Testing Date; and
 - 4.16.4 justification that the rates, prices and charges represent good value for money for the Authority.
- 4.17 The Authority shall request such additional information as it may require to assess the Contractor's Landfill Services Proposal within three (3) weeks of receipt by the Authority of the Landfill Services Proposal. The Contractor shall provide any such additional information within three (3) weeks of request by the Authority.
- 4.18 No less than three (3) weeks before the Landfill Market Testing Date, the Authority shall either:
 - 4.18.1 by giving written notice to the Contractor, accept the Contractor's Landfill Services Proposal for undertaking Landfill Services from the Landfill Market Testing Date, in which case such revised Landfill Services shall commence from the Landfill Market Testing Date;
 - 4.18.2 by giving written notice to the Contractor, accept the Contractor's Landfill Services Proposal in respect of the Landfill Services which shall commence from the Landfill Market Testing Date, but refer the rates, prices and charges for determination in accordance with Clause 116 (Dispute Resolution), in which case the Adjudicator's decision shall be binding.

- 4.19 Following the acceptance of the Contractor's Landfill Services Proposal by the Authority or determination in accordance with paragraphs 4.18.1 and 4.18.2 above, the rates, prices and charges in Schedule 6a (Payment Mechanism) paragraph 2.3 Part B Landfill Services, in TR, BR and HTR shall be amended to reflect the revised rates as a result of the Market Testing exercise in accordance with Schedule 40 (Unitary Charge Adjustment Protocol).
- 4.20 Where the Tender price of a Sub-Contractor appointed by the Contractor pursuant to paragraph 4.18 (the "Successful Tenderer") is lower than the Latest Services Element, then the cost difference between the Successful Tenderer's Tender price and the Latest Services Element shall be deducted from the Latest Services Element with effect from the relevant Landfill Market Testing Date.
- 4.21 Where the Tender price of the Successful Tenderer is higher than the Latest Services Element, then the cost difference between the Successful Tenderer's Tender price and the Latest Services Element shall be added to the Latest Services Element with effect from the relevant Landfill Market Testing Date.
- 4.22 Any dispute under this paragraph 4 shall be determined in accordance with the Dispute Resolution Procedure.

5. **MANAGEMENT OF AD HOC WASTE: MARKET TESTING**

- 5.1 The Contractor shall maintain a rate (the "Ad Hoc Waste Rate") comprising a market tested unit rate for each of the Ad Hoc Waste types including all transport, treatment and disposal costs.
- 5.2 The Ad Hoc Waste Rate shall be derived from Tenders received from no less than three (3) Tenderers, subject to availability, in respect of each Ad Hoc Waste type.
- 5.3 The Contractor shall, from time to time pursuant to paragraph 5.4, seek Tenders from suitably experienced organisations who are capable of managing the Ad Hoc Waste in accordance with the Waste Hierarchy, Schedule 2 (Specification) and Good Industry Practice.
- 5.4 The Contractor shall re-tender the Management of Ad Hoc Waste on an on-going basis to suit market conditions, unless otherwise agreed between the Parties, and will agree with the Authority the dates on which the re-tendered Ad Hoc Waste Rates will apply (the relevant "Ad Hoc Waste Market Testing Date").
- 5.5 The Contractor shall provide to the Authority a list of proposed Tenderers for each Ad Hoc Waste type, a specification and a schedule of terms (the "Tender Documents").
- 5.6 The Authority shall either:
 - 5.6.1 comment on the Contractor's proposals within fourteen (14) days, in which case the Contractor shall take into account the Authority's comments in the Tenders it seeks; or
 - 5.6.2 not offer comment on the Contractor's proposals within fourteen (14) days in which case the Contractor shall proceed to invite Tenders as proposed.
- 5.7 The Contractor shall issue the Tender Documents to prospective Tenderers.
- 5.8 Following the expiry of the Tender period for the return of responses to the Tender Documents (which shall be no later than twenty (20) weeks before the relevant Ad Hoc Waste Market Testing Date) the Contractor shall determine which Tender to select, if any, in respect of the Management of Ad Hoc Waste.
- 5.9 Notwithstanding the provisions of paragraph 4.11, the Contractor shall be bound to accept the lowest ex-works unit rate tendered in respect of each Ad Hoc Waste type, unless the Contractor can demonstrate to the reasonable satisfaction of the Authority's Representative that accepting such a Tender would put the Contractor in breach of the Contract. In this scenario, the margin payable to the Contractor over

and above the Ad Hoc Waste Rate in accordance with Schedule 6a (Payment Mechanism) shall relate to the lowest tendered price.

- 5.10 The unit rate for the relevant Ad Hoc Waste type will apply from the Ad Hoc Waste Market Testing Date and any adjustments to the Unitary Charge will be made in accordance with the provisions of Schedule 40 (Unitary Charge Adjustment Protocol).

Schedule 33 (Cost Apportionment Table) - Redacted

Schedule 34 (Foreseeable Waste Management Legislation)

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

These items 1 and 2 are included herein without in any way limiting the application of the definition of Ad Hoc Waste from time to time.

Further and for the avoidance of doubt, the Contractor agrees that the Contractor has taken into account in its Contractor's Proposals the following Legislation and Guidance to the extent binding on the Contractor as at the date of this Contract:-

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

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

Guidance on the Clean Neighbourhoods and Environment Act 2005.

Revisions to Code of Practice on Litter and Refuse.

The Waste Management (England and Wales) Regulations 2006.

Schedule 35 (Environmental Criteria)

Redacted

Schedule 36 (Required Insurance)

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

- (1) Nottinghamshire County Council and
- (2) Veolia ES Nottinghamshire Limited.

This Schedule 36 comprises four parts-

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

PART 1

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

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

Insureds:-

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

each for respective rights and interests in the Project

1. Contractors' "All Risks" Insurance (CAR)

1.1 Insured Property

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

1.2 Coverage

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

1.3 Sum Insured

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

1.4 Maximum Deductible

Not to exceed £250,000 each and every claim for defective design, materials and workmanship and testing and commissioning, 20% co-insurance in

respect of inflation on incomplete works, £25,000 for storm, tempest, water, subsistence and collapse and in respect of all other claims, £10,000.

1.5 **Territorial Limits**

United Kingdom including offsite storage and during inland transit.

1.6 **Period of Insurance**

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

1.7 **Cover Features & Extensions**

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

CONTRACT A

18. Advance payments

19. Marine 50/50

1.8 **Principal Exclusions**

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

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

2.1 **Insureds**

1. Contractor

each for their respective rights and interests in the Project.

2.2 **Indemnity**

In respect of:

1. loss of anticipated revenue of Contractor during the Minimum Indemnity Period arising from a delay in completion of the Works as a

result of physical loss or damage covered under the Contractors' All Risks' Insurance effected in accordance with Item 1 of Part 1 of this Schedule and/or as provided by the Principal Extensions, including physical loss or damage which would be indemnifiable but for the application of any deductible;

2. the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of revenue of the Contractor which without such expenditure would have taken place, during the Minimum Indemnity Period.

2.3 **Sum Insured**

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

2.4 **Maximum Excess**

45 days.

2.5 **Minimum Indemnity Period**

12 months.

2.6 **Period of Insurance**

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

2.7 **Cover Features & Extensions**

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

2.8 **Principal Exclusions**

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

1. Delayed response by a public body or state authority
2. Modifications or original design and specification

CONTRACT A

3. Loss or permit or licence
4. Non availability of funds

3. **Construction Third Party Liability Insurance**

3.1 **Insureds**

As per 1 above Contractors' "All Risks" Insurance

3.2 **Interest**

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

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

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

3.3 **Limit of Indemnity**

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

3.4 **Maximum Deductible**

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

3.5 **Territorial Limits**

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

3.6 **Jurisdiction**

Worldwide excluding USA/Canada

3.7 **Period of Insurance**

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

3.8 **Cover Features & Extensions**

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

3.9 **Principal Exclusions**

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

CONTRACT A

6. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
7. Liability arising from seepage and pollution unless caused by a sudden, identifiable, unintended and unexpected occurrence.
8. Losses indemnified under the CAR policy or DSU policy.
9. Nuclear/radioactive risks (UK market agreed wording)
10. War and related perils (UK market agreed wording)
11. Asbestos
12. Toxic mould
13. Deliberate acts of the Insured
14. Financial loss

PART 2

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

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

Insureds:-

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

each for their respective rights and interests in the Project.

1. Property Damage Insurance

1.1 Insured Property

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

1.2 Coverage

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

1.3 Sum Insured

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

1.4 Maximum Deductible

£100,000 Indexed in accordance with Clause 122.13 of the Contract (Increase in Insured Amounts) each and every claim.

1.5 Territorial Limits

United Kingdom plus elsewhere whilst in inland transit.

1.6 Period of Insurance

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

1.7 Cover Features & Extensions

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

1.8 Principal Exclusions

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

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

2. **Business Interruption Insurance**

2.1 **Insureds**

1. Contractor

each for their respective rights and interests in the Project.

2.2 **Indemnity**

In respect of:

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

2.3 **Sum Insured**

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

2.4 **Maximum Excess**

14 days.

2.5 **Minimum Indemnity Period**

12 months.

2.6 Period of Insurance

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

2.7 Cover Features & Extensions

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

2.8 Principal Exclusions

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

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

3. Third Party Public and Products Liability Insurance

3.1 Interest

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

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

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

3.2 **Limit of Indemnity**

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

3.3 **Maximum Deductible**

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

3.4 **Territorial Limits**

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

3.5 **Jurisdiction**

Worldwide excluding USA/Canada

3.6 **Period of Insurance**

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

3.7 **Cover Features & Extensions**

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

3.8 **Principal Exclusions**

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

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

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

5. Disclosure

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

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

6. Non-vitiation

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

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

7. Cancellation

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

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

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

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

8. Changes in cover

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

Section IV: Claims

10. Notice of claims

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

11. Claim Payments / Loss Payee

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

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

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

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

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

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

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

11.4 **Set-off**

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

12. **Waiver of subrogation**

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

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

13. **Primary insurance**

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

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

Section V: Miscellaneous

15. Notice

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

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

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

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

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

16. Governing law & Jurisdiction

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

This endorsement overrides any conflicting provision in this Policy.

PART 4

Broker's Letter of Undertaking

To: The Authority

Dear Sirs

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

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

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

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

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

4.2 Advisory Obligations

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

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

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

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

4.3 Disclosure Obligations

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

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

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

4.4 **Administrative Obligations**

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

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

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

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

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

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

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

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

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

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

4.5 Insurance Cost Reporting Procedures

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

5 Notification Details

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

Nottinghamshire County Council

Chief Executive

County Hall

West Bridgford

Nottingham NG2 7QP

6 General

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

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(other than the Required Insurances) that ought to have been placed or may at some future date be placed by ourselves or by other brokers.

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

Yours faithfully

For and on behalf of [Contractor's broker]

For and on behalf of Contractor

For and on behalf of the Authority

Schedule 37 (Insurance Premium Risk Sharing)

1. DEFINITIONS

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

<p>"Actual Relevant Insurance Cost"</p>	<p>means the aggregate of the insurance premiums reasonably incurred by the Contractor to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions</p>
<p>"Base Cost"</p>	<p>means £294,640 in respect of the Works Period and £199,896 per annum in respect of the Service Period being the amounts as agreed at the Bid Date and set out in the Financial Model which represent the insurance costs (which exclude amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Commencement Date, expressed in real terms as at the Bid Date</p>
<p>"Base Relevant Insurance Cost"</p>	<p>means, the aggregate of the Base Costs which were (at Bid Date) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPI from the Bid Date up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction</p>
<p>"Base Relevant Insurance Reduction"</p>	<p>means the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:</p>

	<p>(a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be £0); or</p> <p>(b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:</p> <ul style="list-style-type: none"> (i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the "Actual Reduction"); (ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and (iii) the effects of RPI since the Bid Date
<p>"Business Interruption Cover"</p>	<p>shall bear the meaning ascribed to it in Schedule 36 (Required Insurance Schedule)</p>
<p>"Contract Period"</p>	<p>means the period from and including the date of this Contract to the Expiry Date, or if earlier, the Termination Date</p>
<p>"Contractor Related Party"</p>	<p>means the Contractor's agents and contractors (including without limitation the Construction Sub-Contractor) and its or their subcontractors of any tier and its or their directors, officers, employees and</p>

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **INSURANCE COST INDEX**

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

Schedule 38 (Financial Model) - Redacted

Schedule 39 (Suspensory Provisions)

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

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

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

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

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

Schedule 40 (Unitary Charge Adjustment Protocol) - Redacted

Schedule 40A (Compensation for lost Third Party Income)

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

1. POST-TERMINATION SERVICE AMOUNT

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

2. COMPENSATION EVENTS

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

3. QUALIFYING CHANGE OF LAW

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

4. AUTHORITY CHANGE

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

5. FORCE MAJEURE EVENT

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

6. AUTHORITY STEP-IN

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