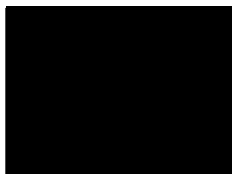


- (1) THE MINISTER FOR TRANSPORT AND
TECHNICAL SERVICES
- (2) FICHTNER CONSULTING ENGINEERS LIMITED

CONSULTANT APPOINTMENT

for the provision of professional services in connection with
Jersey's Waste Strategy project



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BETWEEN:

- (1) **THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES** of PO Box 412, South Hill Offices, St Helier Jersey JE4 8UY (“the Client”); and
- (2) **FICHTNER CONSULTING ENGINEERS LIMITED** (registered number 02605319) whose registered office is at Leigh House, The Paddock, Eccles Road, Whaley Bridge, High Peak SK23 7ED (“the Consultant”).

BACKGROUND

- (A) The Client is proposing to undertake several projects including the construction of a composting facility and an Energy from Waste Plant (the ‘Project’) at a site or sites to be agreed.
- (B) The Client by this Agreement appoints the Consultant to provide the professional services described in this Agreement and the Consultant agrees to provide such services in accordance with this Agreement.
- (C) Save in respect of the benefits or rights conferred on Individuals pursuant to B8.3 nothing in this Agreement confers or purports to confer on any third party any benefit or right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

IT IS NOW AGREED THAT:

A1 The Agreement comprises:

- This Memorandum of Agreement
- the Conditions of Engagement A(1) Civil/Structural Engineering Lead Consultant published in 2002 by the Association of Consulting Engineers (“ACE A(1)”)
- Schedule 1: Amendments
- Schedule 2: Normal Services
- Schedule 3: Form of Warranty
- Schedule 4: Fees

- Schedule 5: The Parent Company Guarantee

A2 The Services to be performed under this Agreement shall be the services listed in Schedule 2 as may be varied by agreement in writing by the parties, together with any Additional Services instructed in accordance with this Agreement.

A3 The Client proposes to use a turn-key method for procurement of the Energy from Waste Plant. The method of procurement for the Composting Plant is to be advised.

A4 The Client's estimated costs for the Project based upon December 2004 estimates are:

- Composting Plant - £3,900,000.00 (three million and nine hundred thousand pounds)
- Energy from Waste Plant - £75,500,000.00 (seventy-five million and five hundred thousand pounds)

A5 The intended date for completion of the Project is scheduled to be:

- Composting Plant - Summer 2009
- Energy from Waste Plant - Summer 2012

A6 Eversheds LLP of Leeds as legal advisers.

Carey Olsen of St Helier as Jersey legal advisers.

Deloitte and Touche LLP as financial advisers.

HSBC / Rossborough as insurance advisers.

Normandie Analytical Services Limited as asbestos advisers.

A7 For the avoidance of doubt, the Consultant has been appointed in connection with the entire Project (the "Works"). The terms and conditions of this Agreement and the warranties and undertakings which it contains are deemed to apply to all Services performed prior to the date of this Agreement and to be performed by or on behalf of any of the Consultant.

Any Services undertaken by:

Jacobs U.K. Limited before the date of this Agreement;

Jacobs U.K. Limited as instructed by the Consultant after the date of this Agreement;
and

Babtie Fichtner Limited whether before or after the date of this Agreement

in relation to the Project shall be deemed to be Services carried out by the Consultant.

- A8 The Consultant's Project Leader shall be [REDACTED]. The Consultant may appoint a deputy project leader to act in the Project Leader's absence, provided that such deputy project leader is suitably qualified and experienced and has full authority to act on the Consultant's behalf.
- A9 The Client's Representative shall be [REDACTED] of Transport & Technical Services Department, South Hill, St Helier, Jersey, JE4 8UY.
- A10 Not applicable.
- A11 The period of the Consultant's liability is from the effective date to 12 years after the date of takeover of the Energy from Waste Plant.
- A12 Professional Indemnity Insurance is to be maintained in respect of all professional services undertaken by the Consultant in relation to the Project for any one occurrence or series of occurrences is £10,000,000.00 (ten million pounds) each and every claim and £10,000,000.00 (ten million pounds) in the annual aggregate for pollution with an excess of no more than £50,000.00 (fifty thousand pounds) each and every claim, except for claims arising directly or indirectly from or caused by asbestos, in which case the insured limit for all claims in an insurance year shall be limited to £1,000,000.00 (one million pounds) in the annual aggregate.
- A13 The period for which Professional Indemnity Insurance is to be maintained is from the effective date of this Agreement to 12 years after the date of takeover of the Energy from Waste Plant.
- A14 Not applicable.
- A15 The Amount of Public Liability Insurance to be carried by the Consultant is £5,000,000.00 (five million pounds) each and every claim with no excess.
- A16 Warranties for the benefit of any funders of any part of the Project (which shall mean any bank or financial institution) are to be provided within thirty (30) days of the

execution of this Agreement or, if later, within thirty (30) days of being notified by the Client of the identity of the relevant third party or third parties in the terms of the draft warranty annexed at **Schedule 3**.

- A17 The number of site visits shall be as are appropriate for this size and type of Project
- A18 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales and each party submits to the exclusive jurisdiction of the Courts of England and Wales but provided always that in the event that any dispute or difference under this Agreement touches upon relates to or is connected with a dispute or difference between the Client and any third party which relates to the performance of the Consultant under this Agreement or the Services which is being considered in a different forum (including without limitation the Royal Court of Jersey) the Client may by notice in writing to the Consultant require that the Consultant be joined to such proceedings.
- A19 For the purposes of this Agreement, "Normal Services" shall mean the services set out in Schedule 2. "Additional Services" shall mean any Additional Services requested by the Client in writing in accordance with this Agreement.
- A20.1 Payment of fees for Normal Services shall be as set out in the time based rates set out in **Schedule 4** save where the Consultant and the Client have agreed a lump sum for any element of the Normal Services, in which case such lump sum shall be paid by instalments monthly.
- A21.1 Payment of fees for Additional Services shall be as set out in the time based rates set out in **Schedule 4** save where the Consultant and the Client have agreed a lump sum for any element of the Additional Services, in which case such lump sum shall be paid by instalments monthly.
- A22.1 See 20.1 above.
- A23.1 See A20.2 above.
- A24.1 See A20.1 above.
- A22 In addition to the fee, the Consultant shall be entitled to be paid its expenses (as referred to in **B6.3**) at the rates set out in **Schedule 4**. Invoices for the recovery of such expenses shall be submitted monthly within 10 working days of the month end and the amount invoiced shall be the total of expenses incurred during the interval in question.

A23 The interest rate payable shall be ■% over Bank of England base rate. The parties agree that this is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

A24 The amendments set out in **Schedule 1** (“Amendments”) to ACE A(1) shall be incorporated into and apply to this Agreement. For the avoidance of doubt, in the event of any conflict between the Amendments and ACE A(1), the provisions of the Amendments shall prevail.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SIGNED as a Deed by)
FICHTNER CONSULTING ENGINEERS)
LIMITED acting by a Director and its)
Secretary or two Directors:)

Director

Director/Company Secretary

The OFFICIAL SEAL of the Minister)
for Transport and Technical Services is)
hereby affixed:)

Signature of Minister:.....

Signed by Deputy Guy de Faye, the Minister for Transport and Technical Services

Date:



SCHEDULE 1

Amendments

1. The terms 'Client', 'Consultant' and 'Project' shall have the meanings as specified above in this Agreement.

2. **Memorandum of Agreement**

Delete.

3. **B Conditions**

B1	At the end of the definition "The Works" insert "and where the context permits any part of the Project".								
	Delete the definition of "Works Cost".								
B1	In the definition of "Insolvency" after "administrative receiver" insert "non-administrative receiver".								
B1	Insert new definitions:								
	<table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">"CDM Regulations</td> <td>the Construction (Design & Management) Regulations 2007 and the related Approved Code of Practice together with any guidance requirements issued from time to time by the Health & Safety Executive, or any remaking thereof or any amendments to a regulation in the same."</td> </tr> <tr> <td>"CDM Co-ordinator</td> <td>as referred to in the CDM Regulations."</td> </tr> <tr> <td>"Construction Phase Plan</td> <td>the document recording the health and safety arrangements, site rules and any special measures for construction work prepared by the Principal Contractor in accordance with regulation 23 of the CDM Regulations, including any update, revision or other refinement of that document by the Principal Contractor during the course of the Works."</td> </tr> <tr> <td>"Designer</td> <td>as referred to in the CDM Regulations."</td> </tr> </table>	"CDM Regulations	the Construction (Design & Management) Regulations 2007 and the related Approved Code of Practice together with any guidance requirements issued from time to time by the Health & Safety Executive, or any remaking thereof or any amendments to a regulation in the same."	"CDM Co-ordinator	as referred to in the CDM Regulations."	"Construction Phase Plan	the document recording the health and safety arrangements, site rules and any special measures for construction work prepared by the Principal Contractor in accordance with regulation 23 of the CDM Regulations, including any update, revision or other refinement of that document by the Principal Contractor during the course of the Works."	"Designer	as referred to in the CDM Regulations."
"CDM Regulations	the Construction (Design & Management) Regulations 2007 and the related Approved Code of Practice together with any guidance requirements issued from time to time by the Health & Safety Executive, or any remaking thereof or any amendments to a regulation in the same."								
"CDM Co-ordinator	as referred to in the CDM Regulations."								
"Construction Phase Plan	the document recording the health and safety arrangements, site rules and any special measures for construction work prepared by the Principal Contractor in accordance with regulation 23 of the CDM Regulations, including any update, revision or other refinement of that document by the Principal Contractor during the course of the Works."								
"Designer	as referred to in the CDM Regulations."								

	<p>“Event of Insolvency occurs where one of the situations identified as an Insolvency applies to the Consultant.”</p>
	<p>“Health and Safety File as referred to in the CDM Regulations.”</p>
	<p>“pre-construction information the information described in regulations 10 and 15 of the CDM Regulations.”</p>
	<p>“Principal Contractor as referred to in the CDM Regulations.”</p>
B2.2	Delete and substitute: “The Consultant shall perform such Additional Services (if any) as the Client may request in writing.”
B2.3	Delete and substitute:
“B2.3	The Consultant warrants that it has exercised and shall continue to exercise in the performance of its duties under this Agreement all the reasonable skill and care as is to be expected of a properly qualified and competent lead consultant experienced in carrying out work such as its duties under this Agreement in relation to projects of similar scope, size, nature, timescale and complexity and on a similar site or at a similar location to the Project.”
B2.4	Before “written” insert “prior”. Delete “which consent shall not be unreasonably withheld or delayed”.
B2.5	<p>Delete and substitute: “The Consultant shall not without the prior written consent of the Client sub-contract all or any part of the Services. If the Consultant considers it necessary for specialist sub-consultants to undertake any part of the Services, the Consultant shall make such recommendations to the Client. If such recommendation is accepted by the Client in writing, the Consultant shall procure from such sub-consultants deeds of collateral warranty with the Client and (on the request of the Client) with any funder in the form set out in Schedule 3 in respect of that part of the Services to be undertaken by the sub-consultants. The Consultant shall remain liable for the performance of the Services as if such sub-consultants had not been appointed.</p> <p>The Consultant shall not use Jacobs U.K. Limited to provide any part of the Services from the date of this Agreement, without the prior written consent of the Client.”</p>
B2.6	In line 1, after “Client” insert “for the Client’s written approval”. In the first sentence delete “and the Client shall not unreasonably withhold consent to such

	recommendation”.
B2.9	After “programme” insert “specified in this Agreement or otherwise”.
B2.10	<p>In the first sentence delete “further approval” and substitute “prior written approval”. In the second sentence before “approval” insert “prior written”.</p> <p>At the end insert: “In the event of an emergency the Consultant shall use all reasonable endeavours to immediately advise the Client of details of any such instructions issued and shall, in any event, provide written confirmation to the Client of the details of any such instructions issued within two working days of their being issued.”</p>
B2.12	<p>Insert a new B2.12 as follows:</p> <p>“In the performance of the Services, the Consultant shall co-operate with and shall not impede the Contractor or Contractors, the Sub-Contractors or any Other Consultants or parties working on the Project and shall comply with the requirements of the Client so that the Project shall be completed in accordance with the programme or programmes approved from time to time by the Client.”</p>
B3.1	Delete and substitute: “The Client shall within a reasonable time of being requested so to do by the Consultant supply to the Consultant without charge data which is reasonably requested by the Consultant and which is necessary for the performance of the Services provided such data is in the possession of the Client, his agents, servants or Contractors. The Consultant shall make such requests on a timely basis.”
B3.3	After “ensure that” insert “so far as reasonably practicable”.
B3.4	<p>Delete and insert:</p> <p>“(1) The Client may assign the benefit of and its benefits and rights under this Agreement to any person by way of absolute legal assignment, on up to two occasions only without consent and afterwards only with the consent of the Consultant (not to be unreasonably withheld or delayed) provided that an assignment by the Client to another ministry or an assignment by way of security to any party providing finance to the Client shall not count towards the number of assignments permitted without consent under this condition B3.4.</p>

	<p>(2) The Consultant may not assign, sub-contract or otherwise transfer the whole or any part of the benefit of, or any of its rights or obligations and/or delegate or sub-contract the whole or any part of its duties under, this Agreement without the Client's prior written consent, such consent to be given or withheld at the Client's absolute discretion.</p> <p>(3) Any sub-contracting, whether or not the Client has given its consent, shall not in any way relieve the Consultant from or reduce the Consultant's obligations and liabilities under this Agreement."</p>
B3.5	Delete "immediately" and substitute "within 7 days".
B3.6	In the final sentence delete "and any instructions issued by the Consultant".
B4.2	In line 3, after "subject to the" insert "prior written".
B4.3	At the end of this condition, after "Consultant" insert "or by the Client".
B5.3	In line 3, replace "two weeks" with "three months".
B5.4	Delete third sentence and substitute:
"B5.4	If the Consultant has not been given instructions to resume any suspended service within twelve (12) months from the date of suspension, the Consultant shall make a written request for such instructions. If written instructions have not been received within thirty (30) days of the date of such request, the Consultant shall have the right by further written notice to the Client to treat this Agreement and his appointment as the Consultant in respect of all or the relevant part of the Services as terminated."
B5.6 and B5.7	Delete and substitute:
"B5.6	In the event of a material and persistent breach by the Client of its obligations under this Agreement and a failure by the Client to take steps to remedy the same within thirty (30) days after receiving written notice from the Consultant specifying the breach and requiring its remedy, then the Consultant shall be entitled immediately to determine this Agreement by written notice to the Client."
B5.8	On the first line, insert "forthwith" after "may be terminated".

B5.10	Insert a new condition:
“B5.10	Following any termination of the Consultant’s engagement however it arises the Consultant shall immediately take all necessary steps to end, in an orderly manner, the provision by it of the Services, such steps to be taken with all reasonable speed and economy. The Consultant shall also deliver to the Client copies in such form as the Client may reasonably require of all documents including (inter alia) negatives and CAD disks (whether in the course of preparation or completed) which the Consultant holds in connection with the Project together with the originals and any copies which the Consultant may hold of all documents provided to it by the Client or by others in connection with the Project.”
B6.2.6	Delete.
B6.6.1	In the second line, delete “28” and replace with “30”.
B6.6.2	Delete “five” and insert “fourteen”.
B6.7	Delete and substitute:
“B6.7.1	Where:
	<p>(i) any changes are made to the Services or to the Client’s requirements; or</p> <p>(ii) where the Consultant is involved in extra work and/or expense for which the Consultant is not otherwise remunerated caused by the Client’s variations to completed work or services; or</p> <p>(iii) where the Consultant is involved in extra work and/or expense for which the Consultant is not otherwise remunerated caused by any other reason beyond the Consultant’s control,</p> <p>and the Consultant considers that the fees should be increased then, prior to carrying out such changes to the Services or to the Client’s requirements and/or such additional work and/or expense, the Consultant shall so notify the Client and within five working days of the instruction the Consultant shall provide to the Client an estimate of the increase in the fees.</p>
B6.7.2	Following notification by the Consultant the Client may either:
	<p>(i) instruct the Consultant not to carry out such changes to the Services or to the Client’s requirements and/or such additional work and/or expense; or</p>

	<p>(ii) instruct the Consultant to carry out such changes to the Services or to the Client's requirements and/or such additional work and/or expense,</p> <p>either before or after attempting to agree the amount of the increase. No additional payment shall become due and payable in respect of varied services if the Consultant has not complied with the requirements of this condition B6.7."</p>
B6.8	Insert "Subject to condition B6.12" at the beginning of this condition.
B6.11	Insert a new condition:
"B6.11	Nothing contained in this Agreement shall in any way limit or exclude the Client's rights and entitlements at common law to deduct or set-off any monies due to the Client or which become due from the Consultant (whether by reason of the provisions of this Agreement or in consequence of any negligence, omission or default by the Consultant in the performance of its obligations under this Agreement) from or against any monies otherwise due to the Consultant under this Agreement."
B6.12	Insert a new condition:
"B6.12	Upon any suspension or termination under this Agreement the Consultant shall not be entitled to any sums in respect of loss of anticipated profit, loss of contracts or any other losses and expenses arising by reason of or in connection with such suspension or termination. (For the avoidance of doubt this does not exclude any costs and expenses reasonably incurred in anticipation of the services being provided for the entire Project)."
B7.1	Second line before "licence to use" insert "irrevocable royalty free". Delete third sentence.
B8.1	Delete.
B8.2	Delete.
B8.5	At the end insert: "For the purposes of this condition B8.5 and condition 8.6 insurance cover shall be deemed available at commercially reasonable rates and terms notwithstanding any increased or additional premium or additional terms required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things particular to the Consultant."

B8.6	At the end of this condition insert: “In the event that such insurance ceases to be available at such rates, the Consultant shall immediately give the Client written notice of the same.”
B8.8	Delete and refer to condition A.16
B11	Special Conditions Insert new conditions:
“B11.1	Project Management
B11.1	The Consultant shall exercise the standard of skill and care referred to in condition B2.3 to manage the project so as to enable the Works when completed to meet the Client’s requirements, the Brief and all planning regulations consents, planning agreements and planning conditions and satisfy all other relevant statutory requirements.”
“B11.2	CDM Regulations
B11.2	The Consultant warrants that it will use reasonable skill and care to comply with the provisions of the CDM Regulations and without prejudice to the generality of the foregoing the Consultant shall: <ul style="list-style-type: none"> - co-operate with and pass all relevant information to the CDM Co-ordinator; - co-operate with Designers, the Principal Contractor and Other Consultants in the exchange of information relating to health and safety aspects of the Project; - analyse all reasonably foreseeable hazards and risks associated with the construction and maintenance of the Works and the disposal of materials from the Works; - avoid hazards and risks wherever possible or clearly identify those hazards and risks if they are unavoidable and prepare a method statement to control such hazards and risks; and

	<ul style="list-style-type: none"> - shall provide on or before substantial/practical completion of the Works all information to the CDM Co-ordinator in respect of the operation and maintenance of the Works and health and safety data for incorporation in the Health and Safety File.”
“B11.3	Prohibited Materials
B11.3.1	<p>The Consultant warrants to the Client, subject to condition B2.3, that to the extent the Consultant either is obliged to specify or approve products or materials for use in the Works or does so specify or approve, the Consultant shall not specify, approve or use any products or materials which are generally known within the construction industry to be deleterious in the particular circumstances in which they are used or those identified as potentially hazardous in or not in conformity with:</p> <ul style="list-style-type: none"> - the report entitled “Good Practice in the Selection of Construction Materials” (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation) other than the recommendations for good practice contained in Section 2 of that report; - relevant British or European Standards or Codes of Practice; or - any publications of the Building Research Establishment related to the specification of products or materials.
B11.3.2	<p>If in the performance of its duties under this Agreement, the Consultant becomes aware that it or any Contractor, Sub-contractor or Other Consultant has specified or used, or authorised or approved the specification or use by others, of any of the products or materials referred to in condition B11.3.1 the Consultant shall immediately give written notice to the Client. This condition B11.3.2 does not create any additional duty for the Consultant to inspect or check the work of others which is not required by any other provisions of this Agreement.”</p>
“B11.5	Parent Company Guarantee
B11.5.1	<p>The Consultant shall procure within 14 days of the date of this Agreement that Fichtner GmbH provides an executed parent company guarantee in favour of the Client in the relevant form set out in Schedule 5. The Client shall be entitled to withhold payment under this Agreement until such time as the executed parent</p>

	company guarantee has been provided to the Client.”
“B11.6	Additional Insurance Provisions
B11.6.1	The Insurances referred to in A12 and A15 (the “Required Insurances”) shall be maintained with a reputable insurer of good financial standing approved by the Client (such approval not to be unreasonably withheld or delayed):
B11.6.2	In relation to the Required Insurances the Consultant shall provide to the Client on reasonable written request: <ul style="list-style-type: none"> 1) confirmation from an insurance broker that the insurance in place meets the requirements of this Agreement and such other information and documentation as may reasonably be requested by the Client to enable it to verify that the Required Insurances are in place (including all documents evidencing any amendments, extensions or variations to such insurances). For the avoidance of doubt this shall not include full copies of the policies for the Required Insurances; and 2) evidence that the premiums payable under the Required Insurances have been paid and that the insurances are in full force and effect.
B11.6.3	The Consultant shall promptly and diligently deal with all claims received relating to the Required Insurances, in accordance with insurers’ requirements, and shall give the Client notification within 20 days after any claim (or circumstances which may reasonably give rise to a claim) in excess of £10,000 on any of the Required Insurances accompanied by full details of the incident giving rise to the claim or circumstance.
B11.6.4	The insurance premiums for the Required Insurances, the amount of any loss that would be recoverable under any of the Required Insurances but for the applicable excess and the amount of any loss which exceeds any limit of indemnity of any of the Required Insurances shall at all times be the responsibility of the Consultant.
B11.6.5	Upon written request from the Client, the Consultant shall obtain quotes for increasing the Consultant’s level of professional indemnity insurance for the Project to an amount notified by the Client. If the quote is accepted by the Client, the Consultant shall be entitled to be paid by instalments upon receipt of a corresponding receipt from the Consultant’s insurers. Following acceptance of the quote, the sums referred to in condition A12 shall be deemed replaced by such

	higher levels of insurance.”
“B11.7	Limitation on Liability
B11.7.1	Notwithstanding the other provisions of this Agreement but subject to condition B11.7.5 , the Consultant’s liability whether in contract or tort, in negligence, for breach of statutory duty or otherwise shall be limited to £10,000,000.00 (ten million pounds) each and every claim and £10,000,000.00 (ten million pounds) in the annual aggregate for pollution and £1,000,000.00 (one million pounds) in the annual aggregate for asbestos related claims or such higher sum as may be covered by the insurance taken out (if any) pursuant to condition B11.6.7 but provided always that the Consultant’s maximum aggregate liability under this Agreement whether in contract or tort, in negligence, for breach of statutory duty or otherwise shall be limited to £30,000,000.00 (thirty million pounds). For the purpose of this condition B11.7.1 , all claims arising directly or indirectly from one source or originating cause shall be treated for all purposes as a single claim.
B11.7.2	This condition B11.7 shall not exclude the Consultant’s liability to the Client for personal injury or death or for any matter which it would be illegal for the Consultant to exclude or attempt to exclude its liability or for fraud.
B11.7.3	For the avoidance of doubt, the Consultant shall no liability to the Client for any act of terrorism.
B11.7.4	Neither party shall have any liability to the other for loss of profit, loss of business, or depletion of goodwill.
B11.7.5	It is acknowledged that the Consultant shall not give any direct asbestos related advice under this Agreement. The Consultant’s liability for asbestos related claims shall be limited to <ul style="list-style-type: none"> 1) the cost of re-performance of the Consultant’s work or rectification or remediation; and/or 2) diminution in value of buildings or structures (or any part of either or both of them) arising out of a survey and/or valuation by the Consultant”

SCHEDULE 2

Services

All services will be provided when and as often as necessary and apply to both the Composting and Energy from Waste Plants (save where expressly indicated to the contrary). The sub-headings set out below are for reference purposes only and do not indicate when or at what stage a particular service will be provided.

The scope and nature of the duties to be carried out shall be those of a project manager, planning consultant, CDM Co-ordinator, Designer and contract administrator. In general, the Consultant will be considered to be the project leader with ultimate responsibility to the Client.

This schedule amplifies the Consultant's obligations and sets out specific services, which the Consultant shall perform. The services shall include all other services which are to be reasonably implied for a project manager, planning consultant and contract administrator and those that are required of the Engineer under the Conditions of Contract in respect of the Projects of a similar nature and scale to the Project ("**the Building Contracts**"). It is noted that the proposed Building Contract in relation to the Energy from Waste Plant will be, and that the proposed Building Contract in relation to the Composting Plant may be, an EPC lump sum turn-key contract, and the Consultant's responsibilities listed below are based upon this form of contract.

1. Detailed Responsibilities

1.1 Inception

- 1.1.1 Identify the Client's requirements in relation to the Projects through meetings with the Client and any other parties that the Client requests.
- 1.1.2 Obtain information on and become familiar with the Client's procedures and adhere to these in carrying out any services. Provided that the Client shall have provided details of the same upon request.
- 1.1.3 Discuss the Client's budget and expectations for the Projects to determine the Client's requirements for the Projects and the standards applicable for the Projects.
- 1.1.4 Work with the Client to establish the Client's order of priorities for quality, time and cost.

- 1.1.5 Visit and inspect any relevant sites for the Projects.
- 1.1.6 Investigate and consider the relevant sites in terms of the Client's requirements.
- 1.1.7 Analyse and assess the Client's requirements through research, surveys, visits and studies.
- 1.1.8 Advise the Client on an ongoing basis on each of the relevant sites including, but without limitation the following issues:
 - 1.1.8.1 plan and/or timetables for implementation of the Projects, through the design, procurement, manufacture, construction, commissioning and handover phases;
 - 1.1.8.2 cost plan and budget proposal for the Projects, including a break down budget fee proposal which identifies the resources necessary to execute the Projects throughout all key stages of the Projects including life cycle costs and cost-in use forecasts through reference to benchmark data and review with the Employer;
 - 1.1.8.3 Prepare cost estimates including life cycle costs and cost-in use forecasts through reference to benchmark data; and
 - 1.1.8.4 report on the Projects' risks and identify specific risks where it might be appropriate for a future consultant (and/or some other party) to undertake additional duties.

1.2 **Environmental**

- 1.2.1 Examine the Client's stated environmental policy aspirations. Advise any concerns to the Client and comply with the Client's requirements.
- 1.2.2 Prepare an environmental impact assessment ("EIA") and include detail on the following areas:
 - 1.2.2.1 **Non-technical summary**

Brief summary describing the main features of the Projects and summarising the findings of the impact assessment.
 - 1.2.2.2 **Introduction:**

- (a) Background: Including discussion of the strategies
- (b) Method statement: Describing the methods and principles used in preparing the EIA.

1.2.2.3 **Conclusions**

Including advice to the Client.

1.2.2.4 **Site description**

- (a) Site description: Description of the proposed sites, including their location and environmental situation.
- (b) Policies and plans: Brief discussion of relevant international, national and regional policies and plans, showing how the Projects fit into these policies and plans.

1.2.2.5 **Projects Descriptions**

- (a) Description of the Projects: Including all technical details necessary for the EIA.
- (b) Environmental benefits: Including the increase in renewable power generation and the secure disposal of waste.
- (c) Alternatives considered: Including alternative locations and alternative processes.

1.2.2.6 **Scoping study results**

Explaining which environmental impacts are considered to be the most significant.

1.2.2.7 **Environmental Impacts**

Each of the sections below will include:

- a statement of the potential impacts
- a statement of the existing baseline conditions
- a discussion of the predicted impacts
- a discussion of mitigation methods

- a statement of the significance of remaining impacts.

Where appropriate, consideration will be given to the impacts of the proposals on human health.

- (a) Air quality: Including a summary of the dispersion modelling results, and a discussion of the impact on climate change.
- (b) Water quality: Impacts will depend on the precise sites and the presence of any watercourses nearby.
- (c) Impacts on soil: Including a summary of the ground survey, comments on the impact on the sites and a discussion on the impact of residue disposal.
- (d) Noise: Including a summary of a baseline noise survey and modelling of the impact of additional noise sources due to the Projects.
- (e) Socio-economic: Including comments on employment during operation and during construction.
- (f) Traffic: Including baseline surveys of current traffic movements around the site and on the local approach routes and an assessment of the changes in traffic flows due to the Projects, including construction traffic, employees' cars and commercial vehicles.
- (g) Ecology: Including a baseline survey of local flora and fauna.
- (h) Landscape: Specifically, any changes to views in the area and comments on the architectural treatment intended to mitigate the impact.
- (i) Cultural Heritage: Including any impact on archaeological remains, historic buildings or other aspects of cultural heritage.
- (j) Appendices: Detailed technical reports will be attached in the Appendices, including:
 - dispersion modelling report
 - ground survey (limited investigation)

- noise survey and modelling report
 - traffic flow report
- 1.2.2.8 Advise the Client on the necessity for any special research, surveys, investigations, tests or the like, (whether environmental or otherwise) carry out such surveys, investigations, tests or the like, and report on the findings to the Client.
- 1.2.2.9 Carry out any further reports as necessary, including but without limitation, topographical and dimensional surveys, geotechnical and contamination investigations and environmental and risk analysis.
- 1.2.2.10 Where a third party needs to be appointed to carry out the surveys, investigations, tests or the like (the “Surveys”) referred to in paragraph 1.2.2.8 or 1.2.2.9 above, recommend appropriate third parties to the Client and, after having obtained written consent from the Client to such appointment, engage such third parties on behalf of the Client on institutionally acceptable terms and conditions as agreed with the Client’s legal advisors, including acceptable insurance arrangements and with warranties made available to third parties, including funders and manage the carrying out of the relevant Survey, reporting on the results direct to the Client.

To the extent that the Client considers any further or additional detail is required, the Client will notify the Consultant accordingly.

1.3 Planning and Consents

- 1.3.1 Examine the Client’s stated planning policy aspirations. Advise any concerns to the Client and comply with the Client’s requirements.
- 1.3.2 Discuss the Client’s expectations with regard to health impact with the Client.
- 1.3.3 Prepare a health impact assessment report.
- 1.3.4 Prepare planning applications for the Projects following discussions with the Client and conduct planning negotiations, together with the Client, keeping the Client apprised of any material issues. Manage the progress of such

applications with a view that consent is obtained in accordance with the Projects' programmes.

1.3.5 Agree with the Client all statutory consents, permits, licences and other authorisations/notices that are required for the Projects and prepare applications for the same after consultation with the Client. Manage the progress of such applications with a view that all consents are obtained in accordance with the Projects' programmes and so as to ensure full statutory compliance by the Client.

1.3.6 Advise the Client regarding any statutory requirements with which the Client may be required to comply.

1.4 Preparation of Employer's Requirements

1.4.1 Suggest options to deal with the Client's requirements and prepare business cases for each option.

1.4.2 Advise the Client on the cost of the designs, including effects of Site usage, shape of buildings, alternative forms of design and construction as design develops.

1.4.3 At regular intervals (such intervals to be reasonable for the type and size of the Projects), through the course of the Projects, review and amend the Projects' cost plans as appropriate and discuss with the Client.

1.4.4 Compile the Employer's Requirements based on the agreed option and so as to fully satisfy the Client's requirements.

1.4.5 Advise the Client of the implications of the Employer's Requirements including, but without limitation, insurance responsibilities, need for the provision of collateral warranties to a third party, performance bonds and parent company guarantees.

1.4.6 Finalise the draft Employer's Requirements following discussions with the Client and issue to the Client.

1.4.7 Prepare detailed Projects timetables and cash flow projections and discuss with the Client.

1.5 Procurement of Contractors and sub-contractors/suppliers

- 1.5.1 Advise the Client in detail on the procurement options for any contractors to be appointed and discuss the feasibility of the procurement options with the Client including, but without limitation, amendments to any standard forms.
- 1.5.2 Develop the Projects' timetables and Contract Prices to a stage where they may be formally agreed with the Client.
- 1.5.3 Assist the Client in identifying, selecting and appointing the Contractor in accordance with the Client's procurement process including:
 - 1.5.3.1 making pre-qualification enquiries and investigating potential contractors;
 - 1.5.3.2 preparing a short-list of potential contractors and discussing with the Client;
 - 1.5.3.3 preparing and issuing enquiry documents and/or invitations to tender to the short-listed contractors;
 - 1.5.3.4 develop evaluation criteria and incorporate such commercial and contractual criteria required by the Client into the evaluation process;
 - 1.5.3.5 receiving, opening and recording tenders in accordance with the Client's tendering procedures and financial controls;
 - 1.5.3.6 analysing tenders including, but without limitation, for accuracy, level of pricing and pricing policy and advising Client;
 - 1.5.3.7 advising on errors and qualifications and, if necessary, negotiating with the tenderers;
 - 1.5.3.8 answering all tender queries and liaising with the Client where necessary;
 - 1.5.3.9 monitoring the Projects' costs as tenders are received and investigating appropriate action in the event that tenders exceed budgets;
 - 1.5.3.10 conducting tender interviews and negotiations (where necessary);

- 1.5.3.11 where applicable establish and manage procedures to inviting, analysing and reporting on further tenders;
 - 1.5.3.12 where applicable establish and manage procedures for revision or production of information in order to adjust tender sum or to obtain new tenders within the Projects' costs;
 - 1.5.3.13 preparing a report on the tenders with appropriate recommendations including details of where any of the tenders do not fully comply with the Employer's Requirements and discuss with the Client;
 - 1.5.3.14 together with the Client's solicitors, financial and insurance advisers, finalise and agree the contract documents with the contractors; and
 - 1.5.3.15 assisting the Client's solicitors, financial and insurance advisers in drafting the Building Contracts and finalising the same.
- 1.5.4 Advise on the need for specialist contractors, suppliers and sub-contractors to design and execute parts of the Projects and put in place procedures to ensure such specialist contractors, suppliers and sub-contractors are appointed.
 - 1.5.5 Prior to selection of a tenderer, review and examine the final version of the Contractor's Proposals resolving any errors, omissions and conflicts.
 - 1.5.6 Compile the formal Building Contracts and manage the process of getting the contracts executed.
 - 1.5.7 As part of the Building Contracts, prepare schedules identifying when design information is required for reviewing for construction purposes and fully co-ordinate this with the Projects' timetables. See that this accommodates a reasonable time allowance for the Client's review and approval/amendment.
 - 1.5.8 Organise facilitate and document risk management workshops at appropriate stages of the Projects and incorporate the results into the design.

1.6 Post Appointment of Contractor and Site Mobilisation

- 1.6.1 Carry out the role of Project Manager/Engineer under each of the Building Contracts. Which shall include without limitation:
 - 1.6.1.1 seeing that all documentation, necessary decisions to be provided by the Client to the Contractors under the Building Contracts are provided in a timely manner to permit the Contractors to carry out and complete the Projects at the time specified in the Building Contract;
 - 1.6.1.2 following discussions with the Client, issue all required certificates and instructions under the Building Contracts.
- 1.6.2 Monitor the design process to check that drawings are produced on time and changes to scope are identified as soon as practicable and review changes for cost, time and technical implications.
- 1.6.3 Review the Contractors environmental compliance methods including commenting on how the Contractors propose to monitor, police and report on their own performance.
- 1.6.4 Initiate action in the event that any aspect of the Projects fail to proceed to plan. Agree suitable corrective action and monitor its implementation.
- 1.6.5 Monitor the design so that it develops in accordance with the requirements of the Employer's Requirements and the Contractor's Proposals and in accordance with relevant codes of practice and statutory requirements.
- 1.6.6 Supervise the Site mobilisation process.
- 1.6.7 Provide technical support to Client's Insurance Advisor regarding necessary insurances prior to commencement of works on the Site..
- 1.6.8 Advise the Client regarding the Client's statutory and contractual responsibilities particularly with regard to health, safety and environmental issues.
- 1.6.9 Consider, evaluate and review all invoices, forward to the Client and advise the Client whether any such invoice should be approved.
- 1.6.10 Establish and manage procedures for complying with the Construction (Design and Management) Regulations 2007 and the related Approved Code

of Practice together with any guidance requirements issued by the Health and Safety Executive from time to time and itself comply with the same as a Designer under the Construction (Design and Management) Regulations 2007.

1.6.11 Establish and manage procedures for the following:

- 1.6.11.1 administrating the terms of the Building Contracts including issuing any certificates, valuations and/or invoices;
- 1.6.11.2 ensuring all insurances required by the Building Contracts are in place and copies of appropriate certificates are obtained;
- 1.6.11.3 auditing the performance of the Contractors and/or sub-contractors/suppliers where this is likely to affect the design, programme, or cost of the Projects;
- 1.6.11.4 reviewing and commenting on design information prepared by the Contractors;
- 1.6.11.5 auditing the progress of the Projects;
- 1.6.11.6 dealing with any disputes, arbitration or terminations;
- 1.6.11.7 dealing with any actions or incidents likely to affect safety or security;
- 1.6.11.8 identifying costs associated with design changes, contract awards, construction activities and Client changes/instructions;
- 1.6.11.9 evaluating claims for delay and/or disruptions and requests for extensions of time and additional costs made by the Contractors;
- 1.6.11.10 managing variations to the Building Contracts.

1.7 Construction

- 1.7.1 Monitor the construction phase and with the agreement of the Client, take appropriate action in the event of technical problems, delays, difficulties, communication breakdowns and any other event which threatens any of the Projects' objectives.

1.7.2 See that components manufactured off-site are inspected as necessary, as agreed with the Client.

1.7.3 Monitor performance of the Contractors and sub-contractors and advise the Client of and take appropriate action to rectify deficiencies.

1.8 **Commissioning**

1.8.1 Oversee the preparation of a detailed commissioning and testing programme. Including, without limitation, specifying in the Employer's Requirements the tests that must be satisfied.

1.8.2 Co-ordinate the activities and inspection by personnel from the Client and statutory bodies together with the Contractors, as allowed under the Building Contracts.

1.8.3 Monitor the carrying out of the tests and agree suitable measures with the Client in the event that failures occur.

1.8.4 Check that all necessary reports and certificates have been obtained.

1.9 **Training**

Assist the Client in making arrangements for training of the staff, by the Contractors, who will be operating the completed Projects and monitor compliance with such arrangements.

1.10 **Handover**

1.10.1 Prepare a plan for handover of the Projects.

1.10.2 Establish and manage procedures for implementation of the plan for handover of the Projects.

1.10.3 Confirm that the Employer's Requirements for the provision of operating and maintenance manuals and staff training as expressed in the Building Contracts are fulfilled by the Contractors. Organise all health and safety files and operating maintenance manuals to be supplied at TakeOver. Liaise with the CDM Co-ordinator and the Contractors to see the health and safety file is passed on to the Client.

1.10.4 Assist the Client in arranging the handover of the Projects and the logistics of taking possession of the Projects.

- 1.10.5 Assist the Client's Insurance Advisor in advising the Client regarding insurance of the completed Projects.
- 1.10.6 Establish and manage procedures for verification that construction activities and completed work are in accordance with the requirements of applicable legislation, the Employer's Requirements, Contractor's Proposals and other good practice guidance.

1.11 Completion

- 1.11.1 Prepare and issue the Taking-Over Certificates (as defined in the Building Contracts) in accordance with the Building Contracts.
- 1.11.2 Assist the Client to prepare and settle the final accounts with the Contractors.
- 1.11.3 Assist the Client regarding the settlement of any contractual disputes.
- 1.11.4 Manage the resolution of known and latent defects during the Defects Liability Periods (as defined in the Building Contracts).
- 1.11.5 Co-ordinate the collation of a complete set of all necessary documentation relating to the Projects.
- 1.11.6 Implement and oversee a structured snagging and defects regime and see all snagging works and remedying of defects are correctly signed off during the Defects Liability Period. Not earlier than one month prior to the expiry of the Defects Liability Period, liaise with the Client and inspect the Projects and compile a list of all outstanding defects/snagging to the Projects, such list to be provided to the relevant Contractor prior to the expiry of the Defects Liability Period.
- 1.11.7 After all defects and snagging identified in the Defects Liability Period have been remedied (including without limitation those identified in para 1.11.6 above) prepare and issue the Final Certificates (as defined in the Building Contracts) in accordance with the Building Contracts.

2. Relationship between services in Schedule 2 and instructed services

- 2.1 The services in this Schedule 2 are indicative of the services required for the Projects. The Consultant shall carry out all services agreed and instructed by the Client and these shall form the Services for the purpose of this Agreement.

2.2 The Consultant shall bring to the attention of the Client any of the services that are listed in this Schedule 2 that have not been instructed by the Client to allow the Client to consider whether the relevant services should be so instructed. The Consultant's obligation in this paragraph 2.2 shall be carried out at an appropriate time in the programme for the Projects to allow for the relevant services to be instructed without causing delay to the programme.

3. **General responsibilities**

3.1 In discharging its duties the Consultant shall:

3.1.1 use all reasonable endeavours to ensure that the Client's interests are properly represented in all activities and decisions associated with the Projects to which the Consultant is a party;

3.1.2 take all reasonable steps to anticipate problems and attempt to take such actions that will resolve them to the Client's best advantage;

3.1.3 take all reasonable steps to ensure that all decisions are made and instructions given with due regard to time and cost;

3.1.4 use all reasonable endeavours to ensure that all design proposals are costed as required by the Client;

3.1.5 use all reasonable endeavours to perform all Consultant's services in accordance with the Projects' timetables;

3.1.6 where required by the Client, arrange for meetings to be held as and when necessary and use all reasonable endeavours to ensure all relevant parties have been advised of the meetings and their attendance requested. Review progress of the Projects at the meetings and identify information requirements. Prepare and distribute minutes to all relevant parties;

3.1.7 use all reasonable endeavours to provide information as requested by the Client to the Client and/or any other party;

3.1.8 update the Projects' timetables showing all significant activities and events throughout the Projects when necessary;

3.1.9 retain one complete set of all correspondence, minutes of meetings and any other important documentation relating to the Projects issued by or to the

Consultant. Make such documentation available for inspection by the Client when required and provide copies if requested;

- 3.1.10 notify the Client immediately if the Projects budgets are likely to be exceeded, giving reasons for the increase, and obtain approval for any possible budget overspend;
- 3.1.11 agree a risk management procedure with the Client and maintain the procedure;
- 3.1.12 use all reasonable endeavours to ensure that the Client is kept fully informed of all stages of the Projects including expenditure and progress and report monthly to the Client;
- 3.1.13 attend meetings called by the Client with the Client or with such other persons as the Client requests to progress any aspect of the Projects;
- 3.1.14 monitor performance parameters such as risk, time, cost and quality and give early warnings to the Client on all matters which may affect the timing, cost and quality of the Projects;
- 3.1.15 obtain the Client's approval where necessary in accordance with the Client's approvals process advised to the Consultant;
- 3.1.16 advise the Contractors of the Client's approvals process as necessary;
- 3.1.17 regularly report to the Client on the status of the Projects and obtain any necessary decisions.

SCHEDULE 3

Forms of Warranty

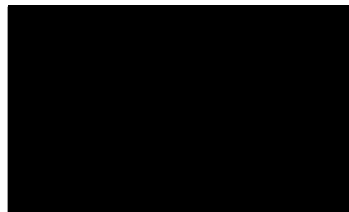
DATED

2008

- (1) FICHTNER CONSULTING ENGINEERS LIMITED
- (2) FUND
- (3) THE MINISTER FOR TRANSPORT AND
TECHNICAL SERVICES

CONSULTANT WARRANTY

relating to
Jersey's Waste Strategy Project



BETWEEN:

- (1) **FICHTNER CONSULTING ENGINEERS LIMITED** (registered number 02605319) whose registered office is at Leigh House, The Paddock, Eccles Road, Whaley Bridge, High Peak SK23 7ED (“the Consultant”);
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] (“the Beneficiary” which expression includes its permitted successors in title and assigns); and
- (3) **THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES** of PO BOX 412 South Hill, St Helier, Jersey, JE4 8UY (“the Client”).

BACKGROUND:

- (A) The Client intends to appoint a contractor or contractors for the carrying out of works in connection with the construction of a composting facility and Energy from Waste Plant the design and (“the Works”).
- (B) The Consultant has been appointed by the Client under a deed of appointment dated [date] (“the Appointment”) to provide services in relation to the Works.
- (C) [By an agreement dated [date] and made between the Client and the Beneficiary the Beneficiary has agreed to provide finance in connection with the Works].
- (D) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Consultant receipt of which the Consultant acknowledges.

2. CONSULTANT’S WARRANTIES

The Consultant warrants to the Beneficiary that it has performed and will continue to perform its duties under the Appointment in accordance with the Appointment and that it has exercised and will continue to exercise in the performance of those duties the reasonable skill and care to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the

Appointment in relation to works of similar scope, nature, timescale and complexity and on a similar site or at a similar location to the Works.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium (excluding internal memoranda and documents, working papers and templates) which have been created and/or developed by the Consultant in the course of performing its obligations under the Appointment (“the Documents”) will remain vested in the Consultant. For the purposes of this **clause 3**, “Intellectual Property” shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.

3.2 The Consultant grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Consultant’s obligations or the termination of the Appointment or this Deed or the determination of the Consultant’s engagement under the Appointment or any dispute under the Appointment or this Deed) to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties. Such licence will enable the Employer to use and reproduce the Documents for any extension of the Development, but shall not include a licence to reproduce the Intellectual Property in the Documents for any extension of the Development.

3.3 The Consultant will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Appointment or under this Deed or as otherwise required to enable it to fulfil its obligations under the Appointment.

- 3.4 The Consultant will not be liable for any use the Beneficiary may make of the Documents for any purpose other than the purposes set out in **clause 3.2**.
- 3.5 The Consultant warrants that the Documents (save to the extent that duly authorised sub-consultants have been used to prepare the same) are the Consultant's own original work and that in any event their use in connection with the Works will not infringe the rights of any third party. The Consultant further warrants that where duly authorised sub-consultants are used their work will be original and that the Consultant will obtain the necessary consents in relation to **clause 3.2**.
- 3.6 The Consultant agrees on reasonable request at any time and following reasonable prior written notice to give to the Beneficiary, or those authorised by the Beneficiary, access to the Documents and to provide copies (including copy negatives and CAD disks) of the Documents at the Beneficiary's expense.

4. **PROFESSIONAL INDEMNITY INSURANCE**

4.1 The Consultant by this Deed covenants with the Beneficiary that it has at its own cost taken out and will maintain professional indemnity insurance with reputable insurers carrying on business in the European Union with a limit of indemnity of not less than £10,000,000.00 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event , in relation to the Works provided always that:

4.1.1 such insurance shall be in place from the date of commencement of the Consultant's services until no less than 12 years after completion of the services under the Appointment;

4.1.2 if such insurance is not available to the Consultant (and/or members of the Consultant's profession engaged in services of a similar scope, size, nature and complexity as the Consultant) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Consultant), the Consultant and the Beneficiary will meet and the Consultant will outline the steps he intends to take to manage such risks. If the steps proposed by the Consultant are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk;

4.1.3 For claims arising directly or indirectly from or caused by pollution £10,000,000.00 (ten million pounds) in the annual aggregate for pollution and £1,000,000.00 (one million pounds) in the annual aggregate for asbestos related claims

4.2 The Consultant will provide the Beneficiary with reasonable evidence that the policies referred to in this **clause 4** are in full force and effect together with a summary of the policy terms and conditions.

5. **NOTICES**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. **ASSIGNMENT**

Without prejudice to the provisions of **clause 10**, the benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Consultant on two occasions only. The Beneficiary will give the Consultant written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Consultant will not contend that any such assignee is precluded from recovering any loss 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 beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. **OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including, without limitation, any remedies in negligence.

8. **NO APPROVAL**

The Consultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance

at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

9. PROHIBITED MATERIALS

9.1 The Consultant warrants that, to the extent it either is obliged to specify or approve products or materials for use in the Works or does so specify or approve, it has exercised and will exercise reasonable skill and care in accordance with this Deed not to specify, approve or use any products or materials which are generally known within the Consultant's profession at the time of specification or use, in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:

9.1.1 the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation) other than the recommendations for good practice contained in Section 2 of that report;

9.1.2 relevant British or European Standards or Codes of Practice;

9.1.3 any publications of the Building Research Establishment related to the specification of products or materials.

9.2 If, in the performance of its duties under the Appointment, the Consultant becomes aware that it, or any other person, has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will immediately give the Beneficiary written notice of the same. This **clause 9.2** does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

10. STEP-IN RIGHTS

10.1 Subject to **clause 10.7** below, the Consultant will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Appointment or its engagement under it or discontinue or suspend the performance of any duties or obligations under the Appointment, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Consultant's grounds for terminating or treating as terminated or repudiated the Appointment or its engagement under it or discontinuing or suspending its performance of the Appointment and stating the amount (if any) of monies outstanding under the Appointment. Within such period of notice:

10.1.1 the Beneficiary may give written notice to the Consultant that the Beneficiary shall become the client under the Appointment to the exclusion of the Client and, upon giving such notice, that will be the case and the Appointment will be and remain in full force and effect notwithstanding any of the grounds in the Consultant's notice under **clause 10.1**; and

10.1.2 if the Beneficiary has given such notice under **clause 10.1.1** or under **clause 10.3**, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Client (provided that where the notice is given under **clause 10.1.1** rather than under **clause 10.3** such breach has properly been included in the Consultant's specified grounds under **clause 10.1**); and

10.1.3 if:

10.1.3.1 the Beneficiary has given such notice under **clause 10.1.1** then from the date of the Consultant's notice; or

10.1.3.2 the Beneficiary has given notice under **clause 10.3** then from the date of the Beneficiary's notice

the Beneficiary will, by **clause 10.1.1**, become responsible for all sums properly payable to the Consultant under the Appointment and for the observance and performance of all of the other duties and obligations on the part of the client to be observed and performed under the Appointment accruing due after the service of such Consultant's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the client under the Appointment.

10.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Consultant the Beneficiary will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Consultant under either **clause 10.1.1** or **clause 10.3**.

10.3 Provided that the Appointment has not previously been terminated the Consultant further covenants with the Beneficiary that if the employment of the Contractor under the Contract is determined or if the Contract is terminated, the Consultant, if requested by the Beneficiary, by written notice and subject to **clause 10.1.2** and **clause 10.1.3**, will accept the instructions of the Beneficiary to the exclusion of the

Client in respect of the Works upon the terms and conditions of the Appointment. The Beneficiary shall then become the client under the Appointment to the exclusion of the Client and the Consultant will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Client under the Appointment.

10.4 The Client acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant by the Beneficiary under **clause 10.3** as conclusive evidence that the Beneficiary is entitled to serve such notice.

10.5 The Beneficiary may by written notice to the Consultant appoint another person to exercise its rights under this **clause 10** subject to the Beneficiary remaining liable to the Consultant as guarantor for its appointee in respect of its obligations under this Deed.

10.6 Where the Contractor is seeking to exercise a right to suspend the performance of any duties or obligations under the Contract as a result of non-payment or in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996, the Contractor will give to the Beneficiary written notice of its intention so to do at the same time as it serves notice on the Employer.

11. **LIMITATION**

11.1 The Consultant has no liability under this Deed which is greater or of longer duration than it would have had if the Beneficiary had been a party to the Appointment as joint employer.

11.2 The Consultant shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Appointment and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as would have been available to the Consultant had the Beneficiary been the employer under the Appointment.

11.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being twelve years after the date of completion of the services under the Appointment.

12. **GOVERNING LAW AND JURISDICTION**

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

13. **THIRD PARTY RIGHTS**

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.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SIGNED as a deed by)
FICHTNER CONSULTING)
ENGINEERS LIMITED)
acting by a director and its)
Company Secretary or two directors)

Director

Director/Company Secretary

SIGNED as a deed by)
[FUND])
acting by a director and its)
Company Secretary or two directors)

Director

Director/Company Secretary

The OFFICIAL SEAL of the Minister)
for Transport and Technical Services is)
hereby affixed:)

Signature of Minister:.....

Signed by Deputy Guy de Faye, the Minister for Transport and Technical Services

Date:



SCHEDULE 4

Fees

1. Fees

1.1 hourly rates:

Director/Senior Consultant (Process, Plant and Power)

Technical Director

Principal Engineer or Consultant (Process, Plant and Power)

Principal Engineer (civil and structural)

Principal Environmental Scientist

Senior Environmental Specialist

Process Engineer

Plant Specialist (Stuttgart)

Power Systems Specialist

Senior Engineer (civil and structural)

Senior Engineer (mechanical or electrical services)

Senior Architect

Engineer (civil and structural)

Graduate Engineer (civil and structural)

Architectural Technician

Environmental Scientist

CAD Technician

Administrative Assistant

Technical Clerk

Hotel and subsistence will be charged at cost

Mileage in vehicles owned by the company or their employees will be charged at the rate of [REDACTED] p/mile

Bought in services will be charged at cost plus a mark up of [REDACTED]%

All rates and prices are subject to escalation on 1st January 2009 and annually thereafter. Rates and prices will be escalated by the percentage change of the UK Average Earnings Index (AEI) for the whole economy over the most recently available and verified 12 month period except that the escalation on 1st January 2009 will be over a 9 month period all as published on the IDS web-site – www.incomesdata.co.uk.

SCHEDULE 5
Parent Company Guarantee



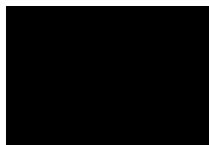
Dated

2008

- (1) FICHTNER GMBH
- (2) THE MINISTER FOR TRANSPORT AND
TECHNICAL SERVICES

PARENT COMPANY GUARANTEE

relating to
Jersey Waste Strategy project



BETWEEN:

- (1) **FICHTNER GMBH** whose registered office is at Sarweystrasse 3, 70191 Stuttgart, Germany (“the Guarantor”); and
- (2) **THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES** of PO Box 412, South Hill Offices, St Helier Jersey JE4 8UY (“the Employer”); and

BACKGROUND

- (A) The Employer has entered into an appointment (“the Contract”) with Fichtner Consulting Engineers Limited (“the Consultant”) dated [date] for the provision of the services set out in the Contract in connection with the implementation of Jersey’s Waste Strategy including the construction of a composting facility and an energy from waste plant (“the Project”).
- (B) The Employer has requested and the Guarantor has agreed to provide a guarantee in connection with the performance of the Consultant’s duties under the Contract.

IT IS NOW AGREED:

1. GUARANTEE

1.1 In consideration of the Employer (at the request of the Guarantor) entering into the Contract and subject to the provisions of **clause 1.2**, the Guarantor by this Deed irrevocably and unconditionally guarantees to the Employer as surety the full and due performance of all of the Consultant’s obligations contained within the Contract provided always that the Guarantor shall have no greater liability by virtue of this Deed than the lower of:

1.1.1 the maximum liability it would have had if the Guarantor had been named as ‘the Consultant’ under the Contract in substitution for the Consultant; and

1.1.2 the sum of: €10,000,000.00 (ten million euros) for any occurrence, subject to a maximum in any insurance year of twice such amounts.

1.2 The Employer confirms that the Guarantor is not required and shall not be required to maintain professional indemnity insurance in accordance with the provisions of clause A12 of the Contract. The Guarantor hereby agrees that it will at its own cost

take out and maintain professional liability insurance, with reputable insurers carrying on business in the European Union, with a limit of indemnity of not less than:

1.2.1 €10,000,000.00 (ten million euros) for bodily injuries; and

1.2.2 €10,000,000.00 (ten million euros) for other damages (property damages and/or pecuniary losses),

for any occurrence, subject to a maximum indemnity in any insurance year of twice the amount of the sums insured. Such insurance is to be maintained from the effective date of the Contract to 12 years after the date of takeover of the Energy from Waste Plant (as defined in the Contract).

2. REIMBURSEMENT

2.1 The Guarantor by this Deed agrees to reimburse the Employer on receipt of its first written notice for all losses, damages, costs and expenses (including legal costs and expenses incurred in enforcing the provisions of the Contract or this Deed), or otherwise which may be incurred by the Employer by reason of the Consultant suffering an event of Insolvency (which has the same meaning as under the Contract) or any breach on the part of the Consultant in fully and duly performing and observing the terms and conditions on its part contained in the Contract.

2.2 In this Deed, Event of Insolvency shall have the same meaning as given in the Contract.

2.3 Save where the Consultant has suffered an Event of Insolvency, any demand by the Employer shall be accompanied by a certified copy of a decision of an adjudicator, arbitrator's award or judgment for the sum demanded.

3. NO DISCHARGE OF LIABILITY

3.1 The liability of the Guarantor will not be discharged or affected in any way by:

3.1.1 any fact, event or rule of law which, but for this **clause 3** might operate to release in whole or in part the Guarantor from its obligations under this Deed including (without limitation) any novation, assignment, termination of the Contract (whether automatic or otherwise and whether by reason of the Consultant suffering an Event of Insolvency or otherwise), or any amendment or extension of time or variation of or under the Contract or any forbearance or forgiveness by the Employer of the Consultant; or

3.1.2 a legal limitation, disability or incapacity of the Consultant.

3.2 Any money judgment of the court or arbitrator's award against the Consultant in favour of the Employer under the Contract shall be conclusive evidence for the purposes of this Deed as to liability of the Consultant to which such judgment or award or decision relates.

4. CONTINUING GUARANTEE

This Deed creates a continuing guarantee and will remain in force until all the obligations of the Consultant under the Contract have been fully satisfied.

5. GUARANTOR'S WAIVER

5.1 The Employer will not be obliged before exercising any of the rights, powers or remedies conferred upon it in respect of the Guarantor under this Deed or by law:

5.1.1 to make any demand of the Consultant;

5.1.2 to enforce or seek to enforce any claim, right or remedy against the Consultant or any other person; or

5.1.3 to make or file any claim or proof in connection with the Insolvency of the Consultant or any other person; or

5.1.4 to take any action or obtain judgement in any court against the Consultant or any other person.

6. GUARANTOR'S DEFENCES

6.1 The Guarantor will be entitled in any proceedings brought by the Employer under this Deed to take advantage of any defences set-offs, counterclaims, estoppels and the like which would be available to the Consultant in any proceedings brought by the Employer under the Contract.

7. ASSIGNMENT

The Employer is entitled to assign the benefit of and its rights under this Deed (as a whole only and not in parts) at any time without the Guarantor's consent to any company, bank or institution providing finance in connection with the Project subject to the Employer giving prior written notice of such assignment to the Consultant and the Guarantor.

8. **GOVERNING LAW AND JURISDICTION**

This Deed will be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

9. **THIRD PARTY RIGHTS**

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.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SIGNED as a deed by)
)
FICHTNER GMBH)
acting by a director and its)
Company Secretary or two directors)

Director

Director/Company Secretary

The OFFICIAL SEAL of the Minister)
for Transport and Technical Services is)
hereby affixed:)

Signature of Minister:.....

Signed by Deputy Guy de Faye, the Minister for Transport and Technical Services

Date:



