

**36. SCHEDULE 36:**  
**REQUIRED INSURANCES**

### **Schedule 36 (Required Insurances)**

This is Schedule 36 comprising the Required Insurances referred to in Clause 118 (Insurance) of the Contract.

This Schedule 36 comprises five Parts:-

- PART 1:** Policies to be taken out by the Contractor and maintained in respect of the Works
- PART 2:** Policies to be taken out by the Contractor and maintained in respect of the Services
- PART 3:** Endorsements
- PART 4:** Broker's Letter of Undertaking
- PART 5:** Definitions

## **PART 1**

### **Policies to be taken out by the Contractor and maintained in respect of the Works**

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

#### **Insured Parties**

- 1) Authority;
- 2) Contractor;
- 3) Construction Sub-Contractor;
- 4) Sub-Contractors of any tier;
- 5) Senior Lender; and
- 6) Consultants to all of the above for their Site activities only,

each for their respective rights and interests in the Project.

#### **1. Contractors' 'All Risks' Insurance**

##### **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 belonging to or the responsibility of the Contractor, the Construction Sub-Contractor any other Sub-Contractors) and all other property used or for use in connection with Works associated with the Project.

##### **Coverage**

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

##### **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 Construction Contract plus provision to include extensions as appropriate.

##### **Maximum Deductible**

£150,000 each and every LEG3 claim and £25,000 each and every other loss.

##### **Territorial Limits**

United Kingdom including offsite storage and during inland transit.

### **Period of Insurance**

For each Facility, from the relevant Works Commencement Date for such Facility until the relevant Service Commencement Date for such Facility save for the MBT Facility which shall be from the Works Commencement Date for the MBT Facility until the Full Service Commencement Date and thereafter in respect of defects liability until expiry of the relevant defects liability period in respect of the relevant Works at such Facility as defined in the Construction Contract and/or New Facilities Construction Contract(s) as applicable.

### **Cover Features & Extensions**

- 1) Professional fees clause.
- 2) Debris removal clause.
- 3) 72 hour clause.
- 4) European Union local authorities clause.
- 5) Free issue materials clause.
- 6) 115% increase clause.
- 7) 10% escalation clause.
- 8) Additional costs of completion clause.
- 9) Automatic reinstatement of sum insured clause.
- 10) Plans and documents clause.
- 11) Loss minimisation.
- 12) Testing/commissioning period clause.
- 13) Terrorism.
- 14) Munitions of war clause.

### **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.

- 6) Cyber risks.
- 7) Inventory losses, fraud and employee dishonesty.
- 8) Design exclusion LEG3 (1995) Design Improvement.

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

### **Insured Parties**

- 1) Contractor; and
- 2) Senior Lender,

each for their respective rights and interests in the Project.

### **Indemnity**

In respect of:

1. loss of anticipated Revenue during at least the Minimum Indemnity Period (set out below) arising from a delay in the Full Service Commencement Date as a result of loss or damage covered under the Contractors' All Risks' Insurance effected in accordance with Item 1 of Part 1 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 Minimum Indemnity Period below.

### **Sum Insured**

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

### **Maximum Excess**

60 days.

### **Minimum Indemnity Period**

24 months.

### **Period of Insurance**

As per the Contractors' "All Risks" Insurance, excluding the relevant defects liability period in respect of the relevant Works as defined in the Construction Contract and/or New Facilities Construction Contract(s) as applicable to each Facility.

### **Cover Features & Extensions**

- 1) Denial of access.
- 2) Utilities.
- 3) Terrorism.
- 4) Professional Fees.

### **Principal Exclusions**

- 1) The exclusions under the Contractors' "All Risks" Insurance, other than for consequential financial losses.
- 2) Delayed response by a public body or state authority.

## **3 Construction Third Party Liability Insurance**

### **Interest**

To indemnify the Insured Parties 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; and
- (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 Project.

### **Limit of Indemnity**

Not less than £25,000,000 (twenty five million pounds) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

### **Maximum Deductible**

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

### **Territorial Limits**

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

### **Jurisdiction**

Worldwide excluding USA and Canada.

### **Period of Insurance**

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

### **Cover Features & Extensions**

- 1) Contractual liability.
- 2) Cross liability clause.
- 3) Contingent motor.
- 4) Liability arising out of CDM Regulations.
- 5) Health & Safety at Work Act(s) clause.
- 6) Costs in addition to the Limit of Indemnity (other than USA/Canada).
- 7) Data Protection Act clause.
- 8) Munitions of war.
- 9) Legal defence costs.

### **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 Party.
- 5) Events more properly covered under a professional indemnity policy.
- 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, unintended and unexpected occurrence.
- 8) Losses indemnified under the CAR policy or DSU policy.

## **PART 2**

### **Policies to be taken out by the Contractor and maintained in respect of the Services**

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

#### **Insured Parties**

- 1) Authority;
- 2) Contractor;
- 3) Operating Sub-Contractor;
- 4) Sub-Contractors of any tier to Insured 2) and 3); and
- 5) Senior Lender,

each for their respective rights and interests in the Project.

### **1 Property Damage Insurance**

#### **Insured Property**

Any property of whatsoever nature or description associated with the Project which is the property of the Contractor or for which the Contractor may be responsible including but not limited to the Facilities, and any retained property or estate leased to them by the Authority.

#### **Coverage**

"All risks" of physical loss or damage to the Insured Property from any cause not excluded.

#### **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 extensions as appropriate.

#### **Maximum Deductible**

£25,000 each every claim.

#### **Territorial Limits**

United Kingdom plus elsewhere whilst in inland transit.

#### **Period of Insurance**

From the relevant Service Commencement Date and for the duration of the Service Period, save for the MBT Facility which shall be from the Initial Acceptance Date and then to the termination or expiry of the Contract, and renewable on an annual basis unless agreed otherwise by the Parties.

### **Cover Features & Extensions**

Automatic reinstatement of sum insured.

- 1) Capital additions clause.
- 2) 72 hour clause.
- 3) European Union local authorities clause.
- 4) Replacement of computer records.
- 5) Professional fees.
- 6) Debris removal.
- 7) Repair / reinstatement basis of claims settlement with cash option for non reinstatement.
- 8) Terrorism.
- 9) Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded.

### **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.
- 6) Cyber risks.
- 7) Losses recovered under the CAR policy.

## **2 Business Interruption**

### **Insured Parties**

1. The Contractor; and
  2. Senior Lender,
- each for their respective rights and interests in the Project.

### **Indemnity**

In respect of:

1. loss of anticipated Revenue during at least the Minimum Indemnity Period (set out below) arising from an interruption or interference in the operation 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; and
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 (set out below).

### **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity above for the Minimum Indemnity Period (set out below).

### **Maximum Excess**

30 days.

### **Minimum Indemnity Period**

24 months.

### **Period of Insurance**

From the relevant Service Commencement Date and for the duration of the Service Period, save for the MBT Facility which shall be from the Initial Acceptance Date and then to the termination or expiry of the Contract, and renewable on an annual basis unless agreed otherwise by the Parties.

### **Cover Features & Extensions**

- 1) Denial of access.
- 2) Utilities.
- 3) Terrorism.
- 4) Accountants Clause.
- 5) Automatic Reinstatement of sum insured.

### **Principal Exclusions**

- 1) Exclusions under the Property Damage Insurance, other than for consequential financial losses.

- 2) Delayed response by a public body or state authority.

### **3 Third Party Public and Products Liability Insurance**

#### **Interest**

To indemnify the Insured Parties in respect of all sums that they may become legally liable to pay (including claimants' 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; and
- 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.

#### **Limit of Indemnity**

Not less than £25,000,000 (twenty five million pounds) (Indexed in accordance with Clause 120.14 (Increase in Insured Amounts) of the Contract) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

#### **Maximum Deductible**

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

#### **Territorial Limits**

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

#### **Jurisdiction**

Worldwide excluding USA and Canada.

#### **Period of Insurance**

From the relevant Service Commencement Date and for the duration of the Service Period, save for the MBT Facility which shall be from the Initial Acceptance Date and then to the termination or expiry of the Contract, and renewable on an annual basis unless agreed otherwise by the Parties.

#### **Cover Features & Extensions**

- 1) Full contractual liability.
- 2) Cross liability clause.

- 3) Contingent motor.
- 4) Health & Safety at Work Act(s) clause.
- 5) Defective Premises Act clause.
- 6) Data Protection Act clause.
- 7) Costs in addition to the limit (other than USA/Canada).
- 8) Contingent liability of the Insured Parties for the acts of their sub-contractors.
- 9) Munitions of war.
- 10) Legal defence costs.

#### **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 other than in respect of excess motor liability above.
- 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, unintended and unexpected occurrence.
- 8) Losses under the property damage policy or business interruption policy.

## **4 Environmental Impairment Liability**

### **Insured Parties**

1. Authority;

2. Contractor;
3. Operating Sub-Contractor;
4. Senior Lender,

each as co-insured and each for their respective rights and interests in the Project.

### **Indemnity**

To indemnify the Insured Parties in respect of all sums that they may become legally liable to a third party, including the Authority, and/or sums expended or required to be paid following action by a Relevant Authority, consequent to a pollution incident and resulting in a claim or claims first made against the Insured Parties and reported to the Insurer during the Period of Insurance. A pollution incident relates to either pre-existing pollution or new pollution subsequently caused by the Contractor in connection with the Project.

### **Limit of Indemnity**

Not less than £5,000,000 (five million pounds) (Indexed in accordance with Clause 120.14 (Increase in Insured Amounts) in respect of any one loss, the number of losses being unlimited and not less than £5,000,000 (five million pounds) (Indexed in accordance with Clause 120.14 (Increase in Insured Amounts)) in the aggregate annually.

### **Maximum Deductible**

£100,000 each and every loss.

### **Territorial Limits**

United Kingdom.

### **Period of Insurance**

From the Contract Commencement Date until the earlier of the Expiry Date and the Termination Date.

### **Cover Features & Extensions**

- 1) Regulatory or third party claims for on site clean-up of pre-existing and new conditions.
- 2) Regulatory or third party claims for off-site clean-up of pre-existing and new conditions.
- 3) Third party claims for on-site and off-site property damage from pre-existing and new conditions.
- 4) Third party claims for on-site and off-site bodily injury from pre-existing and new conditions.

- 5) Legal costs.
- 6) No retroactive date.
- 7) Loss prevention and mitigation costs.
- 8) Extended Reporting Period (right to purchase) clause.

**Principal Exclusions**

- 1) War and related perils.
- 2) Nuclear/radioactive risks.
- 3) Asbestos (exclusion not to extend to remediation costs with respect to soil and groundwater).
- 4) Intentional, wilful or deliberate non-compliance with any EU, Authority decision or any UK or EU regulation.
- 5) Deliberate, wilful and intentional non-compliance with any statutory regulation ordinance or instruction of any government agency or body, or executive, judicial or administrative order.
- 6) Criminal fines and penalties.

## **PART 3**

### **Endorsements**

Unless the context otherwise requires the defined terms used in the following endorsements shall have the meaning set out in Schedule 1 (Definitions) to this Contract.

The following endorsements apply to all of the policies set out in this Schedule 36 (Required Insurances)

#### **Endorsement 1**

##### **Cancellation**

This policy shall not be cancelled or terminated before the original expiry date of such policy is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority (copied to the Contractor):

- (a) at least 30 Business Days before any such cancellation, non-renewal or termination is to take effect;
- (b) at least 30 Business Days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
- (c) of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

#### **Endorsement 2**

##### **Multiple Insured/Non-Vitiation Clause**

Each of the parties comprising the Insured Parties shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other Insured Party.

It is understood and agreed that any payment or payments by insurers to any one or more of the Insured Parties shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any Insured Party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this endorsement as a "Vitiating Act") committed by that Insured Party save where such

misrepresentation non-disclosure or material breach of warranty or condition was committed innocently and in good faith.

For the avoidance of doubt, it is however agreed that a Vitiating Act committed by one Insured Party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any Insured Party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an Insured Party.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any Insured Party insurers agree that no party other than an Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of that Authority.

### **Endorsement 3**

#### **Communications**

All notices or other communications under or in connection with this policy shall be given to each Insured Party (and where not an Insured Party also to the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered.
- (b) if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records that a successful transmission has occurred.

The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Contractor's insurance broker at the relevant time. The initial address and facsimile number of the Authority are as follows:

1. Authority: Cambridgeshire County Council  
Address: Cambridgeshire Shire Hall,  
Cambridge,  
CB3 0AP  
Facsimile No: 01223 717 103  
Attention: Head of Waste Management from time to time of the Authority

It is further agreed that a notice of claim given by any Authority or any other Insured Party shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all Insured Parties.

#### **Endorsement 4**

##### **Loss Payee (applicable only to the Physical Damage Policies)**

All proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account.

#### **Endorsement 5**

##### **Primary Insurance**

It is expressly understood and agreed that this policy provides primary cover for the Insured Parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the Insured Parties the insurers will indemnify the Insured Parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

#### **Endorsement 6**

##### **Ringfencing**

The level of any indemnity available to an Insured Party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

## PART 4

### Broker's Letter of Undertaking

**To: Cambridgeshire County Council**

**Dear Sirs**

**Cambridgeshire Waste Management PFI Contract dated [     ] entered into between Donarbon Waste Management Limited (the Contractor) and Cambridgeshire County Council (the Authority), (the Contract)**

1. We refer to the Contract. Unless the context otherwise requires, terms defined in the Contract 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 118 (Insurance) and Schedule 36 (Required Insurances) of the Contract:
  - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Contract 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 that
  - 2.4 the endorsements set out in **Part 3 to Schedule 36** of the Contract 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 by us from insurers in relation to the Required Insurances specified in **Clause 118** of the Contract.

## **4.2 Advisory Obligations**

- 4.2.1** to notify you as soon as reasonably practicable 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 practicable 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; and;
- 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**

- (i) to disclose to insurers all information and any fact, change of circumstance or occurrence made available to us by the Contractor; or
- (ii) to disclose, with the approval of the Contractor (such approval not to be unreasonably withheld), all information and any fact, change of circumstance or occurrence made available to us by the Authority, which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers in accordance with the insurers' relevant policy terms and conditions as soon as reasonably 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 of the information, 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 paragraph 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 the 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, in our opinion as Insurance Brokers 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;
- 4.4.7** to use our reasonable 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** of the Contract.

#### **4.5 Insurance Cost Reporting Procedures**

- 4.5.1** 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 Section 37 (IPRSS) of the Contract. 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:

Cambridgeshire County Council  
Cambridgeshire Shire Hall,  
Cambridge,  
CB3 0AP

#### **6. General**

- 6.1** For the avoidance of doubt, the undertakings 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 (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 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 by and construed in accordance with English law.

Yours faithfully

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For and on behalf of [Contractor's insurance broker]

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For and on behalf of Donarbon Waste Management Limited

## PART 5

### Definitions

"Revenue"	means the projected Unavoidable Fixed Costs and Senior Debt Service Costs of the Contractor;
"Senior Debt Service Costs"	<p>means interest and debt service costs incurred in respect of the Senior Financing Agreements less:</p> <p>(a) sums which are in arrears; and</p> <p>(b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Senior Financing Agreements;</p>
"Unavoidable Fixed Costs"	<p>shall mean the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:-</p> <p>(a) costs which could have reasonably been mitigated or avoided by the Contractor;</p> <p>(b) not used;</p> <p>(c) payments which are not entirely at arm's length (provided that such payments shall not include payments made under the Operating Sub-Contract);</p> <p>(d) payments to holders of equity in the Contractor, Subordinated Lenders and any other financing costs other than Senior 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; and</p> <p>(i) reserves which the Contractor can draw upon without breaching the Senior Financing Agreement.</p> <p>(ii) standby or contingent facilities or funds of</p>

Senior Debt or equity which the Contractor is entitled to have available.

(iii) payments representing any profits of the Project (to the extent not already excluded in (e) above).