

**SCHEDULE 36****RESTORATION AND HANDBACK OF EXISTING LANDFILL SITES****1. DEFINITIONS**

1.1 In this Schedule 36, unless the context otherwise requires:

**"After Care Agreement"** means the detailed plan laying out the proposed closure, Restoration Work and After Care Maintenance and Monitoring Work at each relevant Existing Landfill Site (or part thereof) agreed with each Relevant Authority as more particularly described in paragraph 2.4;

**"After Care Maintenance and Monitoring Work"** means all work after the completion of the Restoration Work required at an Existing Landfill Site (or part thereof) to maintain, control and monitor that site (or part thereof) in accordance with the Landfill Compliance Requirements and so as to ensure that the settlement of waste and materials at the site (or part thereof) can be adequately and sufficiently controlled and monitored;

**"Certificate of Release"** means:

- (a) a certificate or letter issued by the Relevant Authority certifying that the relevant Existing Landfill Site has been capped and restored in accordance with the relevant Planning Permission; or
- (b) a certificate or letter issued by the Relevant Authority in relation to the final part of the relevant Existing Landfill Site the effect of which, when taken together with any previous Certificate of Release in relation to any other part of the relevant Existing Landfill Site, is that the whole of the relevant Existing Landfill Site has been capped and restored in accordance with the relevant Planning Permission; or
- (c) a Notice issued by the Authority pursuant to paragraph 6;

**"Connon Bridge Landfill Site Handback Date"** means the date on which the Connon Bridge (Liskeard) Landfill Site transfers back to the Authority in accordance with this Schedule 36;

**"Connon Bridge Restoration Bond"** means a bond, in a form as reasonably agreed by the Authority, in the amount of £5,000,000 (indexed) payable on demand in the event of any claim under paragraph 4.3 of this Schedule for a period up to the date that is 5 years after the Connon Bridge Landfill Site Handback Date and issued by a reputable UK clearing bank as may be reasonably agreed by the Authority;

**"Handback Date"** means the Connon Bridge Landfill Site Handback Date and the United Mines Landfill Site Handback Date;

**"Landfill Compliance Requirements"** means the requirements of any Relevant Authority, all applicable Necessary Consents, all applicable Legislation and Good Industry Practice;

**"Outstanding CBL Restoration Cost"** means the amount per tonne provided for by the Contractor (in accordance with generally accepted accounting principles in the United Kingdom from time to time) multiplied by the agreed tonnage of waste actually Landfilled in the relevant part of the Connon Bridge (Liskeard) Landfill Site as at the Termination Date or the Expiry Date (as the case may be);

**"Pre-Closure Maintenance and Monitoring Work"** means all work required at an Existing Landfill Site (or part thereof) to maintain, control and monitor the site (or part thereof) in accordance with the Landfill Compliance Requirements from the Service Commencement Date to the date when the Restoration Work commences;

**"Restoration Work"** means the work after Pre-Closure Maintenance and Monitoring Work and prior to the Restoration Date required at an Existing Landfill Site (or part thereof) in relation to the proposed closure, capping and restoration of the site, or any part thereof, in accordance with the Landfill Compliance Requirements;

**"Restoration Date"** means the date on which a Certificate of Release is issued in relation to an Existing Landfill Site;

**"United Mines Landfill Site Handback Date"** means the date on which the United Mines (Redruth) Landfill Site and the United Mines (Redruth) HWRC site transfers to the Authority in accordance with this Schedule 36;

**"United Mines Restoration Bond"** means a bond, in a form as reasonably agreed by the Authority, in the amount of £3,000,000 (indexed) payable on demand in the event of any claim under paragraph 3.3 for a period up to the date that is 5 years after the United Mines Landfill Site Handback Date and issued by a reputable UK clearing bank as may be reasonably agreed by the Authority;

- 1.2 In this Schedule 36 a reference to a "paragraph" means a paragraph of this Schedule 36 and a reference to a "clause" means a clause to this Contract.

**2. RESTORATION AND AFTER CARE OF EXISTING LANDFILL SITES**

- 2.1 Prior to the Handback Date of each Existing Landfill Site the Contractor shall be responsible for all Pre-Closure Maintenance and Monitoring Work, Restoration Work and After Care Maintenance and Monitoring Work, at each Existing Landfill Site in accordance with each relevant After Care Agreement and the requirements of this Schedule 36.
- 2.2 Subject to paragraphs 3, 4 and 5, on and from the Handback Date of each Existing Landfill Site the Authority shall be responsible for all Pre-Closure Maintenance and Monitoring Work, Restoration Work and After Care Maintenance and Monitoring Work, at each Existing Landfill Site in accordance with the Landfill Compliance Requirements and each relevant After Care Agreement.
- 2.3 No later than three (3) months in advance of the date on which it wishes to commence any Restoration Work to an Existing Landfill Site (or part thereof) the Contractor shall:
- (a) produce a draft After Care Agreement;
  - (b) confirm its estimate of the remaining tonnage of waste and materials necessary to close, cap and restore the Existing Landfill Site (or part thereof).
- 2.4 Each draft After Care Agreement shall provide such information as may reasonably be required so as to describe in detail the Restoration Work and After Care Maintenance and Monitoring Work proposals and timescales at the relevant Existing Landfill Site (or part thereof), including:
- (a) site layout drawings showing the proposed pre-settlement contours;
  - (b) site layout drawings showing the forecasted post-settlement contours;
  - (c) the proposed capping and pollution control measures (including leachate control and gas management);
  - (d) environmental management and monitoring infrastructure and locations to ensure their continued suitability for use throughout the duration of the After Care Agreement;
  - (e) landfill gas management systems, including gas treatment, utilisation plant or flares;
  - (f) long and short term stability of the proposed landform including the waste deposits and associated structures such as the capping layer, drainage layer, soil cover and leachate and landfill gas management structures;

- (g) the proposed procedures and timescales for achieving the post-settlement contours;
- (h) proposals for settlement surveys; and
- (i) the anticipated date of a Certificate of Release being issued.

2.5 The Parties shall (each acting reasonably and in good faith) agree the terms of each draft After Care Agreement prior to the final agreement of any Relevant Authority in accordance with paragraph 2.6. If any After Care Agreement is not agreed by the Parties the matter shall be referred on the application of either Party for resolution in accordance with clause 102 (*Dispute Resolution*). Once agreed or determined, the Contractor shall commence the relevant Restoration Work.

2.6. In relation to the agreement of any After Care Agreement the Contractor shall negotiate with each Relevant Authority and the Authority shall give the Contractor (free of charge) any reasonable assistance required by the Contractor during such negotiations. The Contractor shall agree the terms of each draft After Care Agreement with each Relevant Authority prior to the commencement of any Restoration Work and upon such agreement the draft After Care Agreement shall be deemed to be the After Care Agreement for that Existing Landfill Site (or part thereof) for the purposes of this Schedule 36.

2.7 In relation to each After Care Agreement the Contractor shall liaise with the Authority and seek to agree (each acting reasonably and in good faith) from time to time upon the Restoration Work and After Care Maintenance and Monitoring Work:

- (a) required to meet the pre-settlement contours set out in the relevant Planning Permission;
- (b) (in the absence of the relevant Planning Permission setting out pre-settlement contours), required to meet pre-settlement contours which would, or would be reasonably likely to, deliver the post-settlement contours set out in the relevant Planning Permission following the projected settlement of the waste and material in the Existing Landfill Site (or part thereof); or
- (c) (where the volume of waste actually landfilled at the Existing Landfill Site (or part thereof) is less than that required to comply with paragraph 2(a) or 2(b)), required to ensure that during and following the settlement of the waste and material at the Existing Landfill Site (or part thereof) so as to limit, minimise, and where practicable eliminate, the impact upon the Environment of the Existing Landfill Site (or part thereof);

in each case based on the terms of the After Care Agreement.

2.8 The Contractor shall provide the Authority with such reports on the progress of the Pre-Closure Maintenance and Monitoring Work, Restoration Work and After Care Maintenance and Monitoring Work in relation to an Existing Landfill Site (or part thereof) as the Authority may reasonably require from time to time.

2.9 If, following agreement of an After Care Agreement, the Contractor (acting in accordance with Good Industry Practice) or a Relevant Authority requires a variation to an After Care Agreement, including the Restoration Work or the After Care Maintenance and Monitoring Work, its timing or duration, then not later than one (1) month or such shorter period as the parties may agree (acting reasonably) prior to any proposed variation taking effect, the Contractor and the Authority shall acting reasonably agree any such revision to the After Care Agreement.

### **3. HANDBACK OF UNITED MINES (REDRUTH) LANDFILL SITE**

3.1 At any time after the Restoration Date of the United Mines (Redruth) Landfill Site but prior to the Expiry Date, the Contractor may take such steps as is necessary in order for the United Mines (Redruth) Landfill Site to transfer to the Authority. The Authority shall ensure that all Necessary Consents are transferred or other consents have been obtained to enable the United Mines (Redruth) Landfill Site to transfer to the Authority as soon as is practicable after the Restoration Date. Each party shall be responsible for its own costs incurred in complying with this paragraph 3.1 and the Authority shall be responsible for paying all stamp duty and the costs of transferring the Necessary Consents or obtaining any other consents in connection with the transfer of the United Mines (Redruth) Landfill Site to the Authority.

3.2 The Contractor shall indemnify the Authority in relation to any steps undertaken, or expense incurred, by the Authority in relation to the Restoration Work at the United Mines Landfill Site in accordance with each relevant After Care Agreement within five (5) years of the United Mines Landfill Site Handback Date if and to the extent that the United Mines Landfill Site did not comply with the requirements of each such After Care Agreement at the United Mines Landfill Site Handback Date.

3.3 If the Contract is terminated prior to, or within five (5) years of, the United Mines Landfill Site Handback Date the Contractor must provide the Authority with the United Mines Restoration Bond, which will be a pre-condition to any payments by the Authority to the Contractor in relation to such termination or expiry (as the case may be).

### **4. HANDBACK OF CONNON BRIDGE LANDFILL SITE**

4.1 If, prior to the date of termination of this Contract or the Expiry Date (as the case may be), the Connon Bridge (Liskeard) Landfill Site's void space is exhausted, then at any time after the Restoration Date of the Connon Bridge (Liskeard) Landfill Site, the Contractor

shall take such steps as is necessary in order for the Connon Bridge (Liskeard) Landfill Site to transfer to the Authority. The Authority shall ensure that all Necessary Consents are transferred or other consents have been obtained to enable the Connon Bridge (Liskeard) Landfill Site to transfer to the Authority as soon as is practicable after the Restoration Date. Each party shall be responsible for its own costs incurred in complying with this paragraph 4.1 and the Authority shall be responsible for paying all stamp duty and the costs of transferring the Necessary Consents or obtaining any other consents in connection with the transfer of the Connon Bridge (Liskeard) Landfill Site.

4.2 The Contractor shall indemnify the Authority in relation to any steps undertaken, or expense incurred, by the Authority in relation to the Restoration Work at the Connon Bridge (Liskeard) Landfill Site in accordance with each relevant After Care Agreement within five (5) years of the Connon Bridge Landfill Site Handback Date if and to the extent that the Connon Bridge (Liskeard) Landfill Site did not comply with the requirements of each such After Care Agreement at the Connon Bridge Landfill Site Handback Date.

4.3 If the Contract is terminated prior to, or otherwise expires within 5 years of, the Connon Bridge Landfill Site Handback Date, the Contractor must provide the Authority with the Connon Bridge Restoration Bond, which will be a pre-condition to any payments by the Authority to the Contractor in relation to such termination or expiry (as the case may be). In the case of expiry of the Contract, the Contractor shall provide the Authority with a Connon Bridge Restoration Bond at least (6) months prior to the Expiry Date, failing which the Authority shall be entitled to procure a Connon Bridge Restoration Bond and deduct the costs of doing so from the Annual Unitary Charge payable after such date.

## 5. **OUTSTANDING CBL RESTORATION COSTS**

5.1 If and to the extent that at the date of termination of this Contract or the Expiry Date (as the case may be) any part of the Connon Bridge Landfill Site has been Landfilled by the Contractor but the Landfilling of that part has not been exhausted then:

- (a) where the relevant Restoration Work to that part has not commenced, the Contractor shall pay to the Authority an amount equal to the Outstanding CBL Restoration Cost; or
- (b) where the relevant Restoration Work to that part has commenced but has not been completed, the Contractor shall pay to the Authority an amount equal to the Outstanding CBL Restoration Cost less an amount equal to all reasonable costs incurred by the Contractor in relation to the Restoration Work as at that date;

in each case as its contribution to the outstanding Restoration Work required to that part of the Connon Bridge Landfill Site.

5.2 If the amount to be paid by the Contractor to the Authority pursuant to paragraph 5.1 is not agreed by the Parties the matter shall be referred on the application of either Party for resolution in accordance with clause 102 (*Dispute Resolution*).

6. **FAILURE OF A RELEVANT AUTHORITY TO ISSUE A CERTIFICATE OF RELEASE**

6.1 The Parties acknowledge that there are no statutory obligations on a Relevant Authority to issue a Certificate of Release in relation to an Existing Landfill Site.

6.2 Except where a Relevant Authority has objected in writing to issue a Certificate of Release on grounds that the Restoration Work has not been completed in accordance with the relevant Planning Permission (whether in relation to the whole of the Existing Landfill Site or the final part of it), the Authority shall, following receipt of a written notice from the Contractor, carry out (or procure) a survey ("**Landfill Survey**") of the Existing Landfill Site to assess (acting reasonably and in good faith) whether the Restoration Work has been completed in all material respects.

6.3 Without prejudice to the Authority's rights under paragraphs 3.2, 4.2 and 5, if the Landfill Survey shows that the Restoration Work has not been completed in all material respects, the Authority shall:

- (a) notify the Contractor of the remedial work required to the Restoration Work for the Contractor to comply with its obligations under this Schedule 36 such that transfer of the Existing Landfill Site back to the Authority can take place;
- (b) specify a reasonable period within which the Contractor must carry out such remedial work to the Restoration Work; and
- (c) where the cost of any remedial work to the Restoration Work identified by the Landfill Survey:
  - (i) is greater than the cost of the relevant Landfill Survey, be entitled to be reimbursed by the Contractor for the cost of the Landfill Survey; or
  - (ii) is less than the cost of the relevant Landfill Survey, the Authority shall be liable for the cost of the Landfill Survey.

6.4 The Contractor shall carry out such remedial work to the Restoration Work within the period specified in paragraph 6.3(b) and any costs it incurs in carrying out such remedial work shall be at its own expense. Upon completion of such remedial work to the Restoration Work the Authority shall itself issue a Certificate of Release to the Contractor in relation to the Existing Landfill Site.

- 6.5 Without prejudice to the Authority's rights under paragraphs 3.2, 4.2 and 5, if the Landfill Survey shows that the Restoration Work has been completed in all material respects then the Authority shall itself issue a Certificate of Release to the Contractor in relation to the Existing Landfill Site.