

SCHEDULE 10 (TUPE AND PENSIONS)

This Schedule 10 comprises three parts:

PART 1 Employment Costs

PART 2 TUPE

PART 3 Definitions

PART 1 EMPLOYMENT COSTS

1. Employment Costs

- 1.1 The Authority has supplied to the Contractor the information, as at the date of this Agreement, which is contained in the Appendix (the “**Employee List**”) regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those employees of the Authority, the Existing Employer and of any Sub-Contractor of the Authority who it is expected, if they remain in the employment of the Authority, the Existing Employer or of the Sub-Contractor of the Authority as the case may be until immediately before the Service Transfer Date, would be Relevant Employees but the Authority gives no warranty as to the accuracy or completeness of this information.
- 1.2 The Contractor has provided to the Authority, and the Authority has agreed, the details set out in the Schedule (Workforce Information) which show, in respect of each of the Services, the following information:
- 1.2.1 the workforce which the Contractor proposes to establish to provide the Services (the “**Proposed Workforce**”) classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;
- 1.2.2 the monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Services. These costs (the “**Remuneration Costs**”) have been calculated on the basis of (amongst other things) the information contained in the Employee List; and
- 1.2.3 the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce (including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment). For the purposes of this clause costs

associated with dismissal by reason of redundancy in relation to those of the Transferring Employees made redundant by the Contractor following the date of the Service Transfer shall include payments by way of salary and all entitlements to benefits from the date of Service Transfer to the date of dismissal, payments of salary and benefits over relevant notice periods or in lieu of notice, payments by way of redundancy payment in line with employee entitlements and any costs arising from the dismissals which shall for the avoidance of doubt include any costs arising from or connected with any claims of unfair dismissal but shall not include any costs which are included within the Remuneration Costs. These costs (the “**Reorganisation Costs**”) have been calculated by the Contractor and the Sub-Contractors on the basis of (amongst other things) the information contained in the Employee List. Without limitation to clause 1.3 below it is acknowledged and agreed that the Employee List, Remuneration Costs and Reorganisation Costs as detailed within the Schedule are currently provisional as a result of the delay in the provision of the Employee List to the Contractor and that the Contractor shall submit further details of the Employee List, Remuneration costs and Reorganisation Costs to the Authority for agreement as soon as reasonably practicable and in any event by 14 July 2006 following conclusion of a consultation process with the Transferring Employees provided that the consultation process has taken place as expeditiously as possible, consistent with the Contractor complying fully with its obligations under TUPE_ and that the Contractor has used its reasonable endeavours to verify and establish the accuracy of the information contained in the Employee List.

1.3 If at any time (including, for the avoidance of doubt, after the submission of the Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any inaccuracies in or omissions from the information contained in the Employee List then (subject to clauses 1.4, 1.5 and 1.7) there shall be a corresponding adjustment to the Unitary Charge to compensate for any such difference.

1.4 If the circumstances described in clause 1.3 arise:

- 1.4.1 in circumstances where there are more Relevant Employees than shown on the Employee List then the parties shall discuss the implications for the provision of Services; and
 - 1.4.2 the Contractor and the relevant Sub-Contractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Unitary Charge shall be calculated as if they had done so.
- 1.5 In calculating any adjustment to be made to the Unitary Charge pursuant to clause 1.3:
- 1.5.1 no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce;
 - 1.5.2 to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Contractor has been or will be compensated as a result of any indexation of the Unitary Charge under this Agreement;
 - 1.5.3 to avoid doubt any changes in costs which fall to be dealt with under clause 1.3 and which arise from a Change in Law shall be dealt with in accordance with the provisions of clause 1.3 and shall not be taken into account for the purposes of clause 105 (Change in Law);
 - 1.5.4 no adjustments under clause 1.3 shall be made in respect of overpayments made by the Contractor or a Sub-Contractor to Relevant Employees which arise from reliance on the Employee List to the extent that the Contractor or the Sub-Contractor is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
 - 1.5.5 if there are underpayments by the Contractor or a Sub-Contractor to Relevant Employees, whether claimed or established as unlawful

deductions from wages or as a breach of contract, which arise from reliance on the Employee List, there shall be an immediate increase to the Service Payment in respect of all such liabilities of the Contractor or the Sub-Contractor for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Service Transfer Date shall be dealt with in accordance with clauses 2.2.1 or 2.5.1) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs; and

1.5.6 in order to prevent duplication, no adjustment shall be made under this clause 1.5 if any indemnity given by the Authority under any other provision of this Agreement would apply.

1.6 Either party may propose an adjustment to Unitary Charge pursuant to clause 1.3 by giving not less than ten (10) Business Days notice to the other. Each party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to clause 1.3.

1.7 In relation to all matters described in clauses 1.4 and 1.5 the Contractor and the Authority shall, and the Contractor shall procure that the relevant Sub-Contractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

PART 2 TUPE

2. TRANSFER OF EMPLOYEES

2.1. Relevant Transfers

2.1.1. The Authority and the Contractor agree that the following events:

2.1.1.1. the Service Transfer;

2.1.1.2. where the identity of a provider (including the Authority) of any service which constitutes or which will constitute one of the Services is changed whether in anticipation of changes pursuant to this Contract or not,

shall constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 5(4A) of TUPE) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to an occupational pension scheme. On the occasion of a Relevant Transfer (save on expiry or termination of this Contract) the Contractor shall procure that the former and the new Sub-Contractor shall both comply with their obligations under TUPE.

2.1.2. The Authority shall comply and shall procure that the Existing Employer shall comply with its obligations under TUPE in respect of the Service Transfer and the Authority shall comply with its obligations under TUPE in respect of every other Relevant Transfer pursuant to this Contract and the Contractor shall comply and shall procure that each Sub-Contractor shall comply with its obligations (including without limitation the obligation under Regulation 10(3) of TUPE) in respect of each Relevant Transfer pursuant to this Contract and in the event of any breach of this paragraph 2.1.2 by either Party, the Party in default shall

indemnify the other Party against any Direct Losses sustained as a result of such breach. The provisions of these paragraphs 2.1.1 and 2.1.2 shall not apply to the conduct of the Market Testing of any Services which shall be governed by the provisions of Schedule 32 (Benchmarking and Market Testing).

2.2. Emoluments and Outgoings

2.2.1. The Authority shall procure that the Existing Employer of the Transferring Employees is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date.

2.2.2. The Contractor shall be responsible or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of any Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Service Transfer Date.

2.3. The Authority shall and shall use all reasonable endeavours to ensure that the Existing Employer shall and the Contractor shall and shall procure that each and every Sub-Contractor shall take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the services of the Authority including the Services and to the employees who transfer.

2.4. Union Recognition

2.4.1. The Authority shall and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that the Existing Employer shall supply to the Contractor no later than five (5) Business Days prior to the Service Transfer Date true copies of its union recognition agreement(s) and the Contractor shall and shall procure that each and every Sub-Contractor shall in accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each Sub- Contractor) after the transfer to the same extent as they were recognised by the Existing Employer before the Service Transfer Date.

2.4.2. The Contractor shall procure that, on each occasion on which the identity of a Sub-Contractor changes pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Contractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the change of identity of the Sub-Contractor in respect of the provision of the Services. The provisions of this paragraph 2.4 do not apply to the conduct of the Market Testing of any Services which shall be governed by the provisions of Schedule 32 (Benchmarking and Market Testing).

2.5. Employee Indemnities

2.5.1. The Authority shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant Sub-Contractor) against all Direct Losses incurred by the Contractor or any relevant Sub-Contractor in connection with or as a result of:

- (a) a breach by the Authority of its obligations under clause 2.2.1 above;
- (b) any claim or demand by any Transferring Employee arising out of the employment of any Transferring

Employee provided that this arises from any act, fault or omission of the Authority or the Existing Employer in relation to any Transferring Employee prior to the date of the Relevant Transfer and any such claim is not in connection with the Relevant Transfer;

- (c) any claim by any trade union or staff association or employee representative (whether or not recognised by the Authority and/or the Existing Employer in respect of all or any of the Transferring Employees) arising from or connected with any failure by the Authority and/or the Existing Employer to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 10 TUPE, under the Acquired Rights Directive or otherwise save to the extent that any such failure is caused by a failure by the Contractor to provide the Authority or Existing Employer as appropriate with information pursuant to Regulation 10(2)(d) of TUPE;
- (d) any claim or demand by any Former Employees or Remaining Employees in relation to their employment whether prior to or following the date of the Relevant Transfer.

2.5.2. Where any liability in relation to any Transferring Employee, in respect of his or her employment by the Existing Employer or its termination which transfers in whole or part in accordance with TUPE and/or the Directive arises partly as a result of any act or omission occurring on or before the Service Commencement Date and partly as a result of any act or omission occurring after the Service Commencement Date, the Authority shall indemnify and keep indemnified in full the Contractor or the relevant Sub-Contractor against only such part of the Direct Losses sustained by the Contractor or any Sub-Contractor in consequence of the

liability as is reasonably attributable to the act or omission occurring before the Service Commencement Date.

2.5.3. The Contractor shall indemnify and keep indemnified in full the Authority, and at the Authority's request each and every service provider who shall provide any service equivalent to any of the Services after expiry or earlier termination of this Contract ("Future Service Provider") against:

2.5.3.1. all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of any claim or demand against the Authority or any Future Service Provider by any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor after the Service Transfer Date;

2.5.3.2. all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of a breach by the Contractor of its obligations under paragraph 2.2.2 above; and

2.5.3.3. all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant Sub-Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation

10 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date.

2.5.4. The Contractor shall indemnify and keep indemnified in full the Authority, against all Direct Losses incurred by the Authority in connection with or as a result of:

2.5.4.1. any claim by any Relevant Employee that the identity of the Contractor or the relevant Sub-Contractor is to that Relevant Employee's detriment or that any proposed or actual substantial change by the Contractor or any Sub-Contractor to the Relevant Employees' working conditions or any proposed measures of the Contractor or the relevant Sub-Contractor are to that employee's detriment whether such claim arises before or after the Service Transfer Date; and

2.5.4.2. any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Contractor or Sub-Contractor to the Relevant Employees or their representatives whether before on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date save that this shall not include any such misrepresentation or mis-statement wholly or mainly attributable to any inaccuracy or omission in the information provided to the Contractor by the Authority or the Existing Employer in relation to the Transferring Employees.

2.5.5. For the avoidance of doubt, the indemnities in paragraphs 2.5.3 and 2.5.4 shall not apply in respect of any sum for which the

Authority is to indemnify the Contractor or a relevant Sub-Contractor pursuant to paragraph 2.5.1 to the extent that the claim arises from a wrongful act or omission of the Authority.

- 2.5.6. Clause 116 (Dispute Resolution Procedure) of this Contract shall apply where any claim is made in respect of the indemnities given under paragraph 2.5.

2.6. Provision of Details and Indemnity

The Contractor shall immediately upon request by the Authority provide to the Authority details of any measures which the Contractor or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer on the Service Transfer or otherwise in circumstances where employees transfer to the Contractor under TUPE, and if there are no measures, confirmation of that fact, and shall indemnify the Authority against all Direct Losses resulting from any failure by the Contractor to comply with this obligation.

2.7. Retendering

2.7.1. The Contractor shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) months immediately preceding the expiry of this Contract or following the service of a notice under paragraph 2.8 (Termination of Contract) or as a consequence of the Authority notifying the Contractor of its intention to retender this Contract:

2.7.1.1. on receiving a request from the Authority provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services (“the Assigned Employees”) full and accurate details regarding the number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any Sub-Contractor as the case may be until immediately before the Termination Date, would be Returning Employees (the “Retendering Information”);

- 2.7.1.2. provide the Retendering Information promptly and at no cost to the Authority;
 - 2.7.1.3. notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 2.7.1.4. be precluded from making any material increase or decrease in the numbers of Assigned Employees save with the Authority's prior written consent;
 - 2.7.1.5. be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent; and
 - 2.7.1.6. be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Authority's prior written consent.
- 2.7.2. The Contractor shall and shall keep indemnified in full the Authority and at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor or Sub-Contractor failing to provide or promptly to provide the Authority with any Retendering Information or to provide full Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information.

2.7.3. This paragraph 2.7 does not apply to the conduct of the Market Testing of any Services (which shall be governed by the provisions of Schedule 32 (Benchmarking and Market Testing)).

2.8. Employees Termination of Agreement

2.8.1. On the expiry or earlier termination of this Contract, the Authority and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to the Services or any part thereof and consistent with this intention shall use their reasonable endeavours to ensure that TUPE shall apply to transfer the Returning Employees to the Authority or a Future Service Provider as appropriate but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.

2.8.2. For the purposes of this paragraph 2.8 “Returning Employees” shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Contract whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon expiry or termination of this Contract for whatever reason (such date being termed the “Return Date”), the provisions of this paragraph 2.8 will apply:

2.8.2.1. The Contractor shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor or the Sub-Contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor or Sub-Contractors up to the Return Date are satisfied;

2.8.2.2. Without prejudice to paragraph 2.8.2.1, the Contractor shall:

2.8.2.2.1. remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Contractor's or Sub-Contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Contractor's or Sub- Contractor's employees who do not constitute the Returning Employees;

2.8.2.2.2. in respect of those employees who constitute Returning Employees indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date but

excluding any claim in connection with the transfer under TUPE of the Returning Employees) including but not limited to any failure by the Contractor or any Sub-Contractor to comply with its or their obligations under Regulation 10 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider.

2.8.3. The Authority shall be entitled to assign the benefit of this indemnity to any Future Service Provider.

2.9. Sub-Contractors

In the event that the Contractor enters into any Sub-Contract in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to paragraphs 1.1 to 1.8 (Transfer of Employees), and Clause 65 (Employees) and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred or by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Contractor to comply with this paragraph 1.9 and/or the Sub-Contractor's failure to comply with such terms.

2.10 Second Service Transfer

In the event of the Second Service Transfer taking place and employees of the Second Existing Employer transferring under TUPE to the Contractor or any Sub-Contractor:

2.10.1 the provisions of Part 1 of this Schedule shall apply to such transfer in the same way as to the Service Transfer save that for these purposes references to the Existing Employer shall instead be references to the Second Existing Employer and that the Contractor and the Authority shall agree the information referred to in paragraph 1.2 of Part 1 in advance of the Second Service Transfer

2.10.1 the indemnities contained within paragraph 2.5 shall apply save that for these purposes references to the Existing Employer shall be to the Second Existing Employer and reference to the Transferring Employee shall be to employees of the Second Existing Employer whose employment transfers to the Contractor or any Sub-Contractor by virtue of the application of TUPE.

PART 3 DEFINITIONS

Direct Losses	all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
Existing Employer	South Herts Waste Management Limited;
Former Employee	any person who at any time prior to the Service Transfer Date was employed or otherwise engaged in the provision of the Services or any part by the Authority, the Existing Employer or any Contractor to the Authority other than the Transferring Employees or the Retained Employees
Relevant Employees	the employees who are the subject of a Relevant Transfer;
Relevant Transfer	a transfer for the purposes of TUPE;
The Retained Employees	all persons other than the Transferring Employees employed or otherwise engaged in the provision of the Services or any part as at or immediately prior to the Service Transfer Date;
Second Existing Employer	Vaughan Logistics Limited whose registered office is at Dukeries Industrial Estate, Claylands Avenue, Worksop, Nottinghamshire S81 7BQ;
Second Service Transfer	the transfer of the Worksop Household Recycling Centre currently envisaged as taking place in or around May 2007 from the Second Existing Employer to the Contractor or a

Sub-Contractor;

Service Transfer the transfer of the Services from the Existing Employer to the Contractor at the Services Commencement Date;

Transferring Employees the employees of the Existing Employer whose employment transfers to the Contractor by virtue of the application of TUPE;

TUPE the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended or re-enacted which for the avoidance of doubt includes the Transfer of Undertakings (Protection of Employment) Regulations 2006 and where in this schedule reference is made to a specific provision within the 1981 Regulations this shall be construed as being a reference to the corresponding provision in the 2006 Regulations.

26 June 2006

Veolia E.S. Nottinghamshire Ltd

Workforce Information relating to Bid Assumptions for Services affected by TUPE

Service	Position	No. costed into Bid	Rates of Pay (salary/salary equivalent*)	Hours worked per week	Pension Provision			Total Annual Cost per employee
					Costed in	Employer contribution	Annual Cost	
1. Household Waste Recycling Centres	a) Manager	1	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
	b) Supervisor	3	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
	c) Driver	10	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
2. Transfer Stations (Giltbrook only)	a) Site Operative	1	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted

* Includes National Insurance and Overtime.

