

## **SCHEDULE 8**

### **Environmental Provisions**

For the purposes of this Schedule, the following provisions shall have the meanings set out below:

<b>"Action"</b>	any criminal, civil, judicial, regulatory or administrative proceeding, suit, action, written claim, order, requirement or written notice by a Relevant Authority or third party which could reasonably be expected to result in Environmental Liabilities being suffered or incurred in relation to Contamination at or escaping from any Site
<b>"Aggravated Contamination"</b>	<p>the escape, release or migration of Existing Contamination and Known Tannery Contamination at or from an Existing Site or a New Site after:</p> <ul style="list-style-type: none"><li>(a) the Works Commencement Date in relation to the Minor Facility A and the NWTF; and</li><li>(b) the Initial Services Commencement Date in relation to any other Minor Facility;</li></ul> <p>to the extent that such escape, release or migration arises or is increased, accelerated or exacerbated by or as a result of any Contractor Act (but only in the case of Unknown Tannery Contamination or Atkins Default Contamination to the extent that the Contractor knew or ought reasonably to have known (acting as a Reasonable and Prudent Person) of the Unknown Tannery Contamination or Atkins Default Contamination in question)</p>
<b>"Appointment"</b>	the appointment of the Remediation Handback Consultant in the form previously approved by the Councils in accordance with <b>paragraph 1.7.2</b>
<b>"Atkins Report"</b>	the report dated March 2007 and commissioned by Derby City Council (pursuant to the appointment (as amended by a letter) in the Agreed Form dated 6 September 2006) from Atkins Limited relating to the site conditions at the Sinfin Site in the Agreed Form
<b>"Atkins Default Contamination"</b>	any Contamination at, in, on, under or migrating from the Sinfin Site not revealed, but which should have been revealed, by the Atkins Report had Atkins Limited performed their services in all respects in accordance with their terms of appointment
<b>"Closure Report"</b>	the closure report referred to in <b>paragraph 1.12.2</b>
<b>"Closure Statement"</b>	the closure statement referred to in <b>paragraph 1.12.1</b>
<b>"Collateral Warranty"</b>	a warranty to be executed as a deed in favour of the Councils:

	<ul style="list-style-type: none"> <li>(a) by the Remediation Handback Consultant who has prepared the Environmental Condition Survey, the Remediation Handback Specification and who certifies Remediation Handback Completion in accordance with the Remediation Handback Specification and issues the Closure Report and Closure Statement;</li> <li>(b) by the Remediation Handback Contractor in relation to the Remediation Handback Works; and</li> <li>(c) by any environmental consultant who undertakes Investigative Works</li> </ul>
<b>"Contamination"</b>	the presence, retention or accumulation of any Hazardous Substances
<b>"Contractor Environmental Report"</b>	any environmental report or reports prepared by environmental consultants commissioned by the Contractor relating to the presence of Contamination at the Sinfin Site as approved in writing by the Councils prior to the Commencement Date identified as an Agreed Form document;
<b>"Contractor Act"</b>	<p>any act or omission or activity of the Contractor or Contractor Related Party including without limitation:</p> <ul style="list-style-type: none"> <li>(a) any negligent act or omission of the Contractor or any Contractor Related Party;</li> <li>(b) any act outside the ordinary course of business or Good Industry Practice by the Contractor or any Contractor Related Party after the Commencement Date;</li> <li>(c) any non-compliance with the terms of this Contract; or</li> <li>(d) the surrender or variation of any Necessary Consents.</li> </ul>
<b>"Emergency"</b>	an imminent or continuing risk of harm to the environment or human health
<b>"Environmental Condition Survey"</b>	a Phase II environmental audit and such further audits as are recommended by the Remediation Handback Consultant to establish what Remediation Works are required and the related costs to ensure that the Sites are Environmentally Acceptable.
<b>"Environmental Requirements"</b>	<b>Legal</b> Legal Requirements relating directly or indirectly to the Environment
<b>"Environmental Liabilities"</b>	losses, liabilities (including without limitation liability for or a requirement to carry out Remediation Works and/or Investigative Works and/or Monitoring), fines, damages, penalties, costs and expenses (including legal and

professional fees) of any kind whatsoever, save for any indirect or consequential loss or damages or pure economic loss (and "indirect" and "consequential" loss or damages shall include but not be limited to, loss of anticipated profits, loss of revenue loss of use cost of capital, loss of permits, loss of revenue or other loss including in respect of business interruption) in each case as a result of Existing Contamination, and/or New Contamination and/or Atkins Default Contamination (as the case may be). For the avoidance of doubt, the indemnity in **paragraph 1.1.1** shall include any Deductions, loss of revenue and/or additional landfill costs incurred by the Contractor arising in connection with the Environmental Liability and any such losses or increased costs shall not be construed as indirect, consequential or pure economic loss

**"Environmentally Acceptable"**

- (a) in relation to the Sinfin Site in such a condition so as to be suitable for use as a waste management facility and for the provision of the Services and in no worse condition than the baseline condition delineated in the Atkins Report and Contractor Environmental Report but for the avoidance of doubt after Remediation Works have been carried out so as to make the Sinfin Site suitable for use as a waste management facility and for the provision of the Services and such that there is no New Contamination in, at, on or under the Sinfin Site which is causing significant harm or with a significant possibility of causing such harm or causing or likely to cause pollution of controlled waters (as defined in the EPA) and otherwise in such a condition as to comply with Environmental Legal Requirements and any Necessary Consents (subject to **clause 29** (Change in Law)) relating to the pollution or protection of the Environment. For the avoidance of doubt such condition shall relate to the whole of the Sinfin Site and not just any operational part of the Sinfin Site; and
- (b) in relation to the Sites other than the Sinfin Site in such a condition so as to be suitable for use as a waste management facility and for the provision of the Services such that there is no New Contamination in, at, on or under the relevant Site which is causing significant harm or with a significant possibility of causing such harm or causing or likely to cause pollution of controlled waters (as defined in the EPA) and otherwise in such a condition as to comply with Environmental Legal Requirements and any Necessary Consents (subject to **clause 29** (Change in Law)) relating to the pollution or protection of the Environment. For the avoidance of doubt such condition shall relate to the whole of each such Site and not just any operational part of any Site

**"Existing"**

- (a) in relation to any Existing Sites, other than the Sinfin

<b>"Contamination"</b>	<p>Site, any Contamination present at, in, on or under such Existing Sites at any time prior to:</p> <ul style="list-style-type: none"> <li>(i) the Initial Services Commencement Date in relation to any Minor Facility (excluding any Minor Facility A);</li> <li>(ii) the Works Commencement Date in relation to any Minor Facility A;</li> </ul> <p>(b) any Unknown Tannery Contamination; or</p> <p>(c) any escape, release or migration of any such Contamination mentioned in sub-paragraph (a) above or of any Known Tannery Contamination or of any Unknown Tannery Contamination from the Existing Sites at any time before or after:</p> <ul style="list-style-type: none"> <li>(i) the Initial Services Commencement Date in relation to any Minor Facility (excluding the Minor Facility A);</li> <li>(ii) the Works Commencement Date in relation to the Minor Facility A;</li> <li>(iii) the Works Commencement Date in relation to the NWTF;</li> </ul>
<b>"Existing Sites"</b>	<ul style="list-style-type: none"> <li>(a) the Sinfin Site;</li> <li>(b) the Sites of each HWRC;</li> <li>(c) the Sites of each Project Transfer Station,</li> </ul> <p>but excluding any Third Party Transfer Station or Landfill Site used by the Contractor in performing the Services;</p>
<b>"Expert"</b>	an environmental consultant or such other appropriately qualified professional agreed between the Parties but in default of agreement within 5 Business Days of one Party notifying the other of its wish to refer any matter to an Expert then such environmental consultant or such other appropriately qualified professional as shall be nominated by the President for the time being of the Institute of Environmental Management and Assessment
<b>"Hazardous Substances"</b>	any substance, whether alone or in combination with any other substance capable of causing material harm to human health or the Environment
<b>"Indemnity Claim"</b>	any claim made under <b>paragraph 1.1</b>
<b>"Investigative Works"</b>	inspections, investigations, assessments, audits, sampling or Monitoring of the presence or effects of any Contamination at the Sites or any adjoining or adjacent land
<b>"Known Tannery"</b>	any Contamination at, in, on, under or migrating from the

<b>"Contamination"</b>	<p>Sinfin Site that is:</p> <ul style="list-style-type: none"> <li>(a) revealed by the Atkins Report;</li> <li>(b) Atkins Default Contamination; and/or</li> <li>(c) revealed by any Contractor Environmental Report or which should have been revealed by any Contractor Environmental Report had the consultants who prepared such report performed their services in all respects in accordance with their respective terms of appointment;</li> </ul>
<b>"Monitoring"</b>	the carrying out of any monitoring including without limitation landfill gas monitoring, leachate monitoring and groundwater monitoring to monitor the effects of any Existing Contamination and/or New Contamination (as the case may be)
<b>"New Contamination"</b>	<ul style="list-style-type: none"> <li>(a) any Contamination (other than Existing Contamination and Known Tannery Contamination) present at, in, on, under or migrating from the Existing Sites and/or New Sites after the: <ul style="list-style-type: none"> <li>(i) Initial Services Commencement Date in relation to any Minor Facility (excluding the Minor Facility A);</li> <li>(ii) the Works Commencement Date in relation to the Minor Facility A; and/or</li> <li>(iii) the Works Commencement Date in relation to the NWTF; and/or</li> </ul> </li> <li>(b) any Aggravated Contamination;</li> </ul>
<b>"New Sites"</b>	any Site on which a Facility is located (other than any Landfill Site or Third Party Transfer Station) from time to time, but excluding any Existing Sites;
<b>"Proposed Contractors"</b>	the proposed remediation hand back contractors to whom the Tender is submitted by the Remediation Handback Consultant pursuant to <b>paragraph 1.8</b> ;
<b>"Reasonable Prudent Person"</b>	<b>and</b> a person exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator or construction contractor in substantial compliance with all applicable Environmental Legal Requirements engaged in carrying out works of the same or similar type to the Works or providing services of the same or similar type to the Services
<b>"Remediation Handback Completion"</b>	the date on which all the Remediation Handback Works or the Further Remediation Handback Works are properly completed and any defects have been corrected or maintenance carried out in accordance with the Remediation Handback Contract

	as certified by the Remediation Handback Consultant or determined by the Expert in accordance with <b>paragraph 1.15</b>
<b>"Remediation Handback Contract"</b>	the remediation contract or contracts to be in the form of deeds and to be entered into between the Contractor (or a subcontractor) and the Remediation Handback Contractor with regard to the carrying out and completion of the Remediation Handback Works, such contract or contracts in the form approved by the Councils in accordance with <b>paragraph 1.8.2</b>
<b>"Remediation Handback Contractor"</b>	the remediation contractor or contractors employed by the Contractor (or a subcontractor) to undertake the Remediation Handback Works (or any replacement remediation contractor employed by the Contractor (or a subcontractor) to undertake the Remediation Handback Works)
<b>"Remediation Completion Date"</b>	the date stated in the last of the Remediation Completion Certificate or the Further Remediation Completion Certificate or the date determined by the Expert as being the date upon which Remediation Handback Completion occurred (as the case may be)
<b>"Remediation Completion Certificate"</b>	the certificate issued by the Remediation Consultant in accordance with <b>paragraph 1.11</b> certifying Remediation Handback Completion
<b>"Remediation Handback Consultant"</b>	such environmental consultant as is nominated by the Councils and agreed by the Contractor (acting reasonably) and appointed pursuant to the provisions of <b>paragraph 1.7</b>
<b>"Remediation Handback Period"</b>	the period recommended by the Remediation Handback Consultant for the completion of the Remediation Handback Works and/or the Further Remediation Handback Works
<b>"Remediation Handback Specification"</b>	the final specification for the Remediation Handback Works to ensure the relevant Site is Environmentally Acceptable as recommended by the Remediation Handback Consultant or determined by the Expert pursuant to <b>paragraph 1.15</b>
<b>"Remediation Handback Works"</b>	the actions or works as specified in the Remediation Handback Specification
<b>"Remediation Works"</b>	the carrying out of works to prevent, minimise, remedy or mitigate the effects of any Existing Contamination and/or New Contamination (as the case may be) and which includes all Monitoring
<b>"Sites"</b>	for the purposes of this Schedule only, Sites shall mean any New Sites and Existing Sites and Site shall mean any one of them
<b>"Tender"</b>	for the purposes of this Schedule only, a tender for the Remediation Handback Works in such form as is approved by the Councils (such approval not to be unreasonably withheld or delayed) or the Expert in accordance with <b>paragraph</b>

1.15

- "Trigger Condition"** (a) an Action having been made, commenced, served or threatened in writing by a Relevant Authority or a third party; or
- (b) a Reasonable and Prudent Person would carry out Investigative Works and/or Remediation Works and/or Monitoring in relation to any Contamination at or escaping from any Site within a period of 6 Months of becoming aware of such Contamination (or sooner, acting with all due diligence in the event of an Emergency) in order to avoid or mitigate harm to the Environment or harm to human health
- "Unknown Tannery Contamination"** any Contamination at, in, on or under the Sinfin Site present at or prior to the Works Commencement Date other than Known Tannery Contamination

1. **CONTAMINATION**

1.1 **Indemnities**

The following provisions of this **paragraph 1.1** shall apply subject to **paragraph 1.5** of this **Schedule 8**:

- 1.1.1 Subject to **paragraph 1.1.2**, the Councils shall be solely responsible for and shall indemnify the Contractor from and against any Environmental Liabilities arising from or in connection with Existing Contamination and/or Atkins Default Contamination at any time.
- 1.1.2 The Contractor shall be solely responsible for and shall indemnify the Councils from and against any Environmental Liabilities suffered or incurred by the Councils arising from or in connection with New Contamination at any time.
- 1.1.3 To the extent that any Environmental Liabilities incurred or suffered by the Councils or the Contractor cannot be proved to be covered by the indemnities in **paragraphs 1.1.1** and **1.1.2** such Environmental Liabilities shall be borne between the Councils and the Contractor on a fair and equitable basis and the provisions of **paragraph 1.1.4** shall apply.
- 1.1.4 Where **paragraph 1.1.3** applies, the Parties shall first seek to agree what proportions of the Environmental Liabilities each of them shall bear. If agreement cannot be reached between the Parties within 20 Business Days then either Party shall be entitled to refer the matter to the Expert and the provisions of **paragraph 1.1.5** shall apply.
- 1.1.5 The Councils shall use reasonable endeavours to provide such information and assistance as the Contractor may reasonably request in relation to ascertaining whether any Contamination constitutes Atkins Default Contamination.

1.2 **Joint Responsibilities**

- 1.2.1 If either Party becomes aware of a Trigger Condition having been satisfied it shall give written notice to the other Party of the matter as soon as reasonably practicable.
- 1.2.2 Save for an Action which relates to Existing Contamination in relation to which the Councils shall have exclusive conduct of any such Action, the Contractor shall have exclusive conduct of any Action.
- 1.2.3 In connection with any Action, both Parties shall:
- 1.2.3.1 retain and preserve all relevant documents, records and information within their power, possession or control which are relevant in connection with any Action for so long as any Action remains outstanding;
  - 1.2.3.2 at their own cost, be entitled to copies of any relevant documents or records and to relevant photographs of any premises or assets;
  - 1.2.3.3 give to the other Party and its consultants and other advisers all such information (including copies of relevant documents) with regard to the Action as they may reasonably require;
  - 1.2.3.4 consult with the other Party as to whether and how any Action should be avoided, resisted, construed, defended, compromised or otherwise dealt with;
  - 1.2.3.5 permit the other Party and any representative of the other Party to attend any meetings with any Relevant Authority or third party with regard to the Action; and
  - 1.2.3.6 not make any admission of liability, agreement or compromise with any Relevant Authority or third party in relation to the Action without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 1.2.4 In the event that either Party proposes to undertake any Investigative Works and/or Remediation Works and one Party is liable to indemnify the other in respect of the cost thereof under **paragraph 1.1** the Parties shall as soon as reasonably practicable consult in all good faith to agree the type and scope of the Investigative Works and/or Remediation Works and/or Monitoring required to be undertaken.
- 1.2.5 In the event of a dispute between the Parties as to the type and scope of the Investigative Works and/or Remediation Works and/or Monitoring the matter shall be referred to the Expert for determination of the type and scope of the Investigative Works and/or Remediation Works and/or Monitoring and the provisions of **paragraph 1.1.5** shall apply and the Investigative Works and/or Remediation Works and/or Monitoring shall be implemented in accordance with the recommendations of the Expert.
- 1.2.6 Where either Party has paid monies to the other in respect of any Indemnity Claim (the "**Indemnifying Party**") and the other Party recovers from a third party any payment, saving or benefit which is



referable to a fact, matter, event or circumstance giving rise to that Indemnity Claim, the other Party shall:

- 1.2.6.1      notify the Indemnifying Party as soon as reasonably possible; and
- 1.2.6.2      shall pay to the Indemnifying Party an amount equal to the amount that the other Party will save by virtue of the payment, saving or benefit by or from a third party (less any reasonable costs incurred in recovering or obtaining such payment, saving or benefit and any tax actually suffered thereon by the other Party (including but not limited to any increase in insurance premium or excess as a consequence of the claim against insurance)) (the "**Benefit**") to the extent that the amount of the Benefit does not exceed the aggregate payments previously made by the Indemnifying Party to the other Party in respect of that Indemnity Claim.

### 1.3      **Contractor Responsibilities**

- 1.3.1      The Contractor covenants not to carry out or permit to be carried out at the Existing Sites any of the following:
  - 1.3.1.1      not used;
  - 1.3.1.2      any Investigative Works after the date of this Contract without the prior written consent of the Councils except where required pursuant to any Environmental Legal Requirements provided that in such case such Investigative Works are properly required for such purpose and the scope of such Investigative Works have been approved by the Councils (such approval not to be unreasonably withheld or delayed) and in the event of any such Investigative Works being carried out the Contractor shall ensure that the Councils are provided with a copy and has the benefit of a Collateral Warranty from the consultant who carries out such Investigative Works.

### 1.4      **Further Joint Responsibilities**

- 1.4.1      Each Party covenants to supply the other Party with copies of all notices, directions, reports or correspondence received by it and which concern any Contamination in, on or under the Sites or any escape, release or migration of any Contamination at or from the Sites at any time and which are likely to result in a Trigger Condition applying.
- 1.4.2      In each case, save where:
  - 1.4.2.1      required under any Necessary Consents or Environmental Legal Requirements; or
  - 1.4.2.2      required in order to properly comply with any requirement under this Contract.

the Parties each covenant:

- 1.4.2.3 not to notify or report or disclose to any Relevant Authority any information regarding the environmental state and condition of the Sites or of the presence, accumulation, escape, release or migration of any Contamination in, on, under, at or from the Sites without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed; and
- 1.4.2.4 not to do or permit to be done anything which would or is reasonably likely to result in any requirement for Remediation Works at or in relation to the Sites or which would or is reasonably likely to result in an Action.

## 1.5 **Limitation on Claims**

- 1.5.1 Each Party will only be entitled to make an Indemnity Claim if and to the extent that a Trigger Condition has been satisfied in relation to the matter giving rise to the relevant claim.
- 1.5.2 In the event that Trigger Condition (a) is satisfied a Party will only be entitled to be paid pursuant to an Indemnity Claim if and to the extent that the Liabilities suffered or incurred are as a result of the Action in question.
- 1.5.3 The Contractor shall not be entitled to claim or recover from the Councils pursuant to **paragraph 1.1.1** of this **Schedule 8** in respect of Atkins Default Contamination any amount in excess of five million pounds (£5,000,000) in aggregate.
- 1.5.4 Nothing in this Contract shall require the Councils to bear any Environmental Liability or carry out any Remediation Works which arise or relate to New Contamination at any time.
- 1.5.5 Nothing in this Contract shall in any way restrict or limit the common law duty of either Party to mitigate its loss.

## 1.6 **Agreement on Liabilities**

The Parties hereby agree that the provisions hereof constitute an agreement on liabilities for the purposes of Part IIA of the EPA and the statutory guidance issues in respect of it (including without limitation paragraph D38 of DEFRA Circular 01/2006) and the Parties acknowledge that either may show it to any Relevant Authority for the purposes of establishing any allocation of liability in relation to the Sites in the event of any enforcement under Part IIA of the EPA.

## 1.7 **Appointment of Remediation Handback Consultant**

- 1.7.1 At any time within 18 Months before the Expiry Date or the Extended Expiry Date (as the case may be) or following a Termination Notice being issued in relation to any Contractor Default, the Councils may require the carrying out of an Environmental Condition Survey and if so, the Councils shall at the same time nominate the Remediation Handback Consultant.
- 1.7.2 The Contractor shall submit a draft deed of appointment of the Remediation Handback Consultant to the Councils for its approval (such approval not to be unreasonably withheld or delayed) and shall

confirm its agreement or otherwise to the nominated Remediation Handback Consultant (acting reasonably) within 10 Business Days of the Councils nominating the Remediation Handback Consultant pursuant to **paragraph 1.7.1**.

1.7.3 the Councils shall then notify the Contractor whether it approves or rejects the draft appointment within 10 Business Days of receiving it. Where the Councils approve the draft appointment the Contractor shall proceed to appoint the Remediation Handback Consultant in accordance with **paragraph 1.7.5**.

1.7.4 If the Councils do not approve the draft appointment in accordance with **paragraph 1.7.3** or the Parties cannot agree on the proposed Remediation Handback Consultant nominated by the Councils then within 5 Business Days the matter shall be referred to an Expert for determination in accordance with **paragraph 1.15**.

1.7.5 The Contractor shall at its sole cost appoint the Remediation Handback Consultant on the terms of the Appointment (and will supply a completed copy to the Councils within 5 Business Days of receiving it):

1.7.5.1 to carry out an Environmental Condition Survey;

1.7.5.2 to prepare a draft of the Remediation Handback Specification;

1.7.5.3 to recommend a reasonable Remediation Handback Period in respect of each of the Sites;

1.7.5.4 require that the Remediation Handback Consultant provides a Collateral Warranty to the Councils in favour of the Councils and such other third party as is reasonably requested by the Councils; and

1.7.5.5 to provide a reasonable estimate of the cost of the Remediation Handback Works

1.7.6 The Contractor shall procure that in preparing the draft of the Remediation Handback Specification that the Remediation Handback Consultant shall:

1.7.6.1 take into account the requirement to put each Site into a condition which is Environmentally Acceptable;

1.7.6.2 take into account all matters which a skilled and diligent remediation consultant experienced in matters of this nature would take into account including (without limitation) all Environmental Legal Requirements and/or all relevant Necessary Consents existing at the date of the appointment of the Remediation Handback Consultant pursuant to **paragraph 1.7.3**;

1.7.6.3 submit the Remediation Handback Specification in draft (together with any supporting documentation necessary) to any Relevant Authority to the extent that this is required to obtain (as soon as reasonably practicable) any

Necessary Consents needed for the carrying out of the Remediation Handback Works;

- 1.7.6.4 ensure that the Remediation Handback Specification meets the requirements of any Relevant Authority as applicable;
- 1.7.7 The Contractor shall procure that the Remediation Handback Consultant shall submit:
  - 1.7.7.1 the results of the Environmental Condition Survey to the Contractor and the Councils (together with a reasonable estimate of the cost of the Remediation Handback Works) within 5 Days of the Remediation Handback Consultant completing such survey;
  - 1.7.7.2 the Remediation Handback Specification for approval by the Contractor and the Councils (such approval not to be unreasonably withheld or delayed) within 20 Days of the Remediation Handback Consultant completing the Environmental Condition Survey or such longer time as the Parties shall agree (acting reasonably and taking into account the extent of the Environmental Condition Survey).
- 1.7.8 The Councils and the Contractor shall notify each other in writing whether they approve or reject the Remediation Handback Specification within 28 Days of receiving it from the Remediation Handback Consultant.
- 1.7.9 Where either the Contractor or the Councils does not approve or rejects the Remediation Handback Specification in accordance with **paragraph 1.7.8** then within 10 Business Days the matter shall be referred to an Expert within 10 Business Days for determination in accordance with **paragraph 1.15**.
- 1.7.10 The Contractor shall procure that in accordance with its Appointment the Remediation Handback Consultant seeks to obtain (without any obligation to do so before submitting the final Remediation Handback Specification to the Parties) any Necessary Consents required for the carrying out of the Remediation Handback Works before submitting the final Remediation Handback Specification to the Parties.

## 1.8 The Tender Process

- 1.8.1 Within 20 Business Days of the later of the Remediation Handback Specification being provided to the Parties and the obtaining of all Necessary Consents required for the carrying out of the Remediation Handback Works the Parties shall agree the names of at least 3 Proposed Contractors and the proposed form of the Remediation Handback Contract.
- 1.8.2 Where the Parties cannot agree the names of the Proposed Contractors and/or the proposed form of the Remediation Handback Contract in accordance with **paragraph 1.8.1** then within 5 Business Days the matter shall be referred to an Expert for determination in accordance with **paragraph 1.15**.

- 1.8.3 Following agreement (or determination by the Expert) of the Proposed Contractors and the Remediation Handback Contract, the Contractor shall issue the Tender to the Proposed Contractors. The Tender shall have attached to it the Remediation Handback Contract and shall specify that responses to the Tender must be received by the Contractor within 20 Business Days of issue of the Tender.
- 1.8.4 No Tender shall be accepted by the Contractor without the prior written approval of the Councils (such approval not to be unreasonably withheld or delayed).
- 1.8.5 The Councils shall be entitled (prior to giving approval pursuant to **paragraph 1.8.4**) to require the Contractor to procure reasonable further details or information from any Proposed Contractor as to any aspect of its Tender. The Contractor shall in any event provide the Councils with a copy of any tender acceptance report relating to a Proposed Contractor so as to assist the Councils in assessing and approving any Tender pursuant to **paragraph 1.8.4**.
- 1.8.6 If agreement cannot be reached between the Contractor and the Councils as to which Tender should be accepted within 20 Business Days of the Contractor sending all Tenders to the Councils then within a further 5 Business Days the matter shall be referred to an Expert in accordance with **paragraph 1.15**.
- 1.8.7 The Contractor shall accept the Tender agreed with the Councils or determined by the Expert (as the case may be) within 5 Business Days of such agreement or determination (as the case may be).
- 1.8.8 As soon as reasonably practicable following acceptance of a Tender in accordance with **paragraph 1.8.7** the Contractor (or a sub-contractor) shall enter into the Remediation Handback Contract with the Remediation Handback Contractor and shall supply a copy of the completed Remediation Handback Contract to the Councils within a further 5 Business Days.

## 1.9 Remediation Handback Works

- 1.9.1 The Contractor shall procure at its own cost that the Remediation Handback Works shall be carried out and completed by the Remediation Handback Contractor in accordance with the Remediation Handback Contract (including without limitation in accordance with the Remediation Handback Specification).
- 1.9.2 In respect of the Remediation Handback Works:
- 1.9.2.1 the Parties agree and acknowledge that if and to the extent that the CDM Regulations apply to the Remediation Handback Works the Councils will be deemed to have hereby appointed the Contractor to act as the only client in respect of such Works subject to **clause 17** (CDM Regulations);
- 1.9.2.2 the Contractor shall ensure that the Remediation Handback Contract contains an obligation on the Remediation Handback Contractor to comply with all Environmental Legal Requirements applicable at the date

of the Remediation Handback Contract and all relevant Legal Requirements and Guidance of any Relevant Authority;

- 1.9.2.3 the Contractor shall ensure that the Remediation Handback Contract shall grant the Councils any necessary step in rights;
- 1.9.2.4 ensure that the Remediation Handback Contract contains a provision requiring the Remediation Handback Contractor to complete the Remediation Handback Works within the Remediation Handback Period;
- 1.9.2.5 the Contractor shall at the request of the Councils keep it informed as to the progress of the Remediation Handback Works and supply to the Councils such information as the Councils shall reasonably require in relation to any aspect of the Remediation Handback Works or the Remediation Handback Contract;
- 1.9.2.6 the Contractor shall permit the Councils (and/or its advisers or consultants) access to any Site (or any part of it) to inspect and/or monitor the Remediation Handback Works upon reasonable prior written notice and subject to complying with the Remediation Handback Contractor's reasonable safety and security requirements (as may be updated from time to time but provided that such access and inspection and/or monitoring does not impede the progress of the Remediation Handback Works or the Services and that the Councils (and/or its advisers or consultants) are not permitted to provide any instructions to the Remediation Handback Contractor (or any sub-contractor of any tier);
- 1.9.2.7 the Contractor shall take into account any reasonable representations of the Councils in relation to the Remediation Handback Works (but on the basis that the Councils will be under no duty to monitor the Remediation Handback Works or to make representations);
- 1.9.2.8 the Contractor shall ensure that under the Remediation Handback Contract the Remediation Handback Consultant shall be responsible for obtaining all Necessary Consents required for carrying out the Remediation Handback Works;
- 1.9.2.9 subject to **clauses** 47 (Contractor's Records), 49 (Data Protection) and 75 (Freedom of Information), the Contractor shall maintain as confidential and not disclose at any time to any person or body any information of a confidential nature including (without limitation) concerning the operations, processes or dealings of the other Party or any information of whatsoever nature concerning the organisation, business, financial arrangements, transactions or affairs of the other Party which have come or may come to the knowledge of the Contractor as a result of the carrying out of the

Remediation Handback Works save as required by Law or as necessary to enable the Contractor to comply properly with its obligations under this Contract or as may be expressly authorised in writing by the Councils;

- 1.9.2.10 the Contractor shall ensure that the Councils are notified of and has the right to attend any site meetings with any Relevant Authority concerning the Remediation Handback Works and to receive on request copies of all correspondence with all such authorities in relation to the Remediation Handback Works and the minutes and other records of all such meetings (where received by the Contractor);
- 1.9.2.11 at any time prior to the date of the issue of the Remediation Completion Certificate the Contractor shall notify the Councils as soon as reasonably practicable after the Contractor becomes aware that any Hazardous Substances are discovered at or escaping from any Site which are not taken into account in the Remediation Handback Specification and which should be so taken into account;
- 1.9.2.12 on discovery of such Hazardous Substances pursuant to **paragraph 1.9.2.11** the Contractor shall procure that the Remediation Handback Consultant considers the same and if necessary in its professional opinion recommends a variation to the Remediation Handback Specification to ensure that the Site is put into a condition which is Environmentally Acceptable and the Contractor shall notify the Councils in writing of such recommendation (if any);
- 1.9.2.13 the Contractor shall not make any change or variation to the Remediation Handback Specification pursuant to **paragraph 1.9.2.12** without the prior written agreement of the Councils (such agreement not to be unreasonably withheld or delayed). If the Councils give their prior written agreement to any such recommendation, the Parties shall seek to agree the variation to the Remediation Handback Specification acting in good faith and failing such agreement within 10 Business Days the matter shall be referred to an Expert within 5 Business Days for determination in accordance with **paragraph 1.15**.

## 1.10 Collateral Warranties

Within 10 Business Days of entering into the Remediation Handback Contract, the Contractor shall use all reasonable endeavours to provide to the Councils the Collateral Warranties from the Remediation Handback Contractor.

## 1.11 Remediation Handback Completion

- 1.11.1 When the Contractor is of the opinion that Remediation Handback Completion has occurred and following receipt of confirmation from any Relevant Authority that they are satisfied with the Remediation

Handback Works it shall forthwith notify the Remediation Handback Consultant and the Councils of the same.

1.11.2 The Contractor shall procure that the Remediation Handback Consultant shall within the period of 10 Business Days of its receipt of the Contractor's notice given under **paragraph 1.11.1** either:

1.11.2.1 issue the Remediation Completion Certificate stating the date upon which in its opinion Remediation Handback Completion has occurred; or

1.11.2.2 notify the Councils and the Contractor that Remediation Handback Completion has not been achieved together with a report setting out the respects in which it considers that the same had not been achieved.

1.11.3 If the Remediation Handback Consultant provides a report pursuant to **paragraph 1.11.2.2**, the Contractor shall, when it is of the opinion that each of the respects referred to in the Remediation Handback Consultant's report have been satisfied, notify the Remediation Handback Consultant and the Councils of the same and thereafter the procedures set out in **paragraphs 1.11.1** and **1.11.2** shall be repeated until the Remediation Completion Certificate is issued or it is determined by the Expert pursuant to **paragraph 1.15** that the Remediation Completion Certificate should have been issued.

1.11.4 If:

1.11.4.1 the Councils disagree with the issuance of the Remediation Completion Certificate; or

1.11.4.2 the Remediation Handback Consultant fails to issue the Remediation Completion Certificate in accordance with **paragraph 1.11.2** and the Contractor wishes to challenge the same; or

1.11.4.3 there are any aspects of the Remediation Handback Consultant's report provided pursuant to **paragraph 1.11.2.1** which either Party wishes to challenge;

then the relevant Party shall be entitled to refer the matter within 20 Business Days for determination by an Expert in accordance with **paragraph 1.15**.

1.11.5 If the Parties agree or the Expert decides (as the case may be) that further works need to be carried out in order to fulfil the Handback Specification ("**Further Remediation Handback Works**"), then it shall also specify a further Remediation Handback Period ("**Further Remediation Handback Period**") and the Contractor will procure at its own expense that the Further Remediation Handback Works are carried out within the Further Remediation Handback Period.

1.11.6 When the Contractor is of the opinion that Remediation Handback Completion of the Further Remediation Handback Works has occurred the Contractor shall forthwith notify the Remediation Handback Contractor and the Councils of the same and the provisions of **paragraph 1.11.1** and **1.11.6** (inclusive) shall then apply mutatis



mutandis (but replacing the words "Remediation Completion Certificate" by "Further Remediation Completion Certificate") and there shall be no restriction on the number of times that these provisions may apply.

- 1.11.7 The Parties agree that the relevant Remediation Completion Certificate or Further Remediation Completion Certificate shall be final and binding on the Parties unless the matter is referred for determination by an Expert in accordance with **paragraph 1.15** and is so referred within 20 Business Days of receipt of the relevant Remediation Completion Certificate or Further Remediation Completion Certificate.

#### 1.12 **Documents to be Provided on Remediation Handback Completion**

On Remediation Handback Completion the Contractor shall procure that there is provided to the Councils (or in the event that the Councils exercises any step in rights and the Remediation Handback Works are completed by a contractor appointed by the Councils) at the cost and expense of the Contractor the following information and documents (all of which shall be addressed to both the Contractor and to the Councils):

- 1.12.1 three copies of a statement by either the Remediation Handback Consultant or Remediation Handback Contractor of not more than two A4 pages in length which shall:

- 1.12.1.1 describe the project in very brief form, including its objectives and the Remediation Handback Works;
- 1.12.1.2 make specific reference to the Closure Report;
- 1.12.1.3 detail the extent of regulatory liaison;
- 1.12.1.4 detail the regulatory approval obtained (if any) and reference key documentation; and
- 1.12.1.5 include a summary statement that the goals of the project have been achieved

(the "**Closure Statement**"); and

- 1.12.2 three copies of the a report by either the Remediation Handback Contractor or Remediation Handback Consultant or the contractor appointed by the Councils (following any step in), containing the following information and documents:

- 1.12.2.1 a section concerning the pre existing conditions including:
  - (a) the history of the site including any historical plans;
  - (b) site investigation activities; and
  - (c) pre remediation ground conditions; and
- 1.12.2.2 a section concerning the management of the Remediation Handback Works including:
  - (a) parties involved;

- (b) management structure;
  - (c) project management; and
  - (d) contract procurement, management and site supervision; and
- 1.12.2.3 a section concerning the Remediation Handback Works carried out including:
- (a) site management including health and safety, environmental protection and waste management;
  - (b) remedial strategy and methods;
  - (c) detailed description of the works carried out; and
  - (d) selected photographs; and
- 1.12.2.4 a section on validation of the Remediation Handback Works including:
- (a) the project remediation validation criteria;
  - (b) the risk assessment process by which the criteria were derived;
  - (c) the approval (if any) as supplied of the regulatory authorities of the derived validation criteria;
  - (d) the process of validation during the Remediation Handback Works;
  - (e) the detailed results of the validation;
  - (f) any approval provided by any Regulatory Authority of the validation results; and
  - (g) a summary statement on the results of the validation; and
- 1.12.2.5 a section on the final as-built condition of the site including a discussion and detailed survey quality plans in hard copy and CAD format of the final site conditions including excavations and backfilled areas, areas investigated and areas not investigated. The excavation plans should include depths, batters, extracted and remaining buried obstructions and soil validation samples; and
- 1.12.2.6 a section concerning any regulatory liaison process including:
- (a) an outline discussion of the liaison process;
  - (b) a summary of all written submissions, presentations, meetings and correspondence;

- (c) details of any licensing and permitting requirements and how they were fulfilled; and
- (d) copies of any appropriate Relevant Authorities' approvals and copies of any written conclusion issued to the Remediation Handback Contractor or Remediation Handback Consultant or the contractor appointed by the Councils by any Relevant Authorities on the final condition of the Site; and
- (e) one copy of the health and safety file required by the CDM Regulations where applicable to the Remediation Handback Works

(the "**Closure Report**"); and

- 1.12.3 one hard copy of as built drawings and plans relating to the Remediation handback Works in such format as are reasonably available and as the Councils may reasonably specify.

### 1.13 **Costs**

For the avoidance of doubt, the cost of the Remediation Handback Works and any Further Remediation Handback Works and any Monitoring following Remediation Handback Completion shall be reimbursed to the Contractor out of the Retention Fund Account and to the extent that the sums in the Retention Fund Account are inadequate carried out at the sole cost and expense of the Contractor.

### 1.14 **Permits**

- 1.14.1 The Contractor shall take all reasonable steps to assist the Councils in the transfer as soon as practicable of any Necessary Consents relating to the Remediation Handback Works to the Contractor and/or the Remediation Handback Contractor.
- 1.14.2 The Contractor shall use all reasonable endeavours to ensure that upon the Expiry Date or the Extended Expiry Date (as the case may be) or the Termination Date that all Necessary Consents relating to the Remediation Handback Works are, as soon as reasonably practicable, either (i) transferred to any third party nominated by the Councils; or (ii) surrendered, both in accordance with the lawful requirements of the Relevant Environmental Authority and any relevant Environmental Legal Requirements, at the sole cost of the Contractor.

### 1.15 **Expert Determination**

- 1.15.1 Any dispute about the provisions of this Schedule are to be determined by an Expert.
- 1.15.2 The following provisions apply to the Expert:
  - 1.15.2.1 he is to act as an expert and not as an arbitrator;
  - 1.15.2.2 he is to give the Councils and the Contractor an opportunity to make written representations and to comment on each other's representations;

- 1.15.2.3 another expert may replace him if he dies, becomes unwilling or incapable of acting or it becomes apparent for any other reason that he will be unable to determine the matter referred to him within a reasonable time;
- 1.15.2.4 he will be instructed to make his determination within 20 Business Days of the matter being referred to him;
- 1.15.2.5 his decision (in the absence of manifest error) is to be final and binding on the Councils and the Contractor; and
- 1.15.2.6 his fees, including those of his appointment, are to be borne between the Councils and the Contractor as determined by the Expert or, in the absence of a determination, shared equally between the Parties.