

DATED 21 DECEMBER

2010

PORTSMOUTH CITY COUNCIL

- and -

VEOLIA E. S. HAMPSHIRE LIMITED

AGREEMENT

For the Provision of Processing of Glass Services

**Portsmouth City Council
Legal Services**

TERMS AND CONDITIONS

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1 Definitions and Interpretation

1.1 In the Contract the following terms shall have the meanings given to them below:

1.1.1 “Authorities” means the 14 Local Authorities in Hampshire identified in 2.1.4 in Instructions for Tendering

1.1.2 “Bulk Bays” means the bays that the Authorities will deliver their Glass to that are operated by the Disposal Contractor. These Bulk Bays are also where the Contractor will collect Glass in accordance with this Contract

1.1.3 “Commencement Date” means the 6th February 2011 (or as otherwise directed by the Council by reasonable notice in writing)

1.1.4 “Commercial Prudence” means a duty to act with all due commercial care, prudence and foresight that could reasonably be expected of an experienced and competent Contractor working in the waste management industry, to ensure that the Contractor remains a viable commercial entity and able to perform its obligations under the Contract and that it does not incur any expenditure which it seeks to recover from the Managing Authority which is not reasonably necessary or expedient to meet the Contractor's obligations under the Contract

1.1.5 “Conditions” means these terms and conditions

- 1.1.6 "Contract" means this written agreement between the Council and the Contractor incorporating the Deed, Conditions, Schedules, Specification, Method Statement Schedule and Instructions for Tendering
- 1.1.7 "Contract Manager" means the person appointed by the Contractor under Condition 4.2
- 1.1.8 "Contract Term" means the duration of the Contract as set out at Condition 38
- 1.1.9 "Contractor" means the service provider referred to in this Contract
- 1.1.10 "Contractor Charge" means the charge payable for the provision of the Service to the Managing Authority in consideration of the due and proper performance of the Service in accordance with the Contract excluding VAT which shall be due at the rate ruling on the date of the VAT invoice if produced. This shall be deducted from the sale price of Glass that the Contractor receives in accordance with Schedule 3 – Income Schedule. An example of how payments shall be made is included in 2.4 in Instructions for Tendering
- 1.1.11 "Contractor Depot(s)" means the place(s) where Authorities can deliver their Glass in addition to the Bulk Bays
- 1.1.12 "Council" means Portsmouth City Council of Civic Offices, Guildhall Square, Portsmouth, PO1 2PX
- 1.1.13 "Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach

of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party in connection with the subject matter of the Contract

1.1.14 "Disposal Contractor" means the supplier appointed to operate the waste disposal service contract by the Waste Disposal Authorities

1.1.15 "Fraud" means any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud

1.1.16 "Glass" means all household (as defined by the Controlled Waste Regulations 1992) Glass separately collected by the Authorities for recycling, either from bring bank, kerbside collection, household waste recycling centre or similar

1.1.17 "Good Industry Practice" means standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances

1.1.18 "Income Schedule" means the Income Schedule annexed to the Contract containing details of the contract price (Schedule 3 – Income Schedule)

1.1.19 "Managing Authority" means the Council or any other Authority that will from time to time will manage this Contract on behalf of

the Authorities. The Council reserves the right to appoint another Authority to act as Managing Authority on its behalf

1.1.20 "Managing Authority Representative" means the person(s) appointed by the Managing Authority under Condition 4.4

1.1.21 "Method Statement Schedule" means the Schedule of the same title submitted by the Contractor with its Tender. This shall include full details of proposed working methods and terms of reference. This completed Schedule will form the Quality Submission

1.1.22 "Operational Hours" means the times when the Bulk Bays are open for the Contractor to collect Glass for onward processing and for the acceptance of Glass from the Authorities. Current Operational Hours are detailed in the Instructions for Tendering 2.3.8

1.1.23 "Parties" means the Managing Authority and the Contractor (including their successors and permitted assignees) and "Party" shall mean either of them as the case may be

1.1.24 "Residue" means that element of the Glass that has been processed but is not suitable for the remelt market. This includes Glass to aggregate and other non-Glass material such as bottle tops, labels and other contraries

1.1.25 "Schedules" means any or all schedules attached to the Conditions

- 1.1.26 "Service" means the service the Contractor agrees to supply to the Managing Authority in accordance with the Contract including any variations to such service
- 1.1.27 "Specification" means the description of the Service and its obligations
- 1.1.28 "Staff" means any person whether paid or unpaid and whether or not employed by the Contractor and any servant, agent, supplier and sub-contractor who is engaged in the performance of the Contract on behalf of the Contractor and includes the Contractor where the Contractor is an individual
- 1.1.29 "Tender" means the document(s) submitted by the Contractor to the Council in response to the Council's invitation to suppliers for formal offers to supply it with the Services
- 1.1.30 "Waste Disposal Authorities" means the three local authorities in Hampshire (Hampshire County Council, Portsmouth City Council and Southampton City Council) that are responsible for disposing of waste according to section 51 of the Environmental Protection Act 1990
- 1.1.31 "Working Day" means any day on which clearing banks in the City of London are (or would be but for a strike, lock out or other stoppage affecting such banks generally) open during banking hours
- 1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa
- 1.2.2 words importing one gender include all other genders
- 1.2.3 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees
- 1.2.4 reference to any Act of Parliament, order, regulation, statutory instrument or directive will include a reference to any later amendment or re-enactment of the legislation, regulation, instrument or directive
- 1.2.5 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract
- 1.2.6 all agreements on the part of either of the Parties which comprise more than one person or entity shall be joint and several

2 Conditions Applicable

- 2.1 The Conditions shall apply to the Contract for the provision of the Service to the Managing Authority to the exclusion of all other terms and conditions including any terms or conditions which the Contractor may purport to apply under any offer of services or similar document
- 2.2 The Conditions shall prevail over any other parts of the Contract

3 The Service

- 3.1 The Contractor shall be responsible for the accuracy of all documentation and information supplied to the Managing Authority by the Contractor in connection with the supply of the Services
- 3.2 In the case of any ambiguities, or discrepancies in the Specification, the Contractor shall notify the Managing Authority of such ambiguities or discrepancies and the Managing Authority shall resolve the discrepancy and issue appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions
- 3.3 Subject to the Conditions the Contractor shall provide the Service in a workmanlike manner in accordance with the Specification and to the standard of skill and care reasonably expected of skilled and experienced providers of such services for the duration of the Contract Term
- 3.4 The Authorities will not source sell or give to any other contractor or company or person Glass that is collected separately other than through the Contractor
- 3.5 The Contractor shall act with Commercial Prudence at all times

4 Contract Management

- 4.1 The Contractor shall at all times properly manage and monitor the Service
- 4.2 The Contractor shall appoint a Contract Manager to act on its behalf for all purposes connected with the Contract. The Contractor shall inform the Managing Authority of any replacements during the Contract Term
- 4.3 The Contractor shall ensure that at all times the Managing Authority has up to date contact details for the Contract Manager, or any temporary or permanent replacement

4.4 The Managing Authority shall appoint a Managing Authority Representative to act on its behalf for all purposes connected with the Contract

4.5 The Contract Manager, or a duly authorised and competent representative shall be available to meet with the Managing Authority Representative or other appointed representative at all reasonable times and shall provide such written reports as the Managing Authority may reasonably require prior to such meetings

5 Variation

5.1 The Managing Authority Representative may at any time issue to the Contractor instructions in writing varying the Service including:

5.1.1 requiring the Contractor to provide services additional to the Service, provided that such additional services shall be similar to the Service;

5.1.2 requiring the Contractor to vary the Service or any part thereof;

5.1.3 requiring the Contractor to omit or postpone any part of the Service

5.2 The Contract Manager shall respond within 14 days to the written notification described in this Condition 5.1 estimating the operational and financial impacts of the variation

5.3 The Contract Manager may at any time notify the Managing Authority Representative in writing that the Service has been affected by circumstances which in the Contractor's opinion require a variation to the Contract. This notification shall include an estimate of any operational and financial impact of the variation

- 5.4 The Managing Authority Representative and Contract Manager shall use all reasonable endeavours to reach agreement on the operational and financial impacts of the variation
- 5.5 Once the Managing Authority Representative and Contract Manager reach agreement on the impact of a variation the valuation of the variation shall, where appropriate, take the form of a variation of the Income Schedule by such a percentage as fairly and reasonably represents the percentage change in the costs, expenses and / or savings of the Contractor attributable to the variation, but otherwise a fair sum having regard to the Contract price where it is appropriate and reasonable to do so
- 5.6 Should the Managing Authority Representative and Contract Manager not reach agreement on the impact of a variation the procedures described in Specification 4.3 and then Condition 20 (Dispute Resolution) shall be followed
- 5.7 Both the Managing Authority and the Contractor shall be responsible for ensuring, insofar as is necessary, that any changes to the Contract, including those resulting from statutory changes, are promptly notified to its employees, agents and sub-contractors affected by such changes and engaged in providing the Service so far as to ensure that there are no interruptions or delays to or other adverse effects upon the Service

6 Payment and Invoices

- 6.1 The Managing Authority shall submit invoices to the Contractor in accordance with its invoice procedure

- 6.2 Payment of the income to the Managing Authority by the Contractor and VAT if payable shall be due on the thirtieth day after the date a valid invoice is received
- 6.3 Further to the provisions of Condition 8 (Remedies in the event of Inadequate Performance) the Managing Authority may set-off against the Contractor Charge (as identified in Schedule 3 – Income Schedule) (including any applicable VAT payable) any amounts due from the Contractor whether under the Contract or otherwise. The Managing Authority may unilaterally add any sums then due from the Contractor, or any sum which may at any later time become due from the Contractor under the Contract, or any other agreement or contract with the Managing Authority's discretion
- 6.4 Should the Contractor for any reason fail to make payment on the due date (including any sum which was in dispute but subsequently agreed or determined to be due to the Managing Authority) the Contractor shall against receipt of a valid invoice pay interest on the amount overdue at a rate equal to two percentage points above the base lending rate for the time being of Barclays Bank plc at the Managing Authority's discretion
- 6.5 Except where otherwise provided in the Contract, the amount payable to the Managing Authority for the performance of the Service shall be inclusive of all activities identified in 1.2 of Schedule 3 – Income Schedule

7 Conflict of Interest

- 7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Managing Authority, there is or may be an actual conflict, or a

potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authorities under the provisions of the Contract. The Contractor shall disclose to the Managing Authority full particulars of any such conflict of interest which may arise

- 7.2 The Managing Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take any such other steps it deems necessary where, in the reasonable opinion of the Managing Authority, there is or may be actual conflict, or a potential conflict between the pecuniary or personal interest of the Contractor and the duties owed to the Authorities under the provisions of the Contract. The actions of the Managing Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Managing Authority

8 Remedies in the Event of Inadequate Performance

- 8.1 The Contractor warrants that it will provide the Service in all respects in accordance with the Contract for the Contract Term
- 8.2 Where the Managing Authority considers that the Service or part of it has not been delivered in accordance with the Contract a written Action Notice shall be issued by the Managing Authority Representative requiring the Contractor to rectify the failure or omission within such reasonable time period as may be specified in the Action Notice
- 8.3 If the failure or omission in an Action Notice is not rectified by the Contractor within the period specified in the Action Notice, the Managing Authority shall issue a written Default Notice requiring the Contractor to rectify the failure or

- omission within a reasonable time period, which shall be specified in the Default Notice
- 8.4 In the event that the Contractor has not remedied the items detailed in a Default Notice within the specified period, the Managing Authority shall issue a further Default Notice (a 'Continuing Default Notice') upon the expiry of the specified period
- 8.5 Where more than three Action Notices have been issued within a six month period the Managing Authority may issue a written Default Notice
- 8.6. Upon issue of a Default Notice or a Continuing Default Notice, the Contractor shall, at the discretion of the Managing Authority, be due to make an Operational Non Performance Damages payment (Schedule 4 – Operational Non Performance Damages) for failure to meet the specified performance criteria, except when the Default Notice is issued under Condition 8.5 above
- 8.7 If the total number of Default Notices and Continuing Default Notices issued within a 6 month period exceeds three then the Contract may be terminated, in accordance with Condition 19 (Termination), at the discretion of the Managing Authority
- 8.8 The issuing of an Action Notice, Default Notice or Continuing Default Notice shall be without prejudice to any other right or remedy which the Managing Authority may have
- 8.9 Performance criteria and respective Action Notice provisions are detailed in Schedule 4 – Operational Non Performance Damages. Specification 1.4 details the area that shall be measured in respect of this Condition

9 Assignment Sub-Contracting or Novation

- 9.1 The Contractor shall not assign or sub-contract any of its rights or duties under the Contract without prior written consent of the Managing Authority. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract. The Council reserves the right to assign, subcontract or novate all or any of its rights or duties under the Contract without the written consent of the Contractor
- 9.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own
- 9.3 Where the Managing Authority has consented to the placing of sub-contractors, copies of each or any sub contract, shall at the request of the Managing Authority, be sent by the Contractor to the Managing Authority as soon as reasonably practicable

10 Status of the Contractor

At all times during the Contract Term the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of the other, save as expressly permitted by the terms of the Contract

11 Health and Safety

- 11.1 The Contractor shall ensure that safe systems of work and working practices are implemented and fully complied with at all times in the performance of the Contract and Service. The Contractor shall take all reasonable steps to avoid

- risk of injury or ill health to its employees, the employees of the Authorities, or to any person as a result of the Contractor providing the Service under the Contract
- 11.2 The Contractor shall allow for all necessary precautions for safe working conditions and ensure by means of competent supervision, adequate training, information and monitoring that all risks are properly assessed and that all current health and safety official codes of practice and guidance are complied with
- 11.3 An authorised officer of the Managing Authority shall be empowered to instruct the Contractor to suspend the provision of the whole or relevant part of the Service in the event of non-compliance by the Contractor with this Condition and the Contractor shall not resume provision of the Service or such part thereof until such authorised officer is satisfied that this condition will be complied with
- 11.4 The Contractor shall promptly report to the Managing Authority all serious accidents and incidents occurring as a result of the carrying out of the Service under the Contract

12 Place of Performance

- 12.1 The Service shall be provided at the addresses indicated in Specification 1.1 or as agreed by the Parties
- 12.2 Where the place of performance is or includes premises of the Authorities or the Disposal Contractor the Contractor and its Staff shall comply with all rules restrictions and reasonable directions imposed by the Authorities or the Disposal Contractor of which the Contractor or Staff are made aware

12.3 At all times during the Contract Term upon reasonable notice whenever appropriate in the circumstances, the Contractor shall allow the Managing Authority access to all work places, technologies, documentation, resources, systems and procedures for the purpose of inspecting and auditing work being performed pursuant to the provision of the Service

13 Liability Indemnity and Insurance

13.1 Neither Party excludes or limits liability to the other Party for

13.1.1 death or personal injury caused by its negligence; or

13.1.2 Fraud; or

13.1.3 fraudulent misrepresentation

13.2 The Contractor shall indemnify the Managing Authority and keep the Managing Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and other liabilities which may arise out of, or in consequence of, the supply of the Service, or the performance, or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any of its Staff on Authority or Disposal Contractor premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from provision of the Service by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor

13.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Managing Authority or by breach of its obligations under the Contract without prejudice to the generality of Condition 13.2

- 13.4 The Contractor shall effect and maintain a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include (and not be limited to) financial loss arising from provision of Service by the Contractor. Such insurance shall be maintained for the duration of the Contract Term and for a minimum of 2 (two) years following the expiration or earlier termination of the Contract
- 13.5 The Contractor shall maintain in accordance with Condition 13.4 public liability insurance to the value of £10,000,000, employer's liability insurance to the value of £10,000,000, products liability insurance to the value of £10,000,000 and professional indemnity insurance to the value of £5,000,000 in respect of each claim without limit to the number of claims
- 13.6 No policy of insurance required under this Condition 13 to be maintained by the Contractor shall be subject to an excess or deductible in excess of the amount (if any) disclosed to and agreed by the Managing Authority in writing prior to the Commencement Date
- 13.7 The Contractor shall give the Managing Authority, on request, copies of all insurance policies referred to in this Condition or broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premium due under those policies
- 13.8 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. In the absence of insurance

policies in the amount stated, it shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in this clause

14 Warranties and Representations

14.1 The Contractor warrants and represents that:

14.1.1 it has the full capacity and authority and all necessary consents (including when its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract

14.1.2 in entering the Contract it has not committed any Fraud

14.1.3 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of its knowledge or belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract

14.2 In the last 3 years prior to the date of the Contract:

14.2.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country in which it files accounts

14.2.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established

14.2.3 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligation under the Contract

15 Intellectual Property

15.1 Neither Party shall not cause or permit anything that may change or endanger the intellectual property of the other or the others title to it or assist or allow others to do so

15.2 All intellectual property rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, database, patents, patterns, models, designs or other material (the "IP Material"):

15.2.1 furnished to or made available to the Contractor by or on behalf of the Managing Authority shall remain the property of the Managing Authority; and

15.2.2 prepared by or for the Contractor on behalf of the Managing Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Managing Authority;

15.2.3 and the Contractor shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior approval use or disclose any intellectual property rights in the IP Material

15.3 To the extent that the ownership of the IP Material referred to in Condition 15.2.2 has not vested in the Managing Authority from its creation the

Contractor hereby assigns, or shall procure the assignment to the Managing Authority, with full title guarantee, all intellectual property rights which may subsist in the IP Materials prepared in accordance with Condition 15.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the intellectual property rights produced by the Contractor

15.4 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract

15.5 The Contractor shall ensure that the third party owner of any intellectual property rights that are or which may be used to perform the Contract grants to the Managing Authority a non-exclusive licence or, if itself a licence of those rights, shall grant to the Managing Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the intellectual property rights in the same. Such licence, or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Managing Authority to sub-licence, transfer, novate to a third party if it so requires

15.6 The Contractor shall not infringe any intellectual property rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Term, indemnify and keep indemnified and hold the Managing Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Managing Authority may suffer or incur as a result or in connection with any breach of this Condition

15.7 The Contractor grants to the Managing Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any intellectual property rights that the Contractor owned or developed prior to the Commencement Date and which the Managing Authority reasonably requires in order to exercise its rights and take the benefit of this Contract including the Service provided

16 Observance of Statutory Requirements

The Contractor shall comply with all statutory requirements applicable to the Service and shall indemnify the Managing Authority against all actions claims demands proceedings damages costs charges and expenses whatsoever arising directly or indirectly from any failure by the Contractor to comply with such requirements

17 Force Majeure and Continuity of Performance

17.1 In any event or occurrence which is outside the reasonable control of the Parties concerned and which is not attributable to any act or failure to take preventative action, then neither Party shall be liable for failure or delay to perform its obligations under the Contract if such failure results from; fire, flood, violent storm, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological chemical warfare or any other disaster natural or man made

17.2 Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of force majeure. However, if such force majeure prevents either

Party from performing its material obligations under the Contract for a period of in excess of 3 months, either Party may terminate the Contract with immediate effect by notice in writing

17.3 If either Party becomes aware of a force majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in this Condition, it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue

17.4 The Contractor shall immediately notify the Managing Authority Representative of any actual or potential industrial action, whether such action be by its own staff or others or any other contingency of any kind that affects or might affect its ability at any time to fulfil its obligations under the Contract. The Contractor shall continue to provide the Service in accordance with the terms of the Contract during any industrial action or other such contingency. The Contractor shall prepare contingency plans and arrangements and submit details thereof to the Managing Authority Representative on request, and as necessary, implement such plans and arrangements with such amendments and modifications as the Managing Authority Representative requires

17.5 The Contractor shall co-operate with any existing or future contractors prior to commencement of a new contract in order to facilitate any contract changeover period

18 Insolvency of the Contractor

If the Contractor enters into an agreement for the benefit of its creditors or has any distress or execution levied on its goods or being an individual becomes

bankrupt or presents or has presented to the court a bankruptcy petition or being a company enters into liquidation whether compulsory or voluntary (but not if the liquidation is for amalgamation of a solvent company) or is deemed unable to pay its debts as defined in the Insolvency Act 1986 Section 123 or has a receiver manager or administrative receiver or provisional liquidator or administrator appointed or presents or suffers to be presented a petition for an administration order in relation to it or is removed from the Register of Companies, the Managing Authority may terminate the Contract with immediate effect by notice in writing

19 Termination

19.1 Should any of the following circumstances or events occur during the period of the Contract the Managing Authority shall be entitled forthwith to terminate the Contract or such part thereof as appropriate and at its sole discretion (without prejudice to any right of action or remedy which shall have accrued or shall thereupon accrue to the Managing Authority) and where specified recover the amount of any resultant loss from Contractor:

19.1.1 if the provisions of Condition 18 (Insolvency of Contractor) apply;

19.1.2 if the provisions of Condition 8 (Remedies in the event of Inadequate Performance) apply;

19.1.3 where the Managing Authority is provided a right to terminate the Contract under any other term of this Contract

19.2 The Contractor shall notify the Managing Authority immediately if the Contractor undergoes a change of control within the meaning of section 416

of the Income and Corporation Taxes Act 1988 ("change of control"). The Managing Authority may terminate the Contract by notice in writing with immediate effect within six months of being notified that a change of control occurred, or where no notification has been made, the date the Managing Authority becomes aware of the change of control

19.3 If the Contract is terminated the Managing Authority shall:

19.3.1 not be liable to make any payments to the Contractor, provided that not less than 14 days notice of intention is given, until the costs, losses and/or damage arising from the termination have been calculated and it is apparent that any sum is due to the Contractor;

19.3.2 be entitled to repossess its materials, clothing, equipment, vehicles or goods ("materials, etc.") loaned or hired to the Contractor and exercise a lien over any materials, etc., belonging to the Contractor ("the Contractor's materials, etc.") for any sum due to the Managing Authority from the Contractor;

19.3.3 for the purposes of recovering any monies due to the Managing Authority for any loss or damage whether under this or any other agreement (such loss or damage to include the Managing Authority's officers' time spent on termination and/or making alternative arrangements for the provision of the Service or any part thereof) to deduct any sums owing to the Managing Authority from any monies whatsoever due to the Contractor or to recover any such monies as a debt;

19.4 Once the total costs (including loss or damage referred to above) have been calculated any balance due to the Managing Authority may be recovered as a debt or alternatively the Managing Authority will pay to the Contractor any balance due to the Contractor on an agreed final payment date. Where final payment is determined in accordance with Condition 20 (Dispute Resolution), payment must be made seven days from the date of decision

19.5 The rights of the Managing Authority in this Condition 19 are in addition to and without prejudice to any other rights the Managing Authority may have whether against the Contractor directly or pursuant to any guarantee, indemnity or bond

20 Dispute Resolution

20.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 14 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the appropriate director of each Party

20.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act

20.3 If the dispute cannot be resolved by the Parties in accordance with this Condition, the Parties shall attempt to settle the dispute by mediation, unless the Managing Authority considers that the dispute is not suitable for resolution by mediation

- 20.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration if agreed) and the Contractor shall comply fully with the requirements of the Contract at all times
- 20.5 If either Party intends to commence court proceedings, it shall serve written notice on the other Party of its intentions and the Managing Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor

21 Confidentiality

- 21.1 The Contractor and the Managing Authority shall not at any time during or after completion of the Service divulge or allow to be divulged to any person any confidential information (other than to their respective employees or Authorities who need to know the information and who shall be required to comply with the provisions of this Condition) without consent of the other Party. Information shall be regarded as confidential if the disclosing Party has acting reasonably identified it as confidential or if the receiving Party may reasonably be expected to consider that it is or may be confidential and at the relevant time it is reasonable for the information to remain confidential
- 21.2 Condition 21.1 shall not apply to:
- 21.2.1 any information in the public domain other than in breach of this Contract
 - 21.2.2 information in the possession of the receiving Party before such divulgence has taken place

- 21.2.3 information obtained from a third party who is free to divulge the same
- 21.2.4 information required to be divulged in compliance with a statutory or other legal obligation
- 21.3 Conditions 21.1 and 21.2 will remain in effect notwithstanding the completion or termination of the Service or of the Contract

22 Data Protection Act

22.1 The Parties to the Contract agree to comply with the Data Protection Act 1998 ("the DPA") and the following eight data principles laid down in the DPA, namely that data must be:-

- 22.1.1 fairly and lawfully processed
 - 22.1.2 processed for limited purposes
 - 22.1.3 adequate relevant and not excessive
 - 22.1.4 accurate
 - 22.1.5 not kept for longer than is necessary
 - 22.1.6 processed in line with the data subject rights
 - 22.1.7 secure
 - 22.1.8 not transferred to other countries without adequate protection
- 22.2 Neither Party ("the First Party") shall disclose or allow access to any personal data (as defined in "the DPA") provided by the other ("the Second Party") or acquired by the First Party during the course of executing its obligations under the Contract other than:
- 22.2.1 to a person employed or enabled by the First Party; or
 - 22.2.2 as permitted by and in accordance with the DPA

22.3 Any disclosure of or access allowed to personal data shall be made in confidence and shall extend only so far as is necessary for the purpose of carrying out this Contract or complying with any obligations imposed by the DPA. The Parties shall take reasonable steps to ensure the reliability of its Staff and agents who may have access to personal data

22.4 The First Party shall fully indemnify the Second Party in respect of all losses liabilities claims actions proceedings demands costs charges or expenses arising out of or in connection with any civil claim made in respect of information subject to the DPA which claims would not have arisen but for some act omission or negligence on the part of the First Party its employees agents or any sub-contractor (or anyone acting on its or their behalf)

23 Prevention of Corruption

23.1 If the Contractor or its agent (with or without the Contractor's consent) whether in relation to this or any other contract with the Managing Authority shall do or have done any act:

23.1.1 which amounts to an inducement or reward to any person for doing or omitting to do any act relating to the obtaining or execution of the contract

23.1.2 which is an offence under the Prevention of Corruption Acts 1889 – 1916

23.1.3 which amounts to the giving of a fee or reward the receipt of which is an offence under section 117 of the Local Government Act 1972

23.2 the Managing Authority may terminate this Contract with immediate effect and recover from the Contractor any loss resulting from such termination, including the cost reasonably incurred by the Managing Authority of making other arrangements for the supply of the Service and any additional expenditure incurred by the Managing Authority throughout the remainder of the Contract Term

24 Prevention of Fraud

24.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies due to the Managing Authority

24.2 The Contractor shall notify the Managing Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur

24.3 If the Contractor or its staff commits Fraud in relation to this or any other contract with the Managing Authority the Managing Authority may:

24.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Managing Authority resulting from the termination, including the cost reasonably incurred by the Managing Authority of making other arrangements for the supply of the Service and any additional expenditure incurred by the Managing Authority throughout the remainder of the Contract Term; or

24.3.2 recover in full from the Contractor any other loss sustained by the Managing Authority in consequence of any breach of this Condition

25 Social Responsibility

- 25.1 The Contractor agrees that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation
- 25.2 In any event the Contractor shall not unlawfully discriminate either directly or indirectly within the meaning and scope of the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2000
- 25.3 Where the Managing Authority has provided the Contractor with copies of the Managing Authority's own policies on Equalities, Disability or Race Relations then the Contractor shall use its best endeavours to ensure that it, its sub-contractors and employees comply with those policies
- 25.4 The Managing Authority shall be entitled at the Managing Authority's expense to inspect such books, accounts and records belonging to the Contractor as are necessary to demonstrate compliance with this Condition 25

26 Good Faith and Working in Partnership

- 26.1 Both Parties will act reasonably and in good faith towards each other in relation to all matters arising under this Contract
- 26.2 The Contractor shall inform the Managing Authority fully and as soon as possible of any circumstances which might affect the Contractor's ability to provide the Service whether temporarily or permanently
- 26.3 Each Party shall inform the other fully and as soon as possible of any circumstances which might lead to any substantial change in the nature, composition or amount of Glass, or any other circumstances which might alter the obligations of each Party under the Contract. The Managing Authority Representative shall be given all information and other facilities he may require to ensure that the Contractor is fulfilling its obligations under the Contract
- 26.4 The representatives of the Parties appointed under Condition 4 (Contract Management) shall hold regular meetings to review the working of the Contract as defined in Specification 4.2 to determine any actions that may be required to address problems and achieve continuous improvement

27 Freedom of Information

- 27.1 The Contractor shall assist the Managing Authority at no additional charge in meeting any reasonable requests for information in relation to the Contract which are made to the Managing Authority in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. The Managing Authority may from time to time serve on the Contractor an information notice requiring the Contractor within such time and in such form as is specified in the information

notice to furnish the Managing Authority such information as the Managing Authority may reasonably require relating to such requests for information

- 27.2 The Contractor acknowledges that in responding to requests for information as described in Condition 27.1 the Managing Authority shall be entitled to provide information relating to the Contract and the Service. The Managing Authority shall not in responding to such requests for information disclose any information which is exempt as described within any provision of Part II of the Freedom of Information Act 2000

28 General

- 28.1 The Supply of Goods and Services Act 1982 shall apply to the Contract except where varied by the Contract
- 28.2 The Contractor shall make no statement to the press or the public concerning the Contract or the provision of the Service to the Managing Authority without the specific prior written agreement of the Managing Authority
- 28.3 The Contractor shall ensure that all Staff are adequately vetted prior to being employed or engaged for the Service

29 Severance

If any provision of the Contract is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or may at the discretion of the Managing Authority be severed from the Contract and the remaining provisions of the Contract shall remain in full force and effect unless the

Managing Authority at its discretion decides that the effects of such declaration is to defeat the original intention of the Parties in which event the Managing Authority be entitled to terminate the Contract by 30 days written notice to the Contractor

30 Waiver

30.1 The rights of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy

30.2 No waiver shall be effective unless communicated to the other Party in writing

31 Supersedes Prior Agreements

The Contract supersedes any prior agreement between the Parties in relation to the subject matter of the Contract whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which have accrued to either party

32 Entire Agreement Clause

The Contract contains the full and complete understanding between the Parties in relation to the subject matter of the Contract and the Contractor acknowledges that no representations or promises not expressly contained in the Contract have been made by the Managing Authority to the Contractor or any of its employees, agents, servants, subcontractors or other representatives

33 Notices

Any notice to be served on either of the parties by the other should be sent by pre-paid recorded delivery or registered post to the address of the relevant Party shown at the head of the Contract or on the form of Tender or such other address as notified in writing by one Party to the other or by facsimile transmission subject to a confirmatory notice being sent by first class post to the addressee on the date of the facsimile transmission. Provided the relevant communication is not returned as undelivered, the notice shall be deemed to have been received by the addressee with 48 hours of posting or 24 hours if sent by facsimile transmission to the correct facsimile number of the addressee (with correct addressee)

34 Law

Subject to the provisions of Condition 20 (Dispute Resolution), the Managing Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all other matters arising from or connected with it are to be governed and construed according to English law

35 Third Parties

A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement by both Parties. The Parties agree that the Contract (Rights of Third Parties) Act 1999 shall not apply to this Contract

36 Retention of Documents

The Contractor shall retain all information held by it during the Contract Term on behalf of the Managing Authority in connection with the Contract for a period of 3 years following expiry or termination of the Contract and at the end of this period offer the Managing Authority such information prior to destroying it

37 Transfer of Responsibility on Expiry or Termination

- 37.1 The Contractor shall, at no cost to the Managing Authority, promptly provide such assistance and comply with such timetable as the Managing Authority may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Managing Authority shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract
- 37.2 Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the schedules attached to this Contract
- 37.3 The Contractor undertakes that it shall not knowingly do or omit to do anything that may adversely affect the ability of the Managing Authority to ensure an orderly transfer of responsibility

38 Contract Term

38.1 The Contract shall commence on the Commencement Date and shall continue in force for a period of five years unless the term is extended in accordance with Condition 38.2

38.2 This Contract may be extended on the same terms and conditions for one additional period of two years, subject to satisfactory Contractor performance and agreement of the Parties

THIS CONTRACT is made the _____ day of _____

~~2011~~ 2010

BETWEEN

(1) Portsmouth City Council of Civic Offices, Guildhall Square, Portsmouth PO1 2PX ("the Council"); and

(2) *Veolia E. S. Hampshire Limited* company registration number 2817856 whose registered office is at *Veolia House, 154a Pentonville Road, London, N1 9PE* but whose operational address for the purpose of this agreement is *Poles Lane, Otterbourne, Winchester, Hampshire, SO21 2EA*

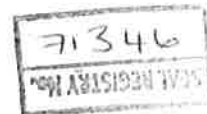
The Parties agree that the Contractor will supply the Council the services as described in the Specification and Tender attached for the Contract Term in accordance with and subject to the attached Conditions and Charge Schedule

The Parties agree that the Specification, Tender, Conditions, Income Schedule, Method Statement Schedule and Instructions for Tendering are incorporated in and form part of this Contract

IN WITNESS whereof the parties hereto have caused this agreement to be executed as a deed the day and year first before written

THE COMMON SEAL of PORTSMOUTH)
CITY COUNCIL was hereunto affixed in)
pursuance of a resolution of the Council)
passed at a meeting duly convened and held:-)

Michael Harvey
Michael Signatures



EXECUTED AS A DEED by the Service
Provider)
acting by a Director and its Secretary whose)
signatures are here subscribed:-)

) Director 

) Secretary 