

18. SCHEDULE 18:

PROFESSIONAL TEAM **COLLATERAL WARRANTIES**

- RPS (MBT)
- Watermans (MBT)
- Watermans (Alconbury)
- Watermans (IVC)

DATED _____ **2008**

(1) WATERMAN SUSTAINABLE ENERGY LIMITED

(2) CAMBRIDGESHIRE COUNTY COUNCIL

(3) DONARBON LIMITED

PROJECT MANAGER'S AUTHORITY WARRANTY
relating to
the design and construction of an In-Vessel
Composting Facility and associated works at
Waterbeach Waste Management Park, Ely Road,
Waterbeach, Cambridge

BETWEEN:

- (1) **WATERMAN SUSTAINABLE ENERGY LIMITED** (No 05143979) whose registered office is at Waterman Group plc, Pickfords Wharf, Clink Street, London SE1 9DG (the "Consultant");
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of Cambridgeshire Shire Hall, Cambridge CB3 0AP (the "Beneficiary", which expression includes its permitted successors in title and assigns); and
- (3) **DONARBON LIMITED** (No 958007) whose registered office is at Ely Road, Waterbeach, Cambridge CB25 9PG (the "Client").

BACKGROUND

- (A) The Consultant is in practice as a technical advisor and project manager.
- (B) By a contract dated on or about the date hereof (the "**Project Agreement**") the Beneficiary has appointed Donarbon Waste Management Limited (the "**SPV**") to carry out in relation to the sites therein defined (the "**Sites**") the design and construction of the IVC works (therein defined as the "**Works**" (which expression has the same meaning in this Deed)).
- (C) The SPV has by a contract dated on or about the date hereof (the "**Operations and Maintenance Contract**") has appointed the Client to carry out in relation to the Sites the design and construction of the Works.
- (D) The Client has by a contract (the "**Construction Contract**") appointed Wasteology Systems Limited (the "**Contractor**") to design and build the Works.
- (E) The Consultant has been appointed by the Client under a deed of appointment dated on or about the date hereof (the "**Appointment**") to provide services in relation to the Works.
- (F) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant, receipt of which the Consultant acknowledges:

1 CONSULTANT'S WARRANTY AND LIABILITY

- 1.1 The Consultant warrants to the Beneficiary that it has carried out and will continue to carry out its duties and obligations under and in connection with the Appointment in accordance with the Appointment and that it has exercised and will continue to exercise in the performance of those duties and obligations the reasonable skill care and diligence to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the Appointment in relation to works of similar scope, nature and complexity to the Works.

- 1.2 The Consultant has no liability hereunder which is greater or of longer duration than it would have had if the Beneficiary had been a party to the Appointment as joint employer. The Consultant shall not be entitled to set-off against any liability to the Beneficiary under this Deed any sum of money or other entitlement due to it from the Client howsoever arising under the terms of the Appointment or in equity or at common law.
- 1.3 Upon the expiration of 12 years from the date of Completion under the Construction Contract (or its equivalent) the liability of the Consultant under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Consultant and notified by the Beneficiary to the Consultant in writing prior thereto.

2 DOCUMENTS

- 2.1 In relation to all drawings, reports, calculations, details, plans, models, specifications, photographs, schedules, bills of quantities, and other documents and information of any nature whatsoever (including any computer software used to generate them and any designs and inventions contained in them), which have been or are hereafter provided by the Consultant in the course of performing its obligations under the Appointment ("Documents"), the Consultant hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding completion of the Consultant's obligations under the Appointment or the termination of the Appointment or the determination of the Consultant's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement, refurbishment and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 2.2 The Beneficiary will not hold the Consultant liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it unless the Consultant authorises such use and confirms the Documents are suitable for it.
- 2.3 The Consultant will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Appointment or hereunder or as otherwise required to enable it to fulfil its obligations under the Appointment.
- 2.4 The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give the Beneficiary or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Beneficiary's expense. The Consultant hereby warrants that it will preserve all such Documents in a safe and accessible place throughout the currency of this Deed.
- 2.5 The Consultant warrants to the Beneficiary that the Documents (save to the extent duly appointed sub-consultants and sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works, including use by the Beneficiary in accordance with the licence granted by this Clause 2, will not infringe the rights of any third party.

3 INSURANCE

- 3.1 The Consultant hereby covenants with the Beneficiary that it has effected a policy of Professional Indemnity insurance covering the liabilities of the Consultant under the Appointment and under this Deed for negligence, with a limit of indemnity of not less than £1,000,000 (one million pounds) for any occurrence or series of occurrences

arising out of any each and every event and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until 12 years after the date of Completion of the Works, provided that such insurance is generally available in the market to members of the Consultant's profession at commercially reasonable rates and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant will be deemed to be within the reasonable rates.

- 3.2 The Consultant shall immediately inform the Beneficiary if for any period such insurance is not or ceases to be available on commercially reasonable terms and shall obtain in respect of such period such reduced level of insurance as is available and would be fair and reasonable in the circumstances for the Consultant to obtain. The Consultant shall co-operate with the Beneficiary to ensure that all reasonable steps are taken to obtain such insurance at reasonable rates.
- 3.3 As and when reasonably required by the Beneficiary the Consultant will produce for inspection documentary evidence in the form of a broker's letter that the insurance referred to in clause 3.1 and 3.2 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

4 Not used

5 NOTICES

- 5.1 Any notice to be given by any party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a working day and otherwise on the next working day.

6 ASSIGNMENT

- 6.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Consultant on two occasions only.
- 6.2 In calculating the number of assignments for the purposes of clause 6.1 no account will be taken of assignments to a successor authority assuming the functions of the Beneficiary or assignments by way of security or by way of re-assignment on redemption.
- 6.3 The Beneficiary will notify the Consultant in writing following any assignment specifying the name and address of the assignee and the date of the assignment.
- 6.4 The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

7 BENEFICIARY'S REMEDIES

- 7.1 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence.

8 INSPECTION OF DOCUMENTS

- 8.1 The Consultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for its benefit or on its behalf.

9 STANDARDS OF PRODUCTS AND MATERIALS

- 9.1 Without prejudice to the generality of clause 1.1 of this Deed, the Consultant warrants that it has exercised and will exercise reasonable skill, care and diligence in accordance with this Deed to see that it has not specified for use and it will not specify for use and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Consultant's profession within the European Union to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.
- 9.2 If in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

10 STEP-IN RIGHTS

- 10.1 The Consultant warrants to the Beneficiary that it shall not terminate nor treat as terminated the Appointment, nor discontinue the performance of any of its services or obligations under the Appointment without first giving to the Beneficiary not less than 28 days' prior notice of the Consultant's intention to do so, specifying the grounds for so doing.
- 10.2 If the Beneficiary serves on the Consultant a notice in accordance with clause 10.3, the Consultant shall not terminate nor treat as terminated the Appointment, nor discontinue the performance of any of its services or obligations under the Appointment, but service of such notice shall not prejudice any other right or remedy the Consultant may have under or in connection with the Appointment.
- 10.3 Unless the employment of the Consultant shall have terminated previously (and whether or not the Consultant shall have served notice on the Beneficiary pursuant to clause 10.1) if the Beneficiary serves upon the Consultant a notice to do so, the Consultant shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Client under and in connection with the Appointment.
- 10.4 As against the Client and the Beneficiary the Consultant shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 10.3 and shall not make any enquiry into the entitlement of the Beneficiary as against the Client to serve such notice.
- 10.5 As from the date of service of notice under clause 10.3, the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Client

under the Appointment, provided that this shall not affect or derogate from any right of action the Client may have against the Consultant in respect of any breach of duty of the Consultant under or in connection with the Appointment happening prior to the date of service of notice by the Beneficiary under clause 10.3.

- 10.6 Within 21 days after serving notice under clause 10.3 or clause 10.9 the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements then owing to the Consultant under the Appointment.
- 10.7 If the employment of the Consultant under the Appointment is terminated before service of any notice under clause 10.3, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its appointee on the same terms as the Appointment but with such revisions as the Beneficiary shall reasonably require to reflect the altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the Appointment.
- 10.8 Upon payment by the Beneficiary in accordance with clause 10.6 and 10.7 of an amount equal to the fees and disbursements owed by the Client, the Consultant shall assign to the Beneficiary all the Consultant's rights against the Client in respect of such unpaid fees and disbursements, and shall pay to the Beneficiary any of the same subsequently received by him from the Client.
- 10.9 The Consultant further covenants with the Beneficiary that if the employment of the Client under the Contract is determined or if the Contract is terminated the Consultant, if requested by the Beneficiary by notice in writing and subject to clause 10.6, will accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of its duties under the Appointment upon the terms and conditions of the Appointment and will if so requested enter into a novation agreement whereby the Beneficiary is substituted for the Client under the Agreement.
- 10.10 The Beneficiary guarantees to the Consultant the performance of the obligations of any appointee of the Beneficiary nominated under clause 10.3 or 10.7 or 10.9.
- 10.11 Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 10 to any other person then if both the Beneficiary and any such other person serve notice under clause 10.3 or clause 10.7 or clause 10.9 or its equivalent the notice served by the Beneficiary will not prevail over any notice served by such other person but will prevail over any notice served by any other person.
- 10.12 The Client agrees to the foregoing provisions of this clause 10 and agrees to be bound by them.

11 SUB-CONTRACTORS

- 11.1 Following a written request from the Beneficiary the Consultant will (unless it has already done so) and/or procure that its sub-consultants execute a deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

12 APPLICABLE LAW AND JURISDICTION

- 12.1 This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

13 THIRD PARTY RIGHTS

13.1 This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first stated above.

Executed (but not delivered)
until the date hereof)
as a deed by)
WATERMAN SUSTAINABLE ENERGY LIMITED)
acting by:-)
)

Director

Director/Secretary

The Common Seal of)
CAMBRIDGESHIRE COUNTY COUNCIL was)
hereunto affixed by order)

Authorised Signatory

Executed (but not delivered)
until the date hereof)
as a deed by)
DONARBON LIMITED)
acting by:-)
)

Director

Director/Secretary