

Schedule 8 Legislative Review

1 Definitions

1.1 In this Schedule 8, the following expressions shall have the meanings set out below:

"Allowed Expenditure" means Expenditure which LWL has fairly and reasonably incurred in any preceding year (but not prior to the Commencement Date) with the prior written approval of the Authority in accordance with the provisions of this Schedule 8 or the provisions of Clause 36 as the case may be and adjusted in accordance with paragraph 6;

"Allowed Finance" means any fixed-term borrowings properly made by LWL from third parties (not being connected with LWL or the Authority unless with the prior written agreement between the Parties) to finance the cost of any Allowed Capital Expenditure (as adjusted pursuant to paragraphs 3 and 6);

"Annual Cost of Allowed Finance" means the annual amount of interest at the Lower Rate of Interest which would be payable on the Allowed Finance and for the avoidance of doubt, the Lower Rate of Interest shall be applied only to that part of the Allowed Finance which represents Allowed Capital Expenditure as adjusted in accordance with paragraphs 2 and 5;

"Business Plan" means the plan setting out LWL's business operations approved by the Authority at its meeting on 29 September 2014;

"Capital Expenditure" means:

- (a) any amount paid by LWL to third parties for the acquisition and installation of any tangible fixed assets in the form of buildings, plant and machinery and vehicles and equipment (which term shall include, for the avoidance of doubt, software) which is a Cost of Compliance;
- (b) for the purposes of sub-clause (a) the expression "installation" shall include any necessary removal of existing assets, fitting out works and commissioning of the assets;
- (c) notwithstanding the provisions of (a):
 - (i) there shall be excluded any amount incurred by LWL directly or indirectly to facilitate the acquisition or installation of such assets such as professional and other fees for advice; and
 - (ii) the amounts referred to in (c)(i) shall never exceed the aggregate of the amounts arising under (a);

"Capital Item" means any individual tangible fixed asset or item of software on which Capital Expenditure is incurred and monies paid;

"Cost of Compliance" means any expenditure of LWL which is directly attributable to the cost of LWL securing compliance of the relevant Delivery Point with all Environmental Laws enacted after the Commencement Date and with which LWL is

required to comply during the Contract Period but excluding any cost of servicing or maintenance except for:

- (a) the salaries and other costs of additional employees which it is necessary for LWL to employ as the result of Environmental Laws enacted after the Commencement Date and during the Contract Period; and
- (b) materials or energy used in relation to machinery or equipment which it is necessary for LWL to install as the result of Environmental Laws enacted after the Commencement Date and during the Contract Period;

"Environmental Laws" means all statutes or other laws or subordinate legislation, regulations or EC directives implemented by UK legislation which are enacted after the Commencement Date (other than those laws which amount to no more than re-enactments or consolidations of laws which were already in force prior to the Commencement Date) and which relate to the waste disposal and waste recovery industries (including Health and Safety Legislation which relates to the Facility and Delivery Points) but excluding;

- (a) any Health and Safety Legislation which is generally applicable to all other businesses operating in the United Kingdom; and
- (b) any Health and Safety Legislation or other legislation which relates to remedial or clean-up works in respect of contaminated land or structures;

"Environmental Taxes" means:

- (a) any taxes and levies or other taxation on the cost of the treatment or disposal of Contract Residual Waste at the Facility;
- (b) any taxes and levies (irrespective of the point at which the tax or levy is raised) or any carbon dioxide or other tax on emissions and discharges which are applicable to the Facility and which have been imposed under any:
 - (i) United Kingdom laws (enacted after the Commencement Date) in the year immediately preceding any anniversary of the first Review Date; or
 - (ii) any European Community legislation which has legal effect in the United Kingdom and which is directly binding and enforceable against LWL (enacted after the Commencement Date) in any year immediately preceding any anniversary of the first Review Date,

in respect of which the Authority will make to LWL the contribution specified in paragraph 6.6.3;

"Expenditure" means Capital Expenditure and/or Revenue Expenditure (as the case may be);

"Lower Rate of Interest" means the lower of the average market rate of the four largest United Kingdom clearing banks over the relevant period and the actual rate of

interest charged on the Allowed Finance over the relevant period calculated on each anniversary of drawdown of the relevant Allowed Finance;

"**Revenue Expenditure**" means payments made by LWL to third parties which are Cost of Compliance and are in respect of matters directly required by Environmental Laws and not as a means of facilitating compliance with Environmental Laws and which are not:

- (a) Capital Expenditure; or
- (b) incurred for the provision of services or are salary payments to additional employees including associated employers overheads in respect of National Insurance and superannuation payments.

2 **Prior Approval**

2.1 If at any time within the Contract Period LWL becomes aware that it will need to incur Expenditure, it shall, as soon as reasonably practicable, notify the Authority in writing of the proposed Expenditure and provide sufficient details concerning the necessity of the proposed Expenditure (including copies of any engineering or environmental reports and details of the relevant Environmental Laws) to support the proposed Expenditure and to enable the Authority to make a reasoned decision not only of the extent of any proposed Allowed Expenditure but also of any proposed Allowed Finance.

2.2 Upon receipt of any such written notice by the Authority, the Parties shall meet to discuss the notice within twenty (20) Business Days thereafter and shall endeavour in good faith to reach agreement as to whether the proposed Expenditure described in the notice is fairly and reasonably required and is a Cost of Compliance and in any event the Authority shall give its decision as soon as possible and in any event within three (3) Months of the date of the notice or such later time as shall be agreed with LWL in the event that for whatever reason the Authority is unable to convene a meeting of the members of the Authority ("**Authority Meeting**") within that three (3) Months.

2.3 If, within a further twenty (20) Business Days of the Authority Meeting, the Parties are unable to agree whether all or any part of the Expenditure is fairly and reasonably required and is a Cost of Compliance, the procedure set out in Clause 36 shall apply.

3 **Review of Expenditure or Environmental Taxes or Allowed Finance**

3.1 The amount of any Expenditure or Environmental Taxes or Allowed Finance will be reviewed on 1 April 2015 and on the 1 April in each subsequent year (a "**Review Date**") as regards Expenditure or Allowed Finance or Environmental Taxes which have been incurred and paid by LWL in the year to 1 April 2015 or in any subsequent year.

3.2 In the case of any Allowed Expenditure which is Capital Expenditure ("**Allowed Capital Expenditure**") the overall cost of any Capital Item will be allocated over the lifespan of that Capital Item commencing from the Review Date immediately following the date on which the Allowed Capital Expenditure was incurred and paid.

3.3 The lifespan of any Capital Item shall be agreed in advance between the Parties before any Allowed Capital Expenditure is incurred (in accordance with paragraph 2). In the event of any dispute the procedure set out in Clause 36 shall apply.

3.4 Unless the Parties agree otherwise the normal lifespan of any Capital Item shall equal the following depreciation period for such items namely:

Buildings	-	20 years
Vehicles and equipment	-	5 years

or in those circumstances where the depreciation period is adjudged to be considerably shorter or longer such other period as the Parties may agree.

3.5 The Authority shall make payments in equal monthly instalments over the lifespan of the Capital Item, the first payment being made at the end of the first Month in the year immediately following the year in which the Allowed Capital Expenditure was incurred and paid and thereafter on the last day of every subsequent Month, unless otherwise agreed between the Parties.

3.6 In the case of any Allowed Expenditure which is Revenue Expenditure ("**Allowed Revenue Expenditure**") or Environmental Taxes, the cost will be allocated to the year immediately following the year in which it was actually incurred and, unless otherwise agreed between the Parties, paid to LWL by the Authority in the following manner:

3.6.1 in the case of Allowed Revenue Expenditure payments will be made in twelve (12) equal monthly instalments payable monthly in arrears with the first payment being made at the end of the first Month of that following year and thereafter on the last day of each subsequent Month; and

3.6.2 in the case of Environmental Taxes payments will be made on the first Review Date immediately following the year in which the Environmental Taxes were paid or (as the case may be) as soon as possible thereafter and subsequent payments shall be made as soon as possible after each anniversary of the first Review Date.

3.7 Where LWL properly incurs Allowed Finance, the Annual Cost of Allowed Finance will be allocated to the year immediately following the year in which the Allowed Finance was actually incurred and paid by LWL and shall be paid by the Authority in equal monthly instalments over the lifespan of the fixed term borrowings, the first payment being made at the end of the first Month in the year immediately following the year in which the Allowed Finance was incurred and paid and thereafter on the last day of every subsequent Month.

3.8 In the event of any dispute between the Parties as to whether certain borrowings constitute Allowed Finance, the procedure set out in Clause 36 shall apply.

4 **Thresholds**

4.1 The Authority shall not be liable in respect of any Allowed Capital Expenditure or any Allowed Finance unless the cost of the relevant Capital Item exceeds ██████████

██████████ and in the case of Allowed Revenue Expenditure unless and until the aggregate of any Revenue Expenditure in any year exceeds ██████████

██████████ (together referred to hereafter as the "**Thresholds**" and individually as "**Threshold**"). In either case the Authority shall only be liable to LWL in respect of amounts in excess of the Thresholds.

- 4.2 Where LWL has incurred Allowed Capital Expenditure or any Allowed Finance in respect of individual Capital Items which individually do not exceed the Threshold then to the extent that such items are purchased as a result of one order or one project (which may combine more than one order) or in response to the same statutory requirement under Environmental Laws then the individual values of such Capital Items shall be aggregated in determining whether the Threshold has been exceeded.

5 **Compliance Standards**

- 5.1 Where it is necessary for LWL to introduce a new technology requiring Capital Expenditure to ensure that the existing processes operated at the Sites comply with Environmental Laws, LWL will:

5.1.1 observe the best available techniques not entailing excessive cost method (the "**BATNEEC Objectives**") referred to in s.7(2) of the EPA (as the same may be amended); and

5.1.2 in selecting the revised or new technology in compliance with paragraph 5.1.1 select the lowest cost alternative available at that date which meets the BATNEEC Objectives, unless otherwise agreed in writing with the Authority; and

5.1.3 ensure that the revised or new technology does satisfy the appropriate authority that LWL is operating in accordance with the terms of any licence permit or authorisation which LWL is required to have under Environmental Laws.

- 5.2 Any dispute between the Parties as to the lowest cost alternative necessary to ensure compliance with the BATNEEC Objectives shall be determined by the dispute resolution procedure set out in Clause 36.

- 5.3 In the event that discussions are held or improvement plans submitted to the appropriate regulatory authority on terms which have not previously been agreed in writing with the Authority, the Authority shall have no obligation to make any payment under this paragraph 5 in relation to that particular event.

6 **Adjustment to the Expenditure incurred by LWL**

- 6.1 In determining the Authority's contribution in respect of any Allowed Expenditure under this Schedule 8 the Parties shall when determining the Allowed Expenditure, fairly take into account any cost savings or other reduction in costs and expenses which LWL has been able to achieve during the Contract Period as a result of technological changes or changes in working practices (as the result of technological

changes in the waste disposal industry) which have occurred or been adopted by LWL after the Commencement Date.

6.2 Any saving shall be expressed as an annualised saving and spread over the lifespan of a Capital Item or anticipated period of benefit of any Revenue Expenditure and be deducted from the Authority's contribution in respect of any Allowed Expenditure before the fractions referred to in paragraphs 6.5 and 6.6 are applied to the Expenditure.

6.3 The value of the annual saving will be indexed on each Review Date.

6.4 In the event of any dispute as to the degree to which technological change or changes in working practices have resulted in financial savings to LWL which should be reflected in a reduction in the Authority's contribution to any Expenditure attributable to any given project the dispute resolution procedure set out in Clause 36 shall apply.

6.5 In the case of Capital Expenditure the Authority will only bear a proportion of the Capital Expenditure expressed as a percentage equal to:

[REDACTED]

6.6 In the case of Expenditure (whether of Capital Expenditure or Revenue Expenditure) there will be a further adjustment so that:

6.6.1 [REDACTED]

6.6.2 in the case of any Capital Expenditure or Revenue Expenditure in respect of the Hendon Delivery Point and the Hornsey Street Delivery Point the Authority will only bear a proportion of the cost

incurred in the year immediately preceding the relevant Review Date expressed as a percentage equal to:

[REDACTED]

6.6.3 the Authority's contribution towards any Environmental Taxes incurred in the year immediately preceding the relevant Review Date in respect of the treatment or disposal of Contract Residual Waste at the Facility shall be determined by a percentage equal to:

[REDACTED]

6.7 The Authority shall not be liable to contribute towards any Expenditure in relation to Allowed Capital Expenditure:

- 6.7.1 which has been provided for in the Business Plan;
- 6.7.2 which has or will be incurred as a result of any change in the current use or capacity of the Facility on the EcoPark or as a result of any expansion or increase in the production levels or throughput at the Facility or any other facilities at the EcoPark which occurs after the Commencement Date; or
- 6.7.3 to the extent that any Expenditure is attributable to the replacement of any building, structure, plant or machinery at the Facility which would ordinarily be replaced in the normal course of business due to wear and tear or obsolescence.

6.8 Notwithstanding any other provision of this Contract the Authority shall have no further liability to LWL under this Schedule 8 following the Expiry Date except as regards Allowed Expenditure incurred by LWL prior to the Expiry Date.