

Appendix MS 3.6-3

DRAFT HEADS OF TERMS

PARTIES

- (1) [**ESCO details here**]
- (2) **VIRIDOR LIMITED** (incorporated and registered in England and Wales under company registration number •), the registered office of which is at • ("**Viridor**").

RECITALS

- (A) Viridor is constructing a 276,000 tonne per annum waste to energy facility, at Beddington Lane, South London, generating electricity and heat (the "**Facility**")
- (B) [] wishes to enter an agreement (the "Heat Purchase Agreement") with Viridor for the offtake of heat [and electricity] from the proposed Facility
- (C) This Agreement sets out the confidential and exclusive basis upon which the parties agree to work together to negotiate and, subject to contract, enter into the Heat Purchase Agreement whereby [] will have an exclusive agreement to purchase heat output from the Facility

IT IS AGREED AS FOLLOWS:

definitions

In this Agreement, the following expressions shall, where the context so requires, be deemed to have the following meanings:

"Business Day"

means any day other than Saturday or Sunday, Christmas Day or Good Friday and other than a bank holiday in England within the meaning given by section 2 of the Banking and Financial Dealing Act 1971;

"Viridor Project Information"

means all documents, surveys, drawings, studies, reports, specifications, calculations, operating manuals, plans and all tangible or intangible property created or prepared by or on behalf of Viridor in relation to the Project, as set out in the attached document;

"[] Project Information"

means all documents, surveys, drawings, studies, reports, specifications, calculations, operating manuals, plans and all tangible or intangible property created or prepared by or on behalf of [] in relation to the Project;

"Group"

means, in relation to any company, that company and every other company that is, from time to time, a subsidiary or holding company of that company or a subsidiary of any such holding company (and the terms "**subsidiary**" and "**holding company**" shall have the meanings given to them by Section 1159 of the Companies Act 2006);

"Heat Purchase Agreement"

means the contract intended to be entered into by Viridor and [] the purchase of Heat from the Facility

"Insolvency Event"

means either party entering into a voluntary arrangement within Part 1 of the Insolvency Act 1986, or any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors; or being unable to pay its debts within the meaning of Section 123(1)(e) or Section 123(2) of the Insolvency Act 1986; or if a trustee, receiver, administrative receiver, administrator or liquidator or similar officer is appointed in respect of all or any part of its business or assets; or if a resolution of it is passed or a petition is presented and not discharged within 28 days for its winding up or for the making of an administration order (otherwise, in each case, than for the purpose of a bona fide amalgamation or reconstruction);

"Party"

means Viridor and [], or any one of them as the context requires;

"Project"

means the design, development, construction, commissioning, and operation of the Facility together with associated plant and equipment required to offtake heat from the Facility;

"Project Documentation"

means, as appropriate, [] Project Information or Viridor Project Information;

"Project Plan"

means a detailed programme for the construction phase of the Project which identifies timings and key dates for its implementation, which will be developed in accordance with Clause 5;

“Facility”

means the energy from waste plant as described in Recital A

Exclusivity

During the term of this Agreement, Viridor shall not (and shall procure that no member of its Group or person acting on behalf of it or its Group shall), make, accept, solicit or consider any offer from, or negotiate with, any person other than [] (or a member of such []'s Group) regarding the potential offtake of steam and/or hot water from the Facility.

AGREEMENT TO negotiate THE HEAT PURCHASE AGREEMENT

In relation to the Heat Purchase Agreement the Parties have agreed in principle to the following terms:

they will negotiate in good faith and aim to conclude negotiations on a legally binding Heat Purchase Agreement within 6 months from the date of this Agreement;

they may agree conditions to the Heat Purchase Agreement which will require fulfilment before the Heat Purchase Agreement becomes fully unconditional; and

the maximum initial heat price chargeable under the Heat Purchase Agreement will be 1.5 p/kWh (based at 1st April 2012) at volumes, temperatures and pressures to be defined in the Heat Purchase Agreement and shall be indexed annually using an indexation methodology detailed in the Heat Purchase Agreement. The Parties acknowledge that this price will be used by [] as a basis to market the sale of heat to its customers.

Without prejudice to the enforceability of the remainder of this Agreement, the Parties agree that the provisions of Clause 3.1 are not intended to (and shall not) create any legally binding obligations on either Party.

Each Party will bear its own legal costs incurred in connection with the negotiation of this Agreement and the Heat Purchase Agreement.

VIRIDOR's RESPONSIBILITIES

It shall be Viridor's responsibility, at its own cost, to:

as soon as reasonably practicable after the date of this Agreement, provide [] with a named representative who will attend all Project meetings to deliver the detailed proposal with respect to developing the Heat Purchase Agreement.

keep [] updated as to progress by them in securing discharge of any outstanding planning conditions for the Facility ;

work with EON to develop the Project Plan; and

EON's Responsibilities

It shall be []'s responsibility, at its own cost, to:

as soon as reasonably practicable after the date of this Agreement, provide Viridor with a named representative who will attend all Project meetings to deliver the detailed proposal with respect to developing the Heat Purchase Agreement.

prepare and submit, as soon as reasonably practicable, the Project Plan; and

upon agreement of the Project Plan, to develop details of the Heat Purchase Agreement for further discussion by the Parties.

Joint responsibilities

Each Party shall:

appoint a representative of sufficient seniority to whom notification of any meetings and/or performance progress should be given;

co-operate with the other to enable it to discharge its obligations under this Agreement with regard to achieving the delivery of the Project and, subject to contract, entering the Heat Purchase Agreement as soon as practicable preferably within 6 months of the date of this Agreement; and give the other Party reasonable opportunity to attend any discussions with Government bodies and/or local resident liaison committees convened by that Party in relation to the Project.

Project documentation

[], in respect of [] Project Documentation, and Viridor, in respect of Viridor Project Documentation:

holds sufficient title in the same to enable the other to use the same in connection with this Agreement;

shall retain all copyright and other intellectual property rights as they hold in the same.

Insofar as it is able, each Party hereby grants or shall procure the grant to the other Party an irrevocable, non-exclusive and royalty free licence to copy, reproduce and use Project Information (subject to such use being solely in relation to the Project) provided that each Party shall have no liability to the other Party for the use by any person of such documents and information other than for the purposes for which they were prepared or provided.

CONFIDENTIALITY AND PUBLICITY

Each Party shall, from the date of this Agreement and for a period of three years after its termination or expiry, keep strictly confidential and shall not disclose to any third party without the prior written consent of the other Party:

information (including Project Documentation) supplied to it by the other Party (or any of its agents, servants, representatives or employees) in relation to the subject matter of this Agreement;

information which may otherwise come into its possession or of which it may become aware with respect to the business or financial affairs of the other Party; and

the terms of this Agreement and all other agreements, arrangements and understandings entered into between the Parties in relation to the subject matter of this Agreement.

Notwithstanding clause [], either Party shall be entitled to disclose any of the information or matters referred to therein:

pursuant to any law;

to its professional advisers and consultants who require disclosure of such information or matters to carry out their duties as professional advisers or consultants;

to the extent that the same has become generally available to the public otherwise than as a result of a breach of this Clause 0 by the Party seeking to disclose the information or matter in question;

to the extent that the same was purchased or otherwise legally acquired at any time from third parties free of any restriction regarding disclosure;

to its officers, employers, agents and contractors subject to appropriate confidentiality obligations being given; or

to any employee of its Group companies if so required in order to develop the Project and the Heat Purchase Agreement.

TERM AND TERMINATION

This Agreement shall commence from the date of execution and shall continue for a period of 24 months (or as extended by agreement between the Parties in writing).

This Agreement may be terminated earlier by written agreement of the Parties and shall terminate:

automatically and forthwith:

pursuant to clause 0; or

upon the execution of the Heat Purchase Agreement;

forthwith:

on written notice being given by one Party to the other upon the occurrence of an Insolvency Event affecting the other Party; or

where a Party commits a material breach of its obligations under this Agreement (the "Defaulting Party") in respect of which the other Party has issued a notice to the Defaulting Party specifying the failure and requiring a remedy and such a requirement has not been complied with within 10 Business Days of receipt of the notice; or

Limitation LIABILITY

Neither Party shall be liable for any indirect or consequential losses or expenses, howsoever caused (including, but not limited to, loss of anticipated profits, goodwill, reputation, business receipts or contracts or losses or expenses resulting from third party claims) which are suffered or incurred by the other Party in connection with the failure to fulfil or breach any obligation under this Agreement.

No action or proceedings for any breach of this Agreement (save for any breach of clause 8) may be commenced after the expiry of one year from the date of termination of this Agreement.

Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury resulting from the acts of that Party or its directors, officers, employees or agents.

Subject to Clause 10.3, the each Party's total aggregate liability in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract, under an indemnity or otherwise (but excluding insured losses) under this Agreement shall in no event exceed £100,000 (one hundred thousand pounds sterling) in aggregate.

General

Either Party may assign the benefit of this Agreement to a third party subject to the consent of the other Party (such consent not to be unreasonably withheld or delayed).

Nothing in this Agreement shall confer any enforceable rights on any third party by virtue of the Contracts (Rights of Third Parties) Act 1999 save for any permitted assign of either party.

No variation of any of the terms and conditions of this Agreement shall be valid unless agreed in writing by the Parties.

The failure of either Party at any time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by the other Party of all its obligations under this Agreement nor shall the waiver of any breach of any provision be taken or held to be a waiver of any past or subsequent breach of any such provision. No waiver shall be effective unless it is communicated to the other Party in writing.

Subject to the Appointment this Agreement contains the entire agreement between the Parties in relation to the subject matter of this Agreement.

This Agreement shall be governed and construed in accordance with English law and each party irrevocably agrees that the Courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement.

NOTICES

Any notice or other document to be given under this Agreement shall be in writing (including facsimile transmission) and shall be deemed duly given if delivered by hand or sent by registered post:

[the ESCO}

if to Viridor to:

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or such other individual or address as may be notified by Viridor to [] or vice versa at any time in writing

IN WITNESS of which the Parties have executed and delivered this Agreement on the date first mentioned above.

Signed by)
duly authorised for and)
on behalf of)
)

Signed by)
duly authorised for and)
on behalf of)
VIRIDOR LIMITED)