

SCHEDULE 12
INDEPENDENT CERTIFIER'S DEED OF APPOINTMENT

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the State of Maryland, this _____ day of _____, 20____.

Independent Certifier

DATED 22 FEBRUARY 2013

Amended and Restated on the ARA Effective Date

- (1) GLOUCESTERSHIRE COUNTY COUNCIL
- (2) UBB WASTE (GLOUCESTERSHIRE) LIMITED
- (3) SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED
- (4) FICHTNER CONSULTING ENGINEERS LIMITED

INDEPENDENT CERTIFIER'S DEED OF APPOINTMENT

BETWEEN:

- (1) GLOUCESTERSHIRE COUNTY COUNCIL of Shire Hall, Gloucester, GL1 2TH (the "Authority");
- (2) UBB WASTE (GLOUCESTERSHIRE) LIMITED (Company No. 8301902) whose registered office is at Unit F, 2nd Floor, Pate Court, St Margret's Road, Cheltenham, GL50 4DY (the "Contractor");
- (3) SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED (Company No. 4684034) whose registered office is at 99 Queen Victoria Street, London, EC4V 4EH as security trustee for the Senior Lenders from time to time under the Senior Financing Agreements (the "Agent" which term shall include any substitute or replacement agent from time to time under the Senior Financing Agreements); and
- (4) FICHTNER CONSULTING ENGINEERS LIMITED (Company No. 2605319) whose registered office is at Kingsgate, Wellington Road North, Stockport, Cheshire, SK4 1LW (the "Independent Certifier");

WHEREAS:

- (A) The Authority and the Contractor have agreed the terms on which the Contractor will provide services relating to the design, installation, operation and maintenance of residual waste treatment facilities (the "Facility") at Javelin Park, Haresfield, Gloucestershire (the "Project") and, accordingly, have entered into a Project Agreement on or around the date hereof (the "Project Agreement").
- (B) The Contractor has entered into the Construction Sub-Contract with the Construction Sub-Contractor for the carrying out of the Works in relation to the Facility.
- (C) The Contractor has also entered into (i) the Senior Financing Agreements with the Senior Lenders and (ii) Operating Sub-Contract with the Operating Sub-Contractor.
- (D) The Independent Certifier is an independent adviser willing to provide services to the Contractor, the Authority and the Agent (which services are also intended to benefit the Construction Sub-Contractor and the Operating Sub-Contractor in each case through collateral warranties provided by the Independent Certifier).
- (E) The Contractor, the Authority and the Agent wish to appoint the Independent Certifier to carry out the duties and obligations which are ascribed to the Independent Certifier in the Project Agreement, and the duties and obligations which are ascribed to the Independent Certifier in the Construction Sub-Contract, upon the terms of this Deed.

IT IS AGREED as follows:

1. **INTERPRETATION**

- 1.1 Unless the context otherwise requires, words and expressions defined in the Project Agreement have the same meanings in this Deed as in the Project Agreement.
 - a. **ARA Effective Date** means the Effective Date as defined in the document titled "Project Documents Amendment and Restatement Agreement" relating to the Gloucester Waste PPP Project entered into between, amongst others, the parties to this Deed.
- 1.2 The headings in this Deed do not affect its interpretation.
- 1.3 Unless the context otherwise requires, all references to Clauses and Schedules are references to clauses of and schedules to this Deed.

1.4 In the case of any conflict or inconsistency between the terms of this Deed and the Project Agreement or any other document incorporated by reference, the terms of this Deed shall prevail.

1.5 References to "the Authority", "the Contractor" and "the Agent" shall include any person or persons for the time being entitled to the benefit of this Deed as a successor to such entities from time to time.

2. APPOINTMENT

2.1 The Contractor, the Authority and the Agent hereby appoint jointly the Independent Certifier to perform the obligations and tasks, which are ascribed to the Independent Certifier in the Project Agreement and the Construction Sub-Contract and which are summarised in Schedule 1, upon the terms and conditions set out below.

2.2 The Independent Certifier shall provide the services under Clause 2.1 above (the "Services") and any Varied Services under Clause 2.4 below independently, fairly and impartially to and as between the counterparties to the Project Agreement and the Construction Sub-Contract and having due regard to the interests of the Senior Lenders and the Operating Sub-Contractor, at such times and at such locations as the parties shall agree from time to time. Whilst the Independent Certifier may take account of any representations made by the Contractor, the Authority, the Senior Lenders' technical adviser, the Construction Sub-Contractor and/or the Operating Sub-Contractor (as appropriate), the Independent Certifier shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Certifier is required to exercise his professional judgement.

2.3 On the date of this Deed the Independent Certifier shall execute (as a deed) and deliver to:

2.3.1 (a) the Construction Sub-Contractor and (b) the Operating Sub-Contractor respectively a collateral warranty agreement in the form of the draft collateral warranty agreement appearing in Schedule 3 to this Deed.

2.4 Varied Services

2.4.1 The Independent Certifier shall carry out and perform any varied or additional services (the "Varied Services") required for the implementation of the Project and reasonably required by the Contractor which are not included in, or which are omitted from, those Services which are set out in Schedule 1, subject to prior agreement by the Contractor to the costs thereof.

2.4.2 If the Independent Certifier shall at any time be required to perform Varied Services, it shall, as soon as reasonably practicable and in any event within five (5) Business Days, give to the Contractor a written estimate of the cost thereof (taking into account any reduction in work or other expense which might also occur as a result of the circumstances giving rise to the Varied Services). The estimate of fees for the Varied Services shall be based upon the rates contained in Part 2 of Schedule 2.

2.5 The Independent Certifier shall provide the Services and the Varied Services:

2.5.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project; and

2.5.2 in accordance with Good Industry Practice, all applicable Legislation and the Output Specification.

For the purposes of this Clause 2.5 "Good Industry Practice" shall mean the exercise of that degree of skill, diligence, prudence, foresight and operating practice that would reasonably and ordinarily be expected from skilled and experienced operators with appropriately qualified personnel engaged in the same type of undertaking as the Independent Certifier in compliance with Legislation.

- 2.6 All instructions to the Independent Certifier must be signed and given by the Contractor's Representative or such other person or persons as may be appointed by the Contractor as such pursuant to Clause 9 (Representatives) of the Project Agreement and as shall be notified to the Independent Certifier by the Contractor. Accordingly, any instructions the Authority wishes to give shall be communicated to the Contractor and the Contractor's Representative shall in turn issue such instructions to the Independent Certifier. The Contractor shall, within a reasonable time of providing such an instruction to the Independent Certifier under this Clause 2.6, provide a copy of such instruction to the Authority and the Agent.
- 2.7 The Independent Certifier shall comply with all reasonable instructions given to it by the Contractor except and to the extent that the Independent Certifier reasonably considers that any such instructions vary or might vary the Services or its authority or responsibilities under this Deed or prejudices or might prejudice the exercise by the Independent Certifier of its professional judgement in accordance with Clauses 2.2 and 2.5 above. The Independent Certifier shall promptly confirm in writing to the Contractor, the Authority and the Agent whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.
- 2.8 The Contractor, the Authority and the Agent agree to co-operate with and provide reasonable assistance to the Independent Certifier to familiarise the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Deed and shall jointly procure that the Independent Certifier is granted such access to the Site and the Works as it may reasonably require for the purposes of carrying out the Services and all other purposes reasonably ancillary thereto.
- 2.9 The Independent Certifier shall be deemed to have full knowledge of the provisions of the Project Agreement, the Senior Financing Agreements, the Construction Sub-Contract and the Operating Sub-Contract and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of the Contractor, the Authority and the Agent which are set out in the Project Agreement, the Senior Financing Agreements and the Construction Sub-Contract under the Construction Sub-Contract and the Operating Sub-Contract under the Operating Sub-Contract which documents shall be made available to the Independent Certifier save for any confidential issues contained in any such documents
- 2.10 The Independent Certifier shall promptly and efficiently perform the Services as and when required in order to facilitate the proper operation of the Project Agreement and the Construction Sub-Contract but consistent with the standards specified in Clauses 2.2 and 2.5 above.
- 2.10.1 Subject to Clause 2.10.2, the Independent Certifier shall use [REDACTED] in connection with the performance of the Services and any Varied Services and such persons' services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Services and any Varied Services. Such persons shall have full authority to act on behalf of the Independent Certifier for all purposes in connection with this Deed.
- 2.10.2 None of the persons mentioned in Clause 2.10.1 shall be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Certifier or he/she is unable to work because of death or ill-health or by agreement of the Contractor, the Authority and the Agent. The Independent Certifier shall notify (giving a minimum of ten (10) Business Days' notice, or as soon as reasonably

practicable) the Contractor, the Authority and the Agent of any such circumstances and shall be responsible for finding a replacement whose appointment shall be subject to approval in writing by the Contractor, the Authority and the Agent.

- 2.11 The Independent Certifier acknowledges that the Agent has an interest in the performance by the Independent Certifier of the obligations ascribed to it under the Project Agreement even though the Agent is not a party to the Project Agreement.

3. DURATION

- 3.1 The Services shall commence on the date of this Deed and shall continue until all the Services and any Varied Services have been performed or this Agreement is otherwise terminated in accordance with Clauses 6 and 7.
- 3.2 The Parties shall hereby agree that this Deed governs all of the Services and any Varied Services provided by the Independent Certifier in relation to the Project whether before or after the date hereof.

4. FEE

- 4.1 The fee of one hundred and forty four thousand and fifty two pounds sterling (£144,052) for the Services provided by the Independent Certifier in relation to the Project shall be paid by the Contractor. The fee is exclusive of VAT and is inclusive of disbursements. The Independent Certifier shall issue invoices to the Contractor in accordance with the provisions of Schedule 2 Part 1. The date on which each invoice is received by the Contractor shall constitute the due date for the purposes of the sum claimed in such invoice. The final date for payment by the Contractor of the sum claimed in each invoice shall be thirty (30) days after the date of receipt by the Contractor of the relevant invoice. If Varied Services are agreed and provided then they shall be paid for by the Contractor and calculated based on the daily rates stated in Schedule 2 Part 2.
- 4.2 Not later than five (5) Business Days after each due date ascertained in accordance with Clause 4.1, the Contractor shall give written notice to the Independent Certifier stating the amounts which the Contractor proposes to pay and the basis on which the amount is calculated.
- 4.3 Subject to Clause 4.6 and unless the Contractor has served notice under Clause 4.4, the Contractor shall pay the Independent Certifier the sum referred to in the notice given under clause 4.2 (or, if the Contractor has not served notice under Clause 4.2 the sum referred to in the invoice given under Clause 4.1) (the "Notified Sum") on or before the final date for payment.
- 4.4 Where the Contractor intends to pay less than the Notified Sum, the Contractor shall give written notice thereof (a "Pay Less Notice") to the Independent Certifier not later than five (5) Business Days before the final date for payment applicable thereto pursuant to Clause 4.1 (the "Prescribed Period"). The Pay Less Notice shall state the amount the Contractor considers to be due on the date the notice is served and the basis on which that sum is calculated.
- 4.5 If the Contractor fails to pay the Independent Certifier any sum due by the final date for payment and has failed to give a Pay Less Notice, the Contractor shall pay the Independent Certifier simple interest on the sum due by them from the final date for payment until the actual date of payment thereof at the Prescribed Rate.
- 4.6 Notwithstanding Clauses 4.3 or 4.4, if the Independent Certifier becomes insolvent after the Prescribed Period the Contractor shall not be required to pay the Independent Certifier the Notified Sum on or before the final date for payment.

- 4.7 If the Contractor fails to pay the amounts properly due from it pursuant to the foregoing provisions of this Clause 4 and no Pay Less Notice has been given pursuant to Clause 4.4, the Independent Certifier may suspend performance of any or all of the Services. This right is subject to the Independent Certifier first giving the Contractor, the Authority and the Agent not less than seven (7) Business Days' notice in writing of such intention stating the grounds for suspension and the Contractor or the Authority or the Agent pursuant to Clause 7A having failed to pay such amount on or before the expiry of said notice. The right to suspend performance as aforesaid shall cease when the Contractor pays the amount(s) properly due by them.
- 4.8 [Not Used].
- 4.9 For the avoidance of doubt neither the Authority or the Agent shall be liable for the payment of the fee or any other fees, costs and/or expenses charged or incurred by the Independent Certifier, subject to Clause 7A.
- 4.10 [Not Used].
- 4.11 [Not Used].

5. LIMITATIONS ON AUTHORITY

The Independent Certifier shall not:

- 5.1 make or purport to make any alteration or addition to or omission from the design of the Facilities (including, without limitation, the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Project; or
- 5.2 (unless the Contractor, the Authority and the Agent consent in writing) consent or agree to any waiver or release of any obligation of the Contractor under the Project Agreement or of any contractor or professional consultant employed or engaged in connection with the Project.

For the avoidance of doubt, the Independent Certifier shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this Deed.

6. TERMINATION

- 6.1 The Contractor, the Authority and the Agent may by joint notice in writing (a "Joint Notice") immediately terminate this Deed if the Independent Certifier:
- 6.1.1 is in breach of any of the terms of this Deed which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Certifier within twenty-one (21) days of receipt by the Independent Certifier of a Joint Notice specifying the breach and requiring its remedy;
- 6.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Services and/or its other duties under this Deed;
- 6.1.3 fails to comply with Clause 2.10;
- 6.1.4 fails or refuses after written warning to provide the Services and/or its other duties under this Deed reasonably and as properly required of him; or
- 6.1.5 is subject to an event analogous to any of the events set out in limbs (c), (d) (e) and (f) of the definition of Contractor Default of the Project Agreement.

6.2 If the Project Agreement is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, this Deed may be terminated by Joint Notice and with immediate effect.

6.3 NOT USED

6.4 NOT USED

6.5 Termination of the Independent Certifier's engagement under this Deed, howsoever arising, shall, subject to Clause 7.6, be without prejudice to the rights and remedies of any party to this Deed in relation to any negligence, omission or default of any other party prior to such termination and shall not affect the continuing rights and obligations of the Contractor, the Authority, the Agent and the Independent Certifier under Clauses 7 (Termination by Independent Certifier), 8 (Confidential Information and Copyright), 9 (Professional Indemnity Insurance), 5 (Limitations on Authority), 18 (Dispute Resolution Procedure) and this Clause or under any other Clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

6.6 Notwithstanding the foregoing provisions of this Clause 6 where the Project Agreement shall have been terminated in part in accordance with its terms, this Agreement shall be amended to reflect such partial termination.

6A **SUSPENSION**

The Contractor, the Authority and the Agent may by issuing a Joint Notice to the Independent Certifier suspend this Deed at any time. During the period of any such suspension, payment of the fee pursuant to Clause 4 shall be suspended.

7. **TERMINATION BY INDEPENDENT CERTIFIER**

7.1 Subject to the following provisions of this Clause 7, the Independent Certifier shall only be entitled to terminate this Deed where the Contractor, the Authority and the Agent are in material breach of their obligations under Clause 4 of this Deed. In the event of any such material breach by the Contractor, the Authority and the Agent of their obligations under this Deed (as the case may be) which they shall fail to remedy after receiving a written notice from the Independent Certifier specifying the breach and requiring its remedy within twenty (20) Business Days of the date of the relevant notice (the "IC Remedy Notice"), the Independent Certifier may then by a written notice to the Contractor, the Authority and the Agent (the "IC Termination Notice") terminate its engagement under this Deed twenty (20) Business Days after the date of the IC Termination Notice.

7.2 Upon any termination of the Independent Certifier's engagement under Clause 6 or Clause 7.1, the Independent Certifier shall be relieved of its obligation to continue with the performance of the Services and any Varied Services and shall take immediate steps to bring to an end the Services and any Varied Services in an orderly manner but with all reasonable speed and economy and shall within ten (10) Business Days of the date of termination deliver to the Contractor copies of all reports, minutes of meetings and other documents prepared or in the course of preparation by the Independent Certifier in connection with the Project and, in the event that a replacement Independent Certifier has been appointed to complete the performance of the Services including any Varied Services, shall co-operate fully with such replacement to the extent that it is reasonable to do so.

7.3 If the Independent Certifier's engagement under this Deed is terminated, pursuant to Clause 6.2 or Clause 7.1, the Contractor shall (subject to any withholdings, deductions or set-offs which the Contractor and/or the Authority and/or the Agent is entitled to make) pay to the Independent Certifier that part of the fee that became due (but remains unpaid) prior to the date of such termination, less the amount of any payments in respect of the fee previously made to the Independent Certifier under this Deed. In addition the Contractor shall reimburse

to the Independent Certifier the direct costs wholly and necessarily incurred by the Independent Certifier and resulting from such termination including any disbursements such as travel costs and hotel expenses to which the Independent Certifier was committed prior to termination occurring and cannot mitigate provided always that such termination and such costs have arisen otherwise than by reason of any negligence, omission or default on the part of the Independent Certifier, its servants or agents, or any sub-contractor or assignee or their respective servants or agents and that the Independent Certifier shall have first submitted its account for payment hereunder to the Contractor upon or within five (5) Business Days following such termination.

7.4 If the Independent Certifier's engagement under this Deed is terminated pursuant to Clause 6.1, the Contractor shall not be required to make any further payment to the Independent Certifier whether for work carried out up to the date of termination or thereafter until the exercise in this Clause 7.4 is complete and then subject to the results of such exercise. Following termination of the Independent Certifier's engagement pursuant to Clause 6.1, the Contractor, the Authority and the Agent may employ a replacement Independent Certifier to carry out and complete the Services and any Varied Services upon the terms and conditions set out in this Deed and at such cost as shall be reasonable in the circumstances. Upon completion of the Services and any Varied Services, the Contractor shall prepare, within a reasonable time thereafter, an account in the form of a statement to be served upon the Independent Certifier setting out the following:

7.4.1 the amount of costs and expenses properly incurred by the Contractor, the Authority and the Agent including those incurred pursuant to Clause 7.4.2 and of any Direct Loss and/or damage caused to the Contractor, the Authority and the Agent as a result of the termination of the Independent Certifier's engagement under this Deed;

7.4.2 the amount of any payments made to the Independent Certifier in respect of the Services and any Varied Services; and

7.4.3 the total amount which would, but for such termination, have been paid to the Independent Certifier in consideration of the Services and any Varied Services on or before due completion thereof in accordance with this Deed.

7.5 If the sum of the amounts referred to in Clauses 7.4.1 and 7.4.2 exceeds or is less than the amount stated under Clause 7.4.3 the difference shall be a debt payable by the Independent Certifier to the Contractor or by the Contractor to the Independent Certifier as the case may be.

7.6 Upon any termination of the Independent Certifier's engagement under this Deed, howsoever arising, the Contractor, the Authority and the Agent shall not be liable, save as is exclusively set out in Clauses 7.3 or 7.4 as appropriate, to the Independent Certifier for any Indirect Losses arising out of or in connection with such termination.

7.7 The provisions of this Deed shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

7A ASSUMPTION AND OBLIGATION TO PAY

7A.1 The Authority, the Contractor and/or the Agent shall be referred to as the "Appointers" and each an "Appointer", for the purposes of this Clause 7A.

7A.2 The Independent Certifier's right to terminate its engagement under this Deed or to discontinue the performance of the Services or the Varied Services (as relevant) shall cease if any Appointer not in breach of this Deed (the "Assuming Appointer") responds to the IC Remedy Notice within the period of 20 Business Days referred to in Clause 7.1, with a notice to the Independent Certifier:

- 7A.2.1 requiring it to continue the performance of the Services and/or the Varied Services (as relevant);
- 7A.2.2 acknowledging that it is assuming all the obligations of the other Appointer(s) in breach under this Deed; and
- 7A.2.3 undertaking to the Independent Certifier both to discharge all payments which may subsequently become due to the Independent Certifier under this Deed and to pay to the Independent Certifier any sums which have already become due but which remain unpaid.
- 7A.3 On compliance by the Assuming Appointer with Clause 7A.2, this Deed shall continue in full force and effect as if the right of termination or discontinuance on the part of the Independent Certifier has not arisen and on the basis that all references in this Deed to the Contractor in relation to the payment of the Fee shall be read and construed as references to the Assuming Appointer.
- 7A.4 Where the Assuming Appointer has given an undertaking under Clause 7A.2.3, and has assumed responsibility under this Deed in accordance with Clause 7A.3, the Appointer in breach shall reimburse and indemnify the Assuming Appointer against each and every liability which the Assuming Appointer may have to the Independent Certifier by virtue of such undertaking and assumption of responsibility and against any claims, demands, proceedings, damages, costs and expenses sustained, incurred or payable by the Assuming Appointer as a consequence of such undertaking and assumption of responsibility insofar as and to the extent that the same has arisen by reason of any breach by the other Appointer of their obligations under this Deed.

8. CONFIDENTIAL INFORMATION AND COPYRIGHT

- 8.1 The Independent Certifier shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to the Contractor's, the Authority's or the Agent's, the Construction Sub-Contractor's or the Operating Sub-Contractor's (if appropriate) technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of the Contractor, the Authority or the Agent, the Construction Sub-Contractor or the Operating Sub-Contractor (if appropriate) where the information was received during the period of this Deed. Upon termination of this Deed for whatever reasons the Independent Certifier shall deliver up to the Contractor, Authority and/or the Agent (as appropriate) all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant either to this Deed or to any previous obligation owed to the Contractor, the Authority and/or the Agent (if appropriate).
- 8.2 The copyright in all reports, calculations, certificates and other similar documents provided by the Independent Certifier in connection with the Project (the "Documents") shall remain vested in the Independent Certifier but the Independent Certifier grants to the Contractor, Authority and the Agent and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use the Documents and to reproduce the information contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

9. PROFESSIONAL INDEMNITY INSURANCE

- 9.1 Without prejudice to its obligations under this Deed or otherwise at law, the Independent Certifier shall maintain professional indemnity insurance on an annual basis with a limit of indemnity of not less than ten million pounds (£10,000,000) Sterling for any one claim (£10,000,000 in the aggregate in respect of pollution or contamination) in respect of any neglect, error or omission on the Independent Certifier's part in the performance of its

obligations under this Deed for the period commencing on the date of this Deed and expiring twelve (12) years after:

9.1.1 the date on which the Works are determined to be completed (pursuant to the issue of an Acceptance Test Certificate); or

9.1.2 the date of termination of this Deed,

whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates. For the avoidance of doubt such insurance does not extend to provide cover for asbestos risks.

9.2 The Independent Certifier shall maintain such insurance with reputable insurers carrying on business in the United Kingdom who are acceptable to the Contractor, the Authority and the Agent, such acceptance not to be unreasonably withheld or delayed.

9.3 Any increased or additional premium required by insurers by reason of the Independent Certifier's own claims record or other acts, omissions, matters or things particular to the Independent Certifier shall be deemed to be within commercially reasonable rates.

9.4 The Independent Certifier shall immediately inform the Contractor, the Authority and the Agent if such insurance ceases to be available at commercially reasonable rates in order that the Independent Certifier, the Contractor, the Authority and the Agent can discuss means of best protecting the respective positions of the Contractor, the Authority and the Agent and the Independent Certifier in respect of the Project in the absence of such insurance.

9.5 The Independent Certifier shall fully co-operate with any measures reasonably required by the Contractor, the Authority and the Agent including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Contractor, the Authority and the Agent undertake in writing to reimburse the Independent Certifier in respect of the net cost of such insurance to the Independent Certifier above commercially reasonable rates or, if the Contractor, the Authority and/or the Agent effect such insurance at rates at or above commercially reasonable rates, reimbursing the Contractor, the Authority and/or the Agent in respect of what the net cost of such insurance to the Contractor, the Authority and/or the Agent would have been at commercially reasonable rates.

9.6 The Independent Certifier shall, prior to commencing the provision of the Services and no later than thirty (30) days after each annual renewal date, produce for inspection by the Contractor, the Authority and the Agent documentary evidence that such insurance is being properly maintained.

9.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Contractor, the Authority and/or the Agent.

10. NOTICES

All notices or other communications required in connection with this Deed shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number of the Contractor and the Authority as set out in the Project Agreement or of the Agent as set out in the Senior Financing Agreements or to such other address or facsimile number as a party to this Deed may notify to another party to this Deed in writing.

11. ASSIGNMENT

- 11.1 The Independent Certifier shall not assign or transfer any of its rights or obligations under this Deed or sub-contract the whole or any part of the Services.
- 11.2 Neither the Contractor nor the Authority shall be entitled to assign or transfer any of its rights or obligations under this Deed save that the parties hereby consent to any such assignment or transfer by the Contractor which is contemporaneous to the assignment or transfer of the Project Agreement and is made to the same assignee or transferee. In the event that the Project Agreement is novated to a third party, the term "Project Agreement" shall include any replacement contract arising from such novation.
- 11.3 The Agent may assign or transfer any of its rights and obligations under this appointment to any other person, firm, corporate body or company provided that it gives notice in writing of such assignment or transfer as soon as possible thereafter to the other parties to this appointment.
- 11.4 The Independent Certifier shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clauses 11.2 or 11.3 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

12. CUMULATIVE RIGHTS AND ENFORCEMENT

- 12.1 Any rights and remedies provided for in this Deed whether in favour of the Contractor, the Authority or the Agent or the Independent Certifier are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.
- 12.2 The duties and obligations of the Independent Certifier arising under or in connection with this Deed are owed to the Contractor, the Authority and the Agent jointly and severally and the Contractor, the Authority or the Agent may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.
- 12.3 The Contractor, the Authority and the Agent covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this Deed which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

13. WAIVER

The failure of any party at any one time to enforce any provision of this Deed shall in no way affect its right thereafter to require complete performance by any other party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

14. SEVERABILITY

In the event that any term, condition or provision contained in this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this Deed and the rest of this Deed shall stand, without affecting the remaining clauses.

15. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

16. **VARIATION**

A variation of this Deed is valid only if it is in writing and signed by or on behalf of each party.

17. **DISPUTE RESOLUTION PROCEDURE**

17.1 All disputes under this Deed shall be resolved in accordance with terms equivalent (mutatis mutandis) to the Dispute Resolution Procedure as set out in the Project Agreement (save for any dispute which relates to the matters referred to in clause 21.4 of the Project Agreement which provisions shall, for the avoidance of doubt, be deemed to be incorporated in this Deed (mutatis mutandis)).

17.2 The Contractor, the Authority, the Agent and the Independent Certifier shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Deed.

18. **GOVERNING LAW AND JURISDICTION**

18.1 Subject to Clause 17 above, this Deed shall be governed by and construed in accordance with the laws of England, and (subject as aforesaid) the parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.

18.2 No action or proceedings may be commenced against the Independent Certifier for any breach of this Deed after the expiry of twelve (12) years following the date of completion of the Services and any Varied Services or the termination of this Deed, whichever is the earlier.

19. **DELIVERY**

This Deed is delivered on the date written at the start of this Deed.

20. **THIRD PARTY RIGHTS**

Save as expressly set out herein, no provision of this Deed is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party against any party to this Deed.

21. **LIMIT ON LIABILITY**

The Independent Certifier's maximum aggregate liability in respect of any and all claims made against it under this Deed by the Contractor, the Authority and/or the Agent or by any and all other claimants arising under or in connection with the Independent Certifier's breach of this Deed, in contract, tort or otherwise in connection with this Deed, shall not exceed ten million pounds (£10,000,000) Sterling (except for any liability for fraud, abandonment, corruption, wilful default, death or personal injury for which the Independent Certifier's liability shall be unlimited).

IN WITNESS WHEREOF the Parties have executed and delivered this Deed on the date first written above.

EXECUTED AND DELIVERED)

as a Deed by UBB WASTE)
(GLOUCESTERSHIRE) LIMITED)

acting by a director/ its duly authorised attorney in)
the presence of:)

)

Name of witness

Address of witness)

)

Occupation of witness)

)

Signature of witness)

.....

EXECUTED AND DELIVERED)

as a Deed by FICHTNER CONSULTING)
ENGINEERS LIMITED)

acting by a director/ its duly authorised attorney in)
the presence of:)

)

Name of witness)

Address of witness)

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Occupation of witness)

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Signature of witness)

.....

THE COMMON SEAL of)

GLOUCESTERSHIRE COUNTY COUNCIL)

was affixed in the presence of:)

)

)

Deputy Chief Executive)

EXECUTED AND DELIVERED)

as a Deed by SUMITOMO MITSUI BANKING)
CORPORATION EUROPE LIMITED

acting by its duly authorised attorneys)

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SCHEDULE 1

SCOPE OF SERVICES - INDEPENDENT CERTIFIER CONTRACT

The Services to be performed by the Independent Certifier under this Deed shall, without prejudice to Clause 2.5 of this Deed, comprise (and the Independent Certifier shall carry out and complete) all of the duties, tasks, functions and obligations attributed to the Independent Certifier in the relevant clauses of the Project Agreement, the Construction Sub-Contract and any other agreement(s) notified in advance to the Independent Certifier by the Contractor ("Additional Documents"), and complying with any time limits specified in such clauses, including, but not limited to, the following particular services, tasks and duties:

General

1. The Facility will be subjected to a comprehensive set of testing and acceptance protocols during the completion of the construction of the Works and during the commissioning of the Works.
2. Readiness Tests and Acceptance Tests will be carried out to confirm the suitability and reliability of the Facility via a two-stage certification process in the Project Agreement and in the Construction Sub-Contract:
 - (a) **Readiness Test Certificate** - certification that all Readiness Tests have been satisfactorily passed to demonstrate that the plant is ready to Accept waste; and
 - (b) **Acceptance Test Certificate** - certification that the Acceptance Tests have been satisfactorily passed to demonstrate successful operation of the plant.
3. Accordingly, in relation to the Project generally, the Independent Certifier shall:-
 - 3.1 visit the Sites, liaise with the Contractor and familiarise himself with:
 - (i) the Project Agreement (including, but not limited to, the Design Data, Output Specification, Service Delivery Plans and Outline Commissioning Plan and all Changes implemented from time to time and any other relevant documentation or information referred to in the Project Agreement),
 - (ii) the Senior Financing Agreements,
 - (iii) the Construction Sub-Contract and Operating Sub-Contract
 - (iv) any Additional Documentsto the extent necessary to be in a position to carry out the duties and services of the Independent Certifier in accordance with the terms of this Deed, the Project Agreement, the Construction Sub-Contract and the Additional Documents;
 - 3.2 from the date of this Deed until the completion of the Services, provide the Contractor (copied to the Authority) with a Monthly report on the activities carried out by the Independent Certifier during each calendar Month;
 - 3.3 monitor the progress of the Works at the Site and the procedures for the identification, approval and implementation of agreed Changes in accordance with the Project Agreement;
 - 3.4 provide to the Contractor, the Authority and/or the Agent at their request (subject to them meeting the Independent Certifier's reasonable copying costs) such additional copies of all or any of the Documents prepared by the Independent Certifier as are reasonably requested by the Contractor, the Authority and/or the Agent from time to time and provide such additional information and co-operation as is reasonably required in connection with the same;

- 3.5 as and when requested by the Contractor, the Authority and/or the Agent participate in the resolution of any dispute between the Authority and the Contractor under the Dispute Resolution Procedure (as such term is defined in the Project Agreement) or between the Contractor and the Construction Sub-Contractor under the Dispute Resolution Procedure (as defined in the Construction Sub-Contract) to the extent that the issues that are the subject of dispute under the Project Agreement or the Construction Sub-Contract which have been referred to the said Dispute Resolution Procedures relate to any of the Independent Certifier's services, duties and/or obligations under this Deed; and
- 3.6 undertake regular Site visits throughout the duration of the Services, recognising that the frequency and timing of the Independent Certifier's visits will be dependent on the progress of construction on the Site.

Works Phase - Prior to Readiness Test Certificate

4. During the Works Period but prior to issue of the Readiness Test Certificate, the Independent Certifier Shall:
- 4.1 monitor the construction, structural and services design for the Project to establish that the design is generally in accordance with the Project Agreement and the Construction Sub-Contract;
- 4.2 monitor the detailed working drawings and specifications to verify that they comply with the Basic Design Proposal as set out in Schedule 29 of the Project Agreement and the Construction Sub-Contract;
- 4.3 review the detailed design information for any approved design or specification variations for compliance with the performance and quality standards of the Project Agreement and the Construction Sub-Contract;
- 4.4 develop and agree with the Contractor the testing protocols and plans prior to completion of the relevant phase of the Works to be carried out prior to the carrying out of Readiness Tests.
- 4.5 following receipt of notification from the Contractor pursuant to Clause 21.2.2 of the Project Agreement, to inspect the Works on the date or dates specified by the Contractor and to attend the Readiness Tests to be carried out (as referred to in Schedule 11 of the Project Agreement);
- 4.6 subject to paragraph 4.7, when the Contractor has satisfactorily completed all of the Readiness Tests in accordance with the Project Agreement, issue the Readiness Test Certificate in accordance with the Project Agreement stating the date on which such Readiness Tests were satisfactorily completed and provide a summary report for all supervised tests to the Contractor, the Authority, the Agent, the Construction Sub-Contractor and the Operating Sub-Contractor;
- 4.7 within five (5) Business Days of any inspection made pursuant to Clause 21.2. of the Project Agreement, to notify the Contractor of any outstanding matters (including, without limitation, the repetition of any of the Readiness Tests which are required to be carried out and passed in accordance with the Contractor's Commissioning Plan) which are required to be attended to before a Readiness Test Certificate can be issued;
- 4.8 to prepare and issue, on the date of issue of any Readiness Test Certificate, a Snagging List to the Authority, the Contractor and the Agent (which shall specify the list of Snagging Items in respect of the Works which are the subject of that Certificate) which the Independent Certifier shall agree with the Contractor and contain an estimate of the cost of rectifying such Snagging Items, and agree a programme for the completion of any such rectification works;

- 4.9 to monitor the carrying out and rectification of all Snagging Items by the Contractor in relation to this period of the Works;
- 4.10 For the avoidance of doubt, paragraphs 4.1 to 4.3 above shall not impose any design obligation on the Independent Certifier, and any liability for the design shall remain with the parties obliged to undertake and complete the design under the Project Agreement and Construction Sub-Contract. The services required under paragraphs 4.1, 4.2 and 4.3 shall be supervisory in nature and not require the Independent Certifier to approve (or otherwise) the suitability of the design under the Project;

Works Phase - From Readiness Test Certificate to Acceptance Test Certificate

5. During the Works Period from the Readiness Test Certificate but prior to the issue the Acceptance Test Certificate, the Independent Certifier shall:
- 5.1 following receipt of notification from the Contractor pursuant to Clause 21.2.2 of the Project Agreement, to commence performance of the activities of the Independent Certifier under Clause 21 of the Project Agreement and the agreed Commissioning Plan pursuant to the Project Agreement;
- 5.2 following receipt of notification from the Contractor pursuant to Clause 21.2.2 of the Project Agreement, to inspect the Works on the date or dates specified by the Contractor and to attend the Acceptance Tests to be carried out and review the results (as referred to in Schedule 11 of the Project Agreement);
- 5.3 subject to clause 5.4, when the Contractor has satisfactorily completed all of the Acceptance Tests in accordance with the Project Agreement, issue the Acceptance Test Certificate in accordance with the Project Agreement stating the date on which such Acceptance Tests were satisfactorily completed and provide a summary report for all supervised tests to the Contractor, the Authority, the Agent, the Construction Sub-Contractor and the Operating Sub-Contractor;
- 5.4 within five (5) Business Days of any inspection made pursuant to Clause 21.2 of the Project Agreement, to notify the Contractor of any outstanding matters (including, without limitation, the repetition of any of the Acceptance Tests which are required to be carried out (as referred to in Schedule 11 of the Project Agreement) and passed in accordance with the Contractor's Commissioning Plan) which are required to be attended to before an Acceptance Certificate can be issued;
- 5.5 Not used.
- 5.6 to prepare and issue, on the date of issue of any Acceptance Test Certificate, a Snagging List to the Authority, the Contractor and the Agent (which shall specify the list of Snagging Items in respect of the Works which are the subject of that Certificate) which the Independent Certifier shall agree with the Contractor and contain an estimate of the cost of rectifying such Snagging Items, and agree a programme for the completion of any such rectification works;
- 5.7 to monitor the carrying out and rectification of all Snagging Items by the Contractor in relation to this period of the Works;
- 5.8 identify any aspect of the Works which need to be inspected before being covered over by subsequent activity so that he may satisfy himself that these have been constructed in accordance with the Contractor's Integrated Management System (as defined in the Output Specification) without the need for opening up;
- 5.9 review any samples as required by the Project Agreement and the Construction Sub-Contract and check that they have been approved in accordance with that agreement;

- 5.10 check the production of the relevant Operating Manuals, relevant approvals, test results, inspection records and As Built Drawings and monitor the timely handover of this documentation; and
- 5.11 comply with the Contractor's Permit to Work System as required.
- 6. Any work arising as a consequence of any agreement to extend the date of Acceptance under the Project Agreement beyond the Acceptance Longstop Date stated in the Project Agreement shall be considered omitted from the Services in this Schedule 1 and shall be considered Varied Services under the provision of clause 2.4.1 of this Appointment.

SCHEDULE 2

PART 1

SCHEDULE OF DRAWDOWN OF FEES

The Independent Certifier shall issue invoices in arrears as follows:

Financial Close		£9,675.00
33 Month Construction Period		
Month 1	£4,072.03	
Month 2	£4,072.03	
Month 3	£4,072.03	
Month 4	£4,072.03	
Month 5	£4,072.03	
Month 6	£4,072.03	
Month 7	£4,072.03	
Month 8	£4,072.03	
Month 9	£4,072.03	
Month 10	£4,072.03	
Month 11	£4,072.03	
Month 12	£4,072.03	
Month 13	£4,072.03	
Month 14	£4,072.03	
Month 15	£4,072.03	
Month 16	£4,072.03	
Month 17	£4,072.03	
Month 18	£4,072.03	
Month 19	£4,072.03	
Month 20	£4,072.03	
Month 21	£4,072.03	
Month 22	£4,072.03	
Month 23	£4,072.03	
Month 24	£4,072.03	
Month 25	£4,072.03	
Month 26	£4,072.03	
Month 27	£4,072.03	
Month 28	£4,072.03	
Month 29	£4,072.03	
Month 30	£4,072.03	
Month 31	£4,072.03	
Month 32	£4,072.03	
Month 33	£4,072.03	
		£134,377.00
Total		£144,052.00

SCHEDULE 2

PART 2

SCHEDULE OF DAILY RATES

Additional services will be provided by the Independent Certifier as required, either on a firm price quoted for a fixed scope of service or, where the precise scope and duration cannot be defined, on a time and disbursement basis in accordance with the following minimum daily rates or such other rates as may be agreed with the Contractor.

Fees

• Director	£1,080
• Senior Consultant	£1,000
• Project Manager/Consultant	£ 840
• Project or Design Engineer	£ 680
• Engineer	£ 560
• Design Technician with CAE tools	£ 520

Other Services and Expenditure:

• Contract Staff	Cost + 15%
• Bought in services (e.g. analysis, measurement, testing)	Cost + 15%
• Mileage in company vehicle	54p/mile
• Subsistence, fares and accommodation	at cost

No additional costs will be incurred without the express agreement of the Contractor in writing.

SCHEDULE 3

INDEPENDENT CERTIFIER'S COLLATERAL WARRANTY

DATED

2013

- (1) FICHTNER CONSULTING ENGINEERS LIMITED
- (2) [UBB GLOUCESTERSHIRE CONSTRUCTION JV] [URBASER ENVIRONMENTAL LIMITED]
- (3) UBB WASTE (GLOUCESTERSHIRE) LIMITED
- (4) GLOUCESTERSHIRE COUNTY COUNCIL
- (5) SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED

THIS DEED dated the day of 2013 is made

BETWEEN:-

- (1) FICHTNER CONSULTING ENGINEERS LIMITED, (Company No. 2605319) whose registered office is at Kingsgate, Wellington Road North, Stockport, Cheshire, SK4 1LW (the "Independent Certifier");
- (2) [UBB GLOUCESTERSHIRE CONSTRUCTION JV an unincorporated joint venture formed of BALFOUR BEATTY CONSTRUCTION NORTHERN LIMITED (Company No. 2818602) whose registered office is at Cavendish House, Cross Street, Sale, Manchester, M33 7BU and BALFOUR BEATTY ENGINEERING SERVICES LIMITED (Company No. SC010625) whose registered office is at Lumina Building, 40 Ainslie Road, Hillington Park, Glasgow, G52 4RU both as agents of BALFOUR BEATTY GROUP LIMITED (Company Number 101073) whose registered office is at Fourth Floor, 130 Wilton Road, London, SW1V 1LQ and URBASER LIMITED (Company number 3588422) whose registered address is at Unit F, 2nd Floor, Pate Court, St Margaret's Road Cheltenham GL50 4DY] [URBASER ENVIRONMENTAL LIMITED (Company No. 7888606) whose registered office is at Unit F, 2nd Floor, Pate Court, St Margaret's Road Cheltenham GL50 4DY] (hereinafter referred to as the "Beneficiary"); and
- (3) UBB WASTE (GLOUCESTERSHIRE) LIMITED (Company No. 8301902) whose registered office is at Unit F, 2nd Floor, Pate Court, St Margaret's Road, Cheltenham, GL50 4DY (the "Contractor");
- (4) GLOUCESTERSHIRE COUNTY COUNCIL of Shire Hall, Gloucester, GL1 2TH (the 'Authority');
- (5) SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED (Company No. 4684034) whose registered office is at 99 Queen Victoria Street, London, EC4V 4EH as security trustee for the Senior Lenders from time to time under the Senior Financing Agreements (the "Agent" which term shall include any substitute or replacement agent from time to time under the Senior Financing Agreements).

BACKGROUND

- (A) The Authority has entered into the Project Agreement with the Contractor pursuant to which the Contractor shall provide services relating to the design, installation, operation and maintenance of a residual waste treatment facility (the "Facility");
- (B) The Contractor has entered into the Construction Sub-Contract with [the Construction Sub-Contractor] [the Beneficiary] pursuant to which the Construction Sub-Contractor is to carry out and complete the Works;
- (C) The Contractor has entered into the Senior Financing Agreements with the Senior Lenders;
- (D) The Contractor has entered into the Operating Sub-Contract with [the Operating Sub-Contractor] [the Beneficiary];
- (E) The Contractor, the Authority and the Agent have entered into the Independent Certifier Contract with the Independent Certifier pursuant to which the Independent Certifier shall provide the Services (as defined therein); and
- (F) The Independent Certifier agrees to enter into this Deed to both warrant its performance of, and to provide assurances in respect of, its obligations under the Independent Certifier Contract to the Beneficiary;

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:-

"Acceptance Date" means the date on which the Works are determined to be complete (pursuant to the issue of an

Acceptance Test Certificate);

"Independent Contract"	Certifier	means the deed of appointment dated of even date herewith made between (1) the Contractor (2) the Authority, (3) the Agent and (4) the Independent Certifier (and others) relating to (inter alia) the execution the Services;
"Documents"		has the meaning ascribed to it in the Independent Certifier Contract;
"Facility"		has the meaning ascribed to it in the Project Agreement;
"Project"		has the meaning ascribed to it in the Project Agreement;
"Project Agreement"		means the agreement dated of even date herewith between (1) the Authority and (2) the Contractor;
"Services"		means together the "Services" and any "Varied Services" as such terms are defined in the Independent Certifier Contract; and
"Works"		has the meaning ascribed to it in the Project Agreement.

1.2 In interpreting this Deed:-

- 1.2.1 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "person" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.2 references to the Beneficiary shall be deemed to include its successors in title and permitted assignees; and
- 1.2.3 headings to Clauses shall be disregarded.
- 1.2.4 unless the context otherwise requires, words and expressions defined in the Project Agreement have the same meanings in this Deed as in the Project Agreement.

2. **SKILL AND CARE**

- 2.1 The Independent Certifier undertakes with and warrants to the Beneficiary that it has carried out and shall continue to carry out and complete the Services fully, faithfully and diligently upon and subject to the provisions of the Independent Certifier Contract using all the reasonable skill, care and diligence as may reasonably be expected of a suitably qualified and skilled professional rendering the Services and experienced in projects of a similar size, scope and complexity as the Project and the Independent Certifier acknowledges that the Beneficiary is relying upon and will continue to rely upon the professional skill, care and impartiality of the Independent Certifier in the performance of the Services and that it owes a duty of care to the Beneficiary in relation thereto such that the duties and obligations owed by the Independent Certifier to the Contractor under the Independent Certifier Contract shall also be owed to the Beneficiary as and when such duties and obligations become due and performable in accordance with the Independent Certifier Contract provided that the duty and/or liability

(whether in duration, extent or nature) of the Independent Certifier under this Deed is to be treated as being no greater (provided that the Independent Certifier shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Independent Certifier from the Contractor) than it would have been if the Beneficiary had been a party to the Independent Certifier Contract (in place of the Contractor) instead of this Deed and the Independent Certifier shall be entitled in the defence of any action or proceedings raised by the Beneficiary under this Deed to rely on any limitation or exclusion to which the Independent Certifier is entitled under the Independent Certifier Contract and to raise the equivalent rights in defence of liability (save for the rights of set-off or counterclaim) as it would have against the Contractor under the Independent Certifier Contract.

- 2.2 Without prejudice to Clause 2.1 and subject to the Independent Certifier's obligations to the Contractor under the Independent Certifier Contract, in the performance of the Services the Independent Certifier undertakes to the Beneficiary to have full regard to any relevant requirements and/or obligations of the Project Agreement and the Construction Sub-Contract and that it shall perform the Services in such manner and at such times that no failure, omission, default or negligent act of the Independent Certifier in relation thereto shall give rise to or cause any breach by the Beneficiary of any such requirements and/or obligations or delay the issue of any Test Certificate or any other certificate or notice to be issued by the Independent Certifier pursuant to the Project Agreement.

3. **INDEMNITY INSURANCE**

The Independent Certifier shall effect and maintain, from the date on which the Independent Certifier Contract until the date 12 years from the date of the Acceptance Test Certificate, professional indemnity insurance with a well established insurance office or underwriter of repute in the sum of ten million pounds (£10,000,000) Sterling for each and every claim (£10,000,000 in the aggregate in respect of pollution or contamination) in respect of negligence, omission or default on the part of the Independent Certifier in the conduct of and execution of its professional activities and duties under the Independent Certifier Contract, PROVIDED THAT such insurance is generally available at reasonable commercial premium rates and on commercially reasonable terms (and, upon such insurance ceasing to be generally available as aforesaid, the Independent Certifier shall notify the Beneficiary thereof). The Independent Certifier shall provide to the Beneficiary from time to time on request particulars of the policy as may be permitted by the insurers and documentary evidence that such insurance is being maintained. The Independent Certifier shall immediately inform the Beneficiary if (for any reason) such insurance ceases to be maintained.

4. **LIABILITY OF THE INDEPENDENT CERTIFIER**

- 4.1 The liability of the Independent Certifier to the Beneficiary under this Deed shall cease on the date twelve (12) years from the date of the Acceptance Test Certificate save in respect of any claim made under this Deed where proceedings have been commenced during such twelve (12) year period.
- 4.2 The Independent Certifier shall have no greater liability to the Beneficiary under this Deed than if the Beneficiary were named as the Contractor under the Independent Certifier Contract provided that the Independent Certifier shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Independent Certifier from the Contractor.
- 4.3 The Independent Certifier shall be entitled to raise as a defence to proceedings brought against it under this Deed any defence that is available to it under the Independent Certifier Contract except the defences of set-off and counterclaim.
- 4.4 Without prejudice to clauses 2.1 and 4 of this Deed, the Beneficiary accepts that the Independent Certifier's total liability for all claims howsoever arising to any and all parties

under or in connection with the Independent Certifier Contract and any and all warranties of any description issued pursuant to the Independent Certifier Contract (for the avoidance of doubt including this Deed) taken in any combination during any and all periods of liability shall not exceed the sum stated at clause 21 in the Independent Certifier Contract in the aggregate for all such claims.

5. **ASSIGNMENT**

Without prejudice to the provisions of Clause 4, the benefit of and the rights of the Beneficiary under this Deed may be assigned on two occasions only without the consent of the Independent Certifier to any party to whom the Beneficiary assigns its interest in the Project only and the Beneficiary will notify the Independent Certifier in writing following any such assignment specifying the name and address of the assignee and the date of the assignment (provided that any assignment by the Beneficiary as aforesaid to any other company within the Beneficiary's Group of companies shall not be subject to the foregoing limitation on the number of assignments permitted without the consent of the Independent Certifier). The Independent Certifier will not contend that any such assignee is precluded from recovering any loss suffered by it resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original named Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary has not suffered any, the same or as much loss.

6. **NOTICES**

6.1 Any notice or other document to be given under this Deed shall be in writing and shall be deemed duly given if proven to have been delivered by hand, by registered post or by fax:-

6.1.1 if to the Beneficiary, at: [insert address], marked for attention of [the Managing Director];

6.1.2 if to the Independent Certifier, at:

Kingsgate (Floor 3)
Wellington Road North
Stockport
Cheshire
SK4 1LW
United Kingdom

marked for the attention of [REDACTED], Gloucestershire Waste PFI Project;

6.1.3 or to such other recipient, delivery address or fax number as either Party may specify to the other in writing from time to time. A notice or other document so delivered before 17:30 on any day shall be deemed to have been duly given on that day. A notice or other document so delivered after 17:30 on a day or on a day which is not a business day shall be deemed to be duly given on the next following business day.

7. **GENERAL**

7.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Independent Certifier to the Beneficiary.

7.2 The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers and remedies permitted by law and may be exercised from time to time and as often as the Beneficiary may deem expedient.

7.3 Any waiver by the Beneficiary of any provision of this Deed, or any consent or approval given by the Beneficiary under this Deed, shall only be effective if given in writing and then only for the purpose and upon the terms for which it is given.

- 7.4 If at any time any one or more of the provisions in this Deed is or becomes invalid, illegal or unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of this Deed shall not be in any way affected or impaired.
- 7.5 The obligations of the Independent Certifier to be performed under and in accordance with the terms of this Deed shall remain in full force and effect until the Beneficiary has received all amounts due or to become due to it under this Deed in accordance with the terms of this Deed.
- 7.6 Copyright in the Documents shall remain vested in the Independent Certifier and subject thereto the Independent Certifier hereby grants to the Beneficiary an irrevocable non-exclusive royalty free licence (for the avoidance of doubt such licence to remain in full force and effect notwithstanding termination of the Independent Certifier's appointment for whatever reason or any dispute hereunder) to copy and use the Documents and to reproduce the works, designs and inventions contained in the Documents for all purposes related to the Works, the Services (as defined in the Project Agreement) and the Project including but without limitation the construction, completion, operation, maintenance, reconstruction, alteration, extension and repair thereof (but so that such licence shall not extend to or include a licence to reproduce the design contained in them for any extension of the Facility) and the Beneficiary shall be entitled to grant sub-licences on terms equivalent to the provision of this Clause 7.6 and the Beneficiary's licences and such sub-licences shall be transferable to other without charge PROVIDED ALWAYS THAT the Independent Certifier shall not be liable for the consequences of any use of the Documents by the Beneficiary for any purpose other than that for which they were prepared and provided by the Independent Certifier.
- 7.7 The Independent Certifier shall provide to the Beneficiary at their request such additional copies of all or any of the Documents as are reasonably required by the Beneficiary beyond those required for the execution and completion of the Works and shall provide such additional information and co-operation as is reasonably required in connection with the same. Where any rights are vested in the Independent Certifier by virtue of Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 the Independent Certifier hereby irrevocably waives any such rights in relation to the Project or any parts thereof and to any Documents and shall obtain a written waiver from its employees from time to time of any rights that they may have in respect of the same.
- 7.8 The Independent Certifier shall not, subject to the Independent Certifier's obligations to the Contractor under the Independent Certifier Contract, agree to any amendment, variation or modification of the Independent Certifier Contract which would adversely affect any right, remedy or entitlement of the Beneficiary under or pursuant to this Deed without the prior written consent of the Beneficiary thereto.
- 7.9 The Independent Certifier and the Beneficiary agree that (only to the extent necessary to give effect to the provisions of this Deed) in the event of any inconsistency or conflict existing between the provisions of this Deed and the provisions of the Independent Certifier Contract, the provisions of this Deed shall prevail (but only to the extent necessary to resolve the relevant inconsistency or conflict).

8. THIRD PARTY RIGHTS

Without prejudice to Clause 5, the parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

9. LIABILITY OF PARTNERS

Where the Independent Certifier is a partnership, references in this Deed to the "Independent Certifier" will be deemed to include reference to each and every present and future partner of

such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

10. **DISPUTE RESOLUTION**

All disputes under this Deed shall be resolved in accordance with the dispute resolution procedure referred to in Clause 17 (Dispute Resolution Procedure) of the Independent Certifier Contract.

11. **LAW AND JURISDICTION**

This Deed is governed by the laws of England and Wales (as applied in England) and, subject to Clause 10, the parties hereby submit to the non-exclusive jurisdiction of the courts of England to settle any disputes which may arise out of or in connection with this Deed.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

EXECUTED AND DELIVERED)

as a Deed by FICHTNER CONSULTING)
ENGINEERS LIMITED acting by a director/ its)
duly authorised attorney in the presence of:)

)

Name of witness)

Address of witness)

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Occupation of witness)

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Signature of witness)

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[EXECUTED AND DELIVERED)

as a Deed by BALFOUR BEATTY)
CONSTRUCTION NORTHERN LIMITED)

acting by a director/ its duly authorised attorney in)
the presence of:)

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Name of witness

Address of witness

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Occupation of witness

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Signature of witness

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EXECUTED AND DELIVERED

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as a Deed by BALFOUR BEATTY
ENGINEERING SERVICES LIMITED

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acting by a director/ its duly authorised attorney in
the presence of:

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Name of witness

Address of witness

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Occupation of witness

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Signature of witness

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EXECUTED AND DELIVERED)
as a Deed by URBASER LIMITED)
acting by a director/ its duly authorised attorney in)
the presence of:)

Name of witness)
Address of witness)
Occupation of witness)
Signature of witness)

[OR]

[EXECUTED AND DELIVERED)
as a Deed by URBASER ENVIRONMENTAL)
LIMITED)
acting by a director/ its duly authorised attorney in)
the presence of:)

Name of witness)
Address of witness)

Occupation of witness

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Signature of witness

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EXECUTED AND DELIVERED

)

as a Deed by UBB WASTE
(GLOUCESTERSHIRE) LIMITED

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acting by a director/ its duly authorised attorney in
the presence of:

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Name of witness

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Address of witness

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Occupation of witness

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Signature of witness

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THE COMMON SEAL of

)

GLOUCESTERSHIRE COUNTY COUNCIL

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was affixed in the presence of:

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Deputy Chief Executive

)

EXECUTED AND DELIVERED

)

as a Deed by SUMITOMO MITSUI BANKING
CORPORATION EUROPE LIMITED

)

acting by its duly authorised attorneys

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