

**SCHEDULE 33****ELECTRICITY GENERATION FROM LANDFILL GAS****1. DEFINITIONS**

In this Schedule 33, unless the context otherwise requires:

**"Connon Bridge Landfill Gas Agreement"** has the meaning given to it in the Deed of Novation relating to Connon Bridge (Liskeard) Landfill Site and Old Connon Bridge Landfill Site (as amended by the Deed of Novation where the context requires);

**"Deed of Novation"** means each of the deeds of novation in such form as may be agreed by the Parties;

**"Equipment"** means all plant, machinery, equipment and apparatus of whatever nature brought onto or installed in a Landfill Site in connection with the Gas Generation Project and including, without limitation, all buildings, civil engineering works, electrical and mechanical equipment, the Gas Collection System, the Gas Transmission System and the Generation Equipment;

**"Existing Landfill Gas Generation Contracts"** means the Connon Bridge Landfill Gas Agreement and the United Mines Landfill Gas Agreement;

**"Gas Collection System"** means any gas wells and associated pipework for the collection of Landfill Gas on a Landfill Site;

**"Gas Generation Project"** the commercial exploitation of Landfill Gas by the Contractor including all activities and efforts associated with the recovery, collecting, processing, selling of Landfill Gas or electricity or heat derived therefrom from the relevant Landfill Site;

**"Gas Transmission System"** means a gas pipeline from the outlet point of the Gas Collection System to the Generation Equipment, including blowers, measurement and monitoring equipment as supplied by an appropriate equipment supplier;

**"Generation Compound"** means the area or areas within the relevant Landfill Site where Generation Equipment is sited;

**"Generation Equipment"** means electrical power generation equipment, power lines, connections or substations provided for the utilisation of Landfill Gas on a Landfill Site;

**"Landfill Gas"** means methane carbon dioxide and other gases produced from a Landfill Site;

**"Landfill Gas Contractors"** means Connon Bridge Energy Limited and United Mines Energy Limited;

**"Landfill Site"** means the Old Connon Bridge Landfill Site or an Existing Landfill Site;

"**Old Connon Bridge Landfill Site**" has the meaning given in Schedule 35 (*Old Connon Bridge Landfill Site*);

"**Related Agreements**" means the "Connon Bridge Direct Agreement" and the "United Mines Direct Agreement" in each case as defined in the relevant Deed of Novation.

"**United Mines Landfill Gas Agreement**" has the meaning given to it in the Deed of Novation relating to United Mines (as amended by the Deed of Novation where the context requires);

## 2. **LANDFILL GAS GENERATION OBLIGATIONS EXISTING LANDFILL GAS GENERATION CONTRACTS**

2.1 The Contractor and the Authority will use all reasonable endeavours to ensure that, on and with effect from the Service Commencement Date, the rights and obligations of CES under the Existing Landfill Gas Generation Contracts and the Related Agreements will be novated to the Contractor and the terms of the Existing Landfill Gas Generation Contracts and the Related Agreements will be amended on and subject to the terms of the Deeds of Novation.

2.2 Pending the novation of the relevant Existing Landfill Gas Generation Contracts and Related Agreements, the Authority will use all reasonable endeavours to procure that CES appoints a nominee of the Contractor as its agent to exercise its rights under the Existing Landfill Gas Generation Contract and will pay to the Contractor an amount equal to all royalties received by CES from the Landfill Gas Contractor which accrued from the Service Commencement Date. The Contractor shall indemnify the Authority and CES for all costs, losses and liabilities incurred by the Authority and CES in relation to an Existing Landfill Gas Generation Contract which are referable to the period after the Service Commencement Date up to such date as the Existing Landfill Gas Generation Contract is novated.

## 3. **LANDFILL GAS MANAGEMENT OBLIGATIONS**

3.1 The Authority acknowledges and agrees that, for so long as the Existing Landfill Gas Generation Contracts and Related Agreements are in effect, the ability of the Contractor to perform its obligations under this Contract relating to the management of Landfill Gas is affected by the rights and obligations of the Landfill Gas Contractors under those Existing Landfill Gas Generation Contracts and Related Agreements.

3.2 The Contractor shall actively manage the Landfill Gas Contractors in accordance with the terms of the Existing Landfill Gas Contracts to ensure, so far as is reasonably practicable having regard to the terms of the Existing Landfill Gas Contracts, compliance with Good Industry Practice, all Legislation, Guidance, and Necessary Consents.

3.3 In the event that the Contractor breaches its obligations under this Contract or otherwise incurs any liability under this Contract in relation to the management of Landfill Gas at an

Existing Landfill Site where an Existing Landfill Gas Generation Contract is in effect and such breach or liability is caused by the acts or omissions of the relevant Landfill Gas Contractor then:

- (a) the Authority shall not be entitled to terminate this Contract by reason of such breach; and
- (b) subject to paragraph 3.3A, the Contractor's liability to the Authority (including in relation to Deductions) in relation to such breach or liability shall be limited to the amounts recoverable by the Contractor from the relevant Landfill Gas Contractor (or any guarantor of its obligations) under the terms of the Existing Landfill Gas Generation Contracts and Related Agreements in relation to the relevant acts or omissions of the Existing Landfill Gas Contractor.

3.3A Any amounts recovered by the Contractor from a Landfill Gas Contractor shall (after deducting properly incurred reasonable third party costs of the Contractor in pursuing the relevant claims) first be allocated pro rata between the Authority and the Contractor to compensate the Parties in relation to the following liabilities and losses:

- (a) in the case of the Contractor, loss of royalties, site remediation and third party liability; and
- (b) in the case of the Authority, any liability of the Authority in relation to an Existing Landfill Site under clause 14 of this Contract and any third party liability including payments which the Authority is required to pay contractors of the WCA as a result of the Existing Landfill Site being Unavailable.

3.4 The limitation on the liability of in paragraph 3.3 shall not apply if and to the extent that the Contractor has contributed to the relevant breach or liability by failing to use reasonable endeavours in accordance with Good Industry practice to manage the relevant Landfill Gas Contractor through the exercise and enforcement of its rights under the Existing Landfill Gas Generation Contract or under any law.

#### 4. **LANDFILL GAS ELECTRICITY GENERATION OBLIGATIONS**

4.1 The Authority acknowledges and agrees that for so long as an Existing Landfill Gas Generation Contract is in effect in relation to a Landfill Site, the sole obligation of the Contractor in relation to the generation of electricity from that Landfill Site shall be to actively manage the Landfill Gas Contractors and to exercise and enforce its rights under the relevant Existing Landfill Gas Generation Contract in accordance with Good Industry Practice, all Legislation, Guidance, and Necessary Consents, whilst having due regard to the overriding requirement to manage the relevant Landfill Site and related Landfill Gas in accordance with its obligations under this Contract.

4.2 Upon termination of an Existing Landfill Gas Contract (whether at the expiry of its original term or on early termination) the Contractor shall, if it believes it to be commercially viable, be entitled, at its sole cost, to generate electricity from Landfill Gas at the relevant Landfill Sites(s) or alternatively extend the term of the relevant Existing Landfill Gas Contract in each case with the consent of the Authority (not to be unreasonably withheld or delayed).

5. **LICENCE**

5.1 The Authority grants to the Contractor, its employees, agents, contractors and such other persons as may be authorised by it in connection with the Project a licence to enter onto the Landfill Sites with or without vehicles to do anything necessary in connection with its obligations under this Schedule 33.

5.2 In the event that the Contractor is generating electricity from Landfill Gas at any Landfill Site in accordance with paragraph 4.2, the Authority grants to the Contractor, a licence for the Contractor, its employees, agents, contractors and such other persons as may be authorised by it:

- (a) to enter onto the relevant Landfill Site for the purposes of evaluation, exploration and testing of the Landfill Gas;
- (b) to supervise, maintain, repair and renew the relevant Gas Collection System, Gas Transmission System and Generation Equipment;
- (c) to use the relevant Generation Compound as the location for the Generation Equipment and to enter the relevant Generation Compound in order to install and subsequently maintain, repair, and renew the Generation Equipment and to use and occupy the relevant Generation Compound for the purpose of the Gas Generation Project;
- (d) to collect Landfill Gas from the relevant Landfill Site and to the free passage of Landfill Gas through the Gas Collection System and the Gas Transmission System;
- (e) with the prior approval of the Authority (not to be unreasonably withheld or delayed) to install upgrades to the Gas Collection System to enhance Landfill Gas volumes available from the Gas Collection System and to make any consequential alterations to the Equipment;
- (f) to do anything necessary to comply with any conditions attached to any Necessary Consents;

- (g) to have access at all times with or without vehicles and for all purposes in connection with the Gas Generation Project; and
- (h) to install and thereafter maintain such cables and other services media as are necessary to connect the Generation Compound to all mains services.

5.3 Each licence granted under paragraphs 5.1 and 5.2 above shall expire on the earlier of the Expiry Date and the Termination Date.

**6. HANDBACK**

6.1 In the event that any Existing Landfill Gas Generation Contract is in effect on the Termination Date, the Authority and the Contractor shall use all reasonable endeavours (including entering into any contracts) to novate to the Authority or as directed by the Authority all of the rights and obligations of the Contractor (excluding accrued rights and obligations) under the relevant Existing Landfill Gas Generation Contract and Related Agreements. Each party shall be responsible for its own costs incurred in complying with this paragraph 6.1 and the Authority shall be responsible for paying all stamp duty and the costs of obtaining any consents in connection with such novation.

6.2 Pending the novation of the relevant Existing Landfill Gas Generation Contracts and Related Agreements, the Contractor will appoint a nominee of the Authority as its agent to exercise its rights under the Existing Landfill Gas Generation Contract and will pay over to the Authority all royalties received from the Landfill Gas Contractor which accrued from the Termination Date. Except in relation to termination for Contractor Default, the Authority shall indemnify the Contractor for all costs, losses and liabilities incurred by the Contractor in relation to an Existing Landfill Gas Generation Contract which are referable to the period after the Termination Date up to such date as the Existing Landfill Gas Generation Contract is novated.