

DRAFT AS AT 28 FEBRUARY 2011

SUBJECT TO CONTRACT

DATED

2011

(1) BEDFORD BOROUGH COUNCIL

- and -

(2) CENTRAL BEDFORDSHIRE COUNCIL

- and -

(3) O&H Q7 LIMITED

- and -

(4) COVANTA ENERGY LIMITED

- and -

(5) COVANTA ROOKERY SOUTH LIMITED

DEED

made pursuant to section 106 of the Town and
Country Planning Act 1990 (as amended)
relating to the land at Rookery South Pit,
Stewartby, Bedfordshire

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BETWEEN:

- (1) **BEDFORD BOROUGH COUNCIL** of Borough Hall, Cauldwell Street, Bedford MK42 9AP ("**BBC**")
- (2) **CENTRAL BEDFORDSHIRE COUNCIL** of Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ ("**CBC**")
- (3) **O&H Q7 LIMITED** (Company Registration Number 5277165) whose registered office is at 25-28 Old Burlington Street, London W1S 3AN (the "**Owner**")
- (4) **COVANTA ENERGY LIMITED** (Company Registration Number 5845046) of 8 Darwin House, The Pensnett Estate, Kingswinford, West Midlands DY6 7YB ("**Covanta Energy**")
- (5) **COVANTA ROOKERY SOUTH LIMITED** (Company Registration Number 07094843) of 8 Darwin House, The Pensnett Estate, Kingswinford, West Midlands DY6 7YB ("**CRSL**")

WHEREAS:

- A BBC and CBC are the local planning authorities for the purposes of the 1990 Act for the area within which the Development is situated.
- B The Owner is the freehold Owner of the Site.
- C Covanta Energy has the benefit of an option to purchase part of the Site registered against Land Registry title number BD209604 as shown edged red on Plan [] but excluding the area shown [] on that Plan.
- D CRSL submitted the Application on 4 August 2010 to obtain authorisation for the Development in the form of the DCO and the Application was accepted by the IPC under section 55 of the 2008 Act on 26 August 2010.
- E It is intended that CRSL will be the undertaker for the purposes of the DCO.
- F Covanta Energy and CRSL intend to construct and operate the Development as authorised by the DCO.

G The Councils the Owner Covanta Energy and CRSL have agreed to enter into this Deed as a development consent obligation under the 2008 Act in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

1.1 For the purposes of this Deed the following expressions shall have the following meanings:

"**1990 Act**" means the Town and Country Planning Act 1990;

"**2008 Act**" means the Planning Act 2008;

"**Application**" means the application for the DCO to authorise the Development made under section 37 of the 2008 Act by CRSL to the IPC on 4 August 2010;

"**Average Electricity Bill**" means for each year that the Electricity Subsidy is payable under this Deed the average electricity bill based on the typical electricity consumption for a standard mid-sized household as estimated by the Energy Saving Trust for that year or by such other method as may be approved by the Councils;

"**CHP Energy**" means combined heat and power energy;

"**CLP**" means the Community Liaison Panel established by CRSL for the purpose of liaising with the local community about the RRF and as constituted at the date of this Agreement;

"**CLP Terms of Reference**" means the terms of reference for the CLP appended to this Deed as Appendix [] and as may be amended from time to time;

"**Commercial Operations**" means the operation of the Development for commercial processing of waste and production of electricity for transmission to the national electricity grid following completion of hot commissioning by Covanta and "Commercially Operate" and cognate expressions shall be construed accordingly;

"**Complaints Procedure**" means the procedure to be set up by Covanta in accordance with this Deed to enable members of the public to make complaints to Covanta about the construction or operation of the Development;

"**CTF**" means the Community Trust Fund to be established by Covanta for the purposes of expending the CTF Initial Contribution and CTF Annual Contributions in the Area of Benefit;

"**CTF Area of Benefit**" means for the purposes of the Community Trust Fund the geographical area within the parishes of Wootton, Stewartby, Marston Moretaine, Houghton Conquest, Lidlington, Millbrook, Ampthill and Maulden;

"**CTF Annual Contribution**" means the annual contribution of £50,000 Index-Linked to be paid by Covanta into the CTF;

"**CTF Initial Contribution**" means the initial contribution of £150,000 Index-Linked to be paid by Covanta into the CTF;

"**CTF Principles**" means the expending of the CTF Initial Contribution and the CTF Annual Contributions for the purposes of supporting sustainable waste management and/or energy generation projects and related educational initiatives and other projects which are considered to promote the well-being of the community within the CTF Area of Benefit;

"**Councils**" means both BBC and CBC or each of them as the case may require;

"**Covanta**" means Covanta Energy and/or CRSL as the case requires;

"**Development**" means work for the redevelopment of the Site to provide a Resource Recovery Facility ("**RRF**"), such works comprising:

- a. construction of the EfW Facility;
- b. construction of a post-treatment Materials Recovery Facility ("**MRF**");
- c. a visitor centre/education facility within the building housing the EfW Facility;
- d. the provision of a drainage channel on a realignment in substitution for a drainage channel to be constructed in Rookery South Pit both under a Review of Old Minerals Permission reference: BC/CM/2008/08 (decision pending) - original permission reference: 4/1980 granted 7 July 1980;
- e. an access road connecting the RRF to Green Lane, Stewartby;
- f. an underground connection to the electricity grid allowing the export and import of electrical power;

- g. works for the creation of an upgraded site access and new junction on Green Lane, Stewartby and at the internal entrance to the Marston Vale Millennium Park;
- h. improvements to Green Lane between its junction with footpath 4 and Stewartby Lake, including footway improvements;
- i. an improvement to Green Lane level crossing including the installation of full automatic barriers;
- j. further associated development in connection with the above including: weighbridges and security gatehouses; provision of lighting; internal site roads and parking facilities; workshops and stores; bunding, earthworks, landscaping and boundary treatments; pipes for steam pass outs and for hot water pass outs within the Site; habitat creation; the provision of footpaths and cycleways and footpath linkages; foul drainage provision, surface water management systems and water supply works; and
- k. ancillary works comprising demolition of all or part of the existing redundant conveyor structure on the Site.

["**Development Management Contribution**" means the annual contribution of [] Index-Linked to be paid by Covanta to each of the Councils for the purpose of monitoring the obligations in this Deed;]

"**DCO**" means the development consent order to be made under the 2008 Act pursuant to the Application;

"**Ecological Management Scheme**" means a scheme prepared in accordance with the Ecological Management Scheme Outline setting out provision for protection and management of ecology at the Site during the construction and operation of the Development;

"**Ecological Management Scheme Outline**" means the outline of the details of the Ecological Management Scheme set out in the document appended to this Deed as Appendix [2];

"**EfW Facility**" means the Energy from Waste electricity generating station forming part of the Development;

"Electoral Roll" means the register of electors for the relevant district within the boundaries of which the Development is located from time to time;

"Electricity Subsidy" means the electricity subsidy to be paid by Covanta to Eligible Households in the Electricity Subsidy Area that will represent 10 % (ten percent) of the Average Electricity Bill for any year that the Electricity Subsidy is payable;

"Electricity Subsidy Area" means the area within which households are eligible for the Electricity Subsidy [described in Annex []];

"Electricity Subsidy Eligibility Criteria" means the criteria that a household must meet in order to be eligible for receipt of any amount of the Electricity Subsidy;

"Electricity Subsidy Scheme" means the Scheme to be drawn up by Covanta in accordance with Schedule 1 of this Deed for the purposes of setting up and administering the Electricity Subsidy;

"Electricity Subsidy Scheme Start Date" means the date on which registration for the Electricity Subsidy is commenced by Covanta;

"Eligible Households" means those residential households that meet the Electricity Subsidy Eligibility Criteria as at the Electricity Subsidy Scheme Start Date that are as a result eligible to register for and receive the Electricity Subsidy;

"Emissions Data" means data on emissions into the atmosphere from the stack comprised in the EfW Facility that forms part of the Development;

"Energy Saving Trust" means the charity of 21 Dartmouth Street London SW1H 9BP that provides energy saving advice to the general public or such other body as may be approved by the Councils

"Environment Agency" means the Environment Agency or such other body as may be responsible for its relevant functions from time to time;

"Environmental Permit" means the permit required for the Development under the Environmental Permitting (England and Wales) Regulations 2010 for which CRSL has submitted an application to the Environment Agency (ref: EA/EPR/NP2020TVA001);

"Environmental Permit Data" means data prepared by Covanta for submission to the Environment Agency the purpose of the Environmental Permit;

"Expert" means such expert as may from time to time be appointed for the purposes of resolving a relevant dispute as follows:

- a. save as paragraph (b) below requires if the dispute relates to transport or highway works, engineering, demolition or construction works, a chartered civil engineer being a member of the Institution of Civil Engineers (having not less than 10 years' relevant experience in the public or private sector) agreed by the parties to the dispute but in default of agreement appointed at the request of any of the parties by or on behalf of the President from time to time of the Institution of Civil Engineers;
- b. if the dispute relates to any travel plan required under Schedule 1 of this Deed, a transport planner (having not less than 10 years' relevant experience in the public or private sector) agreed by the parties to the dispute but in default of agreement appointed by or on behalf of the President for the time being of the Royal Town Planning Institute;
- c. if the dispute relates to any building within the Development or any similar matter, a chartered surveyor (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the President from time to time of the Royal Institute of Chartered Surveyors;
- d. if the dispute relates to financial matters or matters of accounting usually and properly within the knowledge of a chartered accountant, a chartered accountant (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of either party by or on behalf of the president from time to time of the Royal Institute of Chartered Accountants in England and Wales; and
- e. if the parties to the dispute shall fail to agree upon the nature or difference in question then it should be referred to a solicitor or barrister of a least 15 years' standing agreed by the parties but in default of agreement appointed at the request of either party by or on behalf of the President for the time being of the Law Society;

"Forest of Marston Vale" means the community forest shown for the purposes of identification only [] on Plan [];

"**Forest Plan**" means the Forest Plan 2000 which sets out the strategic framework and guidance for creating the Forest of Marston Vale the relevant extracts of which are appended to this Deed as Appendix [◆];

"**Fuel Bunker**" means the depository within the Development that fuel for the EfW Facility is delivered to and stored within;

"**HGV**" means heavy goods vehicle with a gross vehicle weight of 7.5 tonnes or more and "**HGVs**" shall be construed accordingly;

"**HGV Access and Routeing Plan**" means the plan showing the routes by which HGVs must use when travelling to and departing from the Site in accordance with the HGV Access and Routeing Strategy;

"**HGV Access and Routeing Strategy**" means the strategy for the routeing of HGVs to and from the Development in the form appended to this Deed as Appendix 1 or as amended from time to time in accordance with Schedule 1;

"**Implement**" means the implementation on the Site of the works authorised by the DCO comprised in the Development as specified in Part 1 of Schedule 1 to the DCO by the carrying out of any material operation within the meaning of sections 56(2) and (4) of the 1990 Act PROVIDED THAT for the avoidance of doubt the carrying out of demolition of existing buildings and structures, termination or diversion of existing services or temporary diversion of highways, temporary construction, site preparation, investigation works, archaeological investigations, environmental site investigations, decontamination works, or works and operation to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute implementation for the purposes of this definition or this Deed and "**Implementation**" and cognate expressions shall be construed accordingly;

"**Index-Linked**" means linked to the RPIX Index such that any sum or financial contribution which is so linked in this Deed shall be increased but not decreased by reference to the RPIX Index calculated from the date hereof to the date of payment PROVIDED THAT if the reference base used to compile the RPIX Index changes after the date of this Deed but before payment of any sum which is Index-Linked in this Deed, the figure taken to be shown in the RPIX Index after the change is to be the figure that would have been shown in the RPIX Index if the reference base current at the date of this Deed had been retained;

"**IPC**" means the Infrastructure Planning Commission;

"**Jobcentre Plus**" means the executive agency of the Department for Work and Pensions that is responsible for assisting people with finding work through its network of offices or such other agency or body that is responsible for these functions as may be the case from time to time;

"**Local Employment Scheme**" means a scheme containing the details and mechanisms for securing the use of local labour contractors goods and services during the construction and Operation of the Development to be submitted to and approved by the Councils;

"**Marston Vale Trust**" means the charitable trust responsible for creating and managing the Forest of Marston Vale and the Millennium Country Park (registration number 3462405) of The Forest Centre, Station Road, Marston Moretaine, Bedfordshire MK43 0PR;

"**Marston Vale Trust Initial Contribution**" means the initial contribution of £250,000 Index-Linked to be paid by Covanta to the Marston Vale Trust and expended by the Trust for the purposes of the aims and objectives of the Forest Plan;

"**Marston Vale Trust Annual Contribution**" means the annual contribution of £50,000 Index-Linked to be paid by Covanta to the Marston Vale Trust and expended by The Trust for the purposes of the Forest Plan;

"**Millennium Country Park**" means the Millennium Country Park adjacent to the Site shown for the purposes of identification only [] on Plan [];

"**Millennium Country Park Planting Contribution**" means the contribution to be made by Covanta to the Marston Vale Trust for the purposes of funding off-site planting to be carried out under the Millennium Park Planting Scheme;

"**Millennium Country Park Planting Scheme**" means the scheme for the provision of planting in the Millennium Park to enhance the entrance to the Millennium Park and for planting within the Millennium Park to enhance the amenity value of the Park including deflecting views of the RRF and framing alternative views agreed between the Councils Covanta and the Marston Vale Trust;

"**Occupy**" means to occupy the Development other than for the purposes of construction fitting out hot commissioning or site security and "**Occupation**" "**Occupying**" and "**Occupied**" and cognate expressions shall be construed accordingly;

"Operate" means the operation of the Development for the production of electricity by the EfW Facility and associated recovery of materials by the MRF and "Operation" and cognate expressions shall be construed accordingly;

"Operating Period" means the period from the date of first Operation until decommissioning during which the RRF will Operate;

"Order" means the Order for which the Application was made to authorise construction and operation of the Development in the form as may be made by the Secretary of State;

"RRF" means the resource recovery facility comprised in the Development of which the MRF and EfW Facility form parts thereof;

"Rights of Way Strategy" means a strategy prepared and approved in accordance with this Deed providing for the provision of or upgrading of cycle tracks, footpaths and permissive rights of way over the Site as shown on the Rights of Way Strategy Plan;

"Rights of Way Strategy Outline" means the outline of the Rights of Way Strategy to be read in conjunction with the Rights of Way Plan appended to this Deed as Appendix [3];

"Rights of Way Plan" means the indicative plan showing the cycle tracks footpaths and permissive rights of way to be provided or upgraded as part of the Development in accordance with the Rights of Way Strategy;

"RPIX Index" means the All Items Retail Prices Index (excluding mortgage interest payments) published by the Office for National Statistics or such other index as the Councils and Covanta may agree;

"Site" means land at Rookery South Pit, near Stewartby, Bedfordshire shown for the purposes of identification only edged red on Plan 1;

"Travel Plan" means the Travel Plan in the form appended to this Deed as Appendix [5] or as amended from time to time in accordance with Schedule 1;

"Visitor Centre" means the visitor centre and educational facility to be constructed as part of the Development pursuant to the DCO and maintained in accordance with the Visitor Centre Specification;

"Visitor Centre Specification" means the specification for the Visitor Centre as appended to this Deed at Appendix [4];

"Website" means any website used by Covanta for the purposes of the Development from time to time;

2. INTERPRETATION

- 2.1 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 2.2 Unless the context requires otherwise reference in this Deed to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs and schedules are references to those contained in this Deed and references to plans and drawings are references to plans and drawings annexed to this Deed.
- 2.3 The word "including" shall mean "including without limitation or prejudice to the generality of any description defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.
- 2.4 References in this Deed to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same.
- 2.5 In this Deed the expressions "BBC", "CBC", "Owner" "Covanta Energy" and "CRSL" shall include their respective statutory successors in respect of the functions to which this Deed relates and/or successors in title to the Site as the case may be.
- 2.6 Any obligations of the parties to this Deed contained in this Deed which are or may be deemed to be obligations of one or more persons shall be joint and several obligations on the part of those persons unless the context otherwise requires PROVIDED THAT nothing herein shall impose any liability upon either of the Councils for the actions of the other.
- 2.7 Any covenant by the Owner and/or Covanta Energy and/or CRSL not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge by the Owner and/or Covanta Energy and/or CRSL to do an act or thing may be deemed to include an obligation to procure that the act or thing is done.
- 2.8 If any provision in this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected, impaired or called into question.

2.9 In the event of any conflict between the provisions of this Deed and the DCO and any document annexed hereto as referred to herein, the terms, conditions and provisions of this Deed will prevail.

2.10 The Interpretation Act 1978 shall apply to this Deed.

3. STATUTORY POWERS

3.1 This deed is made pursuant to s106 of the 1990 Act and the obligations in this Deed and herein contained constitute planning obligations for the purposes of the 1990 Act enforceable by the Councils or either of them having regard to their respective statutory functions.

3.2 It is hereby agreed that the Owner and Covanta Energy and CRSL enter this Deed with the effect of binding those parts of the Site shown edged red on Plan 1.

4. COMMENCEMENT

4.1 With the exception of Clause [15] the terms and provisions of this Deed shall not have effect unless and until:

4.1.1 the Order has been made; and

4.1.2 the Development is Implemented.

5. REGISTRATION AS LOCAL LAND CHARGE

It is hereby agreed and declared between the parties hereto that the Council shall forthwith register this Deed as a Local Land Charge for the purposes of the Local Land Charges Act 1975.

6. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENTS

Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission or consent, other than the DCO granted (whether or not on appeal or by any other means) after the date of this Deed.

7. PROVISIONS FOR RELEASE

7.1 It is hereby agreed by the parties to this Deed that this Deed shall determine if the Order is quashed, cancelled, revoked or expires prior to Implementation except to the extent that any obligation in this Deed has been performed in whole or in part.

7.2 The Councils hereby severally covenant with the Owner and Covanta that they shall upon reasonable request from the Owner and/or Covanta and subject to the payment of their reasonable and property professional costs and charges for so doing certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed and if so requested by the Owner and/or Covanta shall execute a deed of release or partial release from the relevant provision(s) of this Deed and ensure that a note of such Deed is registered on each Register of Local Land Charges maintained by the Councils respectively.

8. COVENANTS BY THE OWNER COVANTA ENERGY AND CRSL

8.1 The Owner Covanta Energy and CRSL hereby covenant with the Councils that the Owner Covanta Energy and/or CRSL as the case may be shall carry out and comply with the obligations contained in Schedule 1 to this Deed.

8.2 In respect of the obligations contained in Schedule 1 to this Deed the Owner Covanta Energy and/or CRSL shall only be required to comply with such provisions to the extent that the like obligations or works have not been carried out or complied with under the terms of the ROMP Obligation in which case compliance with the terms of the ROMP Obligation whether by the Owner or Covanta Energy or CRSL or any other person shall be deemed to discharge the Owner and/or Covanta Energy's and/or CRSL's obligations under this Deed.

9. COVENANTS BY THE COUNCILS

9.1 BBC and CBC hereby severally covenant with the Owner and Covanta Energy and CRSL that each of them shall comply with the obligations on their respective parts set out in Schedule 2.

9.2 Nothing in this Deed shall fetter the statutory rights, powers and duties of the Councils as local planning authorities and/or local highway authorities as the case may be.

10. SUCCESSORS IN TITLE

This Deed shall be enforceable against the Owner and/or Covanta Energy and/or CRSL and their successors in title and those deriving title under them in respect of the Site and as provided in Section 106(3) of the 1990 Act but in accordance with Section 106(4) of the 1990 Act and in respect of Clause [8] it is the intention of the parties that neither the Owner nor Covanta Energy nor CRSL nor their successors in title nor those deriving title under them shall have any further liability under this Deed (but without prejudice to any rights of the Councils or either of them in respect of any antecedent breach) in respect of any period during

which the Owner and/or Covanta Energy and/or CRSL or as the case may be any of their successors in title or those deriving title under them no longer has an interest in the Site.

11. THIRD PARTIES

- 11.1 Subject to Clause 11.2 a person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1990 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 11.2 Notwithstanding Clause 11.1 a person comprising part of an Eligible Household may seek to enforce against the Owner and/or Covanta the payment of any amount of Electricity Subsidy due to it under this Deed and not paid to that Eligible Household in accordance with the terms of this Deed SAVE THAT for the avoidance of doubt no such person may enforce any part of paragraph 14 of Schedule 1 of this Deed that does not relate solely to the payment of any amount of Electricity Subsidy to the particular Eligible Household of which such person comprises part against the Owner and/or Covanta Energy and/or CRSL as the case requires other than the Councils.
- 11.3 If any person eligible to do so seeks to enforce the payment of any amount of Electricity Subsidy under clause 11.2 the Owner and/or Covanta Energy and/or CRSL shall not be considered in breach of their obligations under paragraph 14 of Schedule 1 to this Deed unless the Council has confirmed in writing to any such person and the Owner and/or Covanta Energy and/or CRSL that any such breach has occurred having first given the Owner and/or Covanta Energy and/or CRSL reasonable opportunity to address any alleged non-payment of any amount of the Electricity Subsidy to such person.

12. DISPUTE RESOLUTION

- 12.1 In the event of any dispute or difference between the Owner and/or Covanta Energy and/or CRSL and the Councils or any of them arising out of this Deed (other than a dispute or difference relating to a question of law or in relation to the interpretation of the Deed) the Owner and Covanta Energy and CRSL and the Councils agree that the matter in dispute will on the application of either of them be referred to the Expert and it is further agreed that:
- 12.1.1 the determination of the Expert shall be final and binding on the parties save in the case of manifest error;

- 12.1.2 the Owner and/or Covanta Energy and/or CRSL and each of the Councils shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;
- 12.1.3 the Expert's costs shall be borne in such proportions as he/she may direct failing which the Owner and/or Covanta Energy and/or CRSL and the Councils shall each bear their own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of sides to the reference; and
- 12.1.4 the Expert may be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee shall be appointed in the same manner as the Expert.
- 12.2 Where this Deed is enforceable by any third party in accordance with Clause 11 any dispute between that third party and the Owner and/or Covanta Energy and/or CRSL shall be determined in accordance with Clause 12.1 above save that the references to the third party shall be substituted for references to the Councils.

13. VARIATIONS

No variation to this Deed shall be effective unless made by deed or pursuant to the determination of an application made under Section 106A of the 1990 Act.

14. SERVICE OF NOTICES

All notices, requests, demands or other written communications to or upon the respective parties hereto pursuant to this Deed shall be deemed to have been properly given or made if despatched by first class letter to the party to which such notice, request, demand or other written communication is to be given or made under this Deed and addressed as follows:-

- 14.1 if to BBC to the address set out above marked for the attention of the [];
- 14.2 if to the CBC Council to the address set out above marked for the attention of the [];
- 14.3 if to the Owner to the address set out above marked for the attention of the Company Secretary;

14.4 if to Covanta Energy to the address set out above marked for the attention of the Company Secretary; or

14.5 if to CRSL to the address set out above marked for the attention of the Company Secretary.

15. COUNCILS' LEGAL COSTS

Covanta Energy and CRSL agrees that upon completion of this Deed it will pay the Councils' reasonable legal costs properly incurred in the negotiation and completion of this Deed (including the cost of retaining Counsel in relation thereto, but not otherwise) in the following sums:

15.1 to BBC £ ; and

15.2 to CBC £ .

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

THE COMMON SEAL of BEDFORD BOROUGH COUNCIL was affixed in the presence of)))	
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THE COMMON SEAL of CENTRAL BEDFORDSHIRE COUNCIL was affixed in the presence of)))	
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O & H Q7 LIMITED)))	
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COVANTA ENERGY LIMITED)))	
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COVANTA ROOKERY SOUTH LIMITED)))	
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**SCHEDULE 1:
SITE SPECIFIC COVENANTS**

1. Transport

- 1.1 Subject to paragraph 1.2 the Development shall not be constructed or Commercially Operated other than in accordance with the HGV Access and Routeing Strategy (as the same may be amended from time to time) and shall use reasonable endeavours to ensure that HGVs driving to or from the Site do so in accordance with that Strategy.
- 1.2 The Owner and/or Covanta may at their discretion submit to the Councils for approval amendments to the HGV Access and Routeing Strategy in relation to any of the details therein and shall implement any amendments thereto as may be approved by the Councils from time to time
- 1.3 Subject to paragraph 1.4 the operation of the HGV Access and Routeing Strategy (or as the case requires any part of that Strategy) shall be temporarily suspended for so long as required if at any time one or more of the following conditions apply:
- 1.3.1 there is an obstruction to any or all delivery routes set out in the HGV Access and Routeing Strategy that results in there being less than one and a half (1.5) days' fuel for the EfW Facility in the Fuel Bunker;
- 1.3.2 there is any obstruction to delivery routes set out in the HGV Access and Routeing Strategy including but not limited to road works traffic accidents or any incident involving a response from the emergency services that disrupts the operation of the Strategy; or
- 1.3.3 HGV drivers are required to follow alternative routes at the direction of a police officer or traffic warden or any directional traffic sign for the time being in place;.
- 1.4 Where the operation of the HGV Access and Routeing Strategy is suspended in whole or in part the Owner and/or Covanta shall:
- 1.4.1 use reasonable endeavours to ensure that so much of the HGV Access and Routeing Strategy as is reasonably practicable continues to operate;

- 1.4.2 use reasonable endeavours to ensure that operation of the whole HGV Access and Routeing Strategy is restored as soon as reasonably practicable;
- 1.4.3 give the Councils reasonable advance notice of any proposed suspension of the operation of the HGV Access and Routeing Strategy or to the extent that it is not practicable to give such advance notice give them notice as soon as is reasonably practicable following any such suspension and in any event no later than noon of the working day following the suspension of the operation of the HGV Access and Routeing Strategy that the operation of the HGV Access and Routeing Strategy has been suspended including the reasons for any such suspension and the time when the Owner and/or Covanta anticipates that normal operation of the HGV Access and Routeing Strategy will resume; and
- 1.4.4 inform the Councils of the date when operation of the HGV Access and Routeing Strategy resumes by no later than noon of the working day following the resumption of the operation of the HGV Access and Routeing Strategy.

2. Travel Plan

- 2.1 Except as otherwise agreed in writing by the Councils the Development shall not be Occupied or Commercially Operated other than in accordance with the Travel Plan as the same may be amended from time to time under paragraph 2.2 or as a result of the Annual Travel Plan Report as approved by the Councils.
- 2.2 The Owner and/or Covanta may at its discretion submit to the Councils for approval amendments to the Travel Plan in relation to any of the details therein and shall implement any amendments thereto as may be approved by the Councils from time to time.
- 2.3 The Owner and/or Covanta shall on each anniversary of the commencement of Commercial Operation of the Development carry out a review of the Travel Plan and submit the result of such a review to the Councils for approval (the "Annual Travel Plan Report") which shall include any amendments to the Travel Plan as necessary based on the review carried out in accordance with this paragraph.

3. Ecological Management

- 3.1 The Development shall not be Implemented unless and until:

- 3.1.1 the Ecological Management Scheme has been submitted for approval to the Councils; and
- 3.1.2 the Councils have approved the Ecological Management Scheme.
- 3.2 The Ecological Management Scheme shall be prepared in accordance with the Ecological Management Scheme Outline.
- 3.3 The Owner and/or Covanta shall implement and maintain the approved Ecological Management Scheme in accordance with the approved details or any amendment thereto as approved by the Councils from time to time until such time as the Development is decommissioned.
- 3.4 Except as otherwise agreed in writing by the Councils the Development shall not be Occupied or Commercially Operated other than in accordance with the approved Ecological Management Scheme as may be approved by the Councils from time to time.

4. Millennium Country Park Planting Scheme

- 4.1 The Development shall not be Occupied unless and until:
 - 4.1.1 the Millennium Country Park Planting Scheme has been agreed with the Marston Vale Trust; and
 - 4.1.2 the Millennium Country Park Planting Scheme has been carried out to the satisfaction of the Marston Vale Trust; or
 - 4.1.3 the Millennium Country Park Planting Contribution has been paid to the Marston Vale Trust

and in each case evidence thereof has been provided to the Councils before Occupation.

- 4.2 In the event that the Owner and/or Covanta pays the Millennium Park Planting Contribution to the Marston Vale Trust, Covanta and/or the Owner shall use reasonable endeavours to procure that the Millennium Park Planting Scheme is carried out by the Marston Vale Trust and provide evidence thereof to the Councils.

5. Marston Vale Trust Contributions

- 5.1 The Development shall not be Occupied unless and until:

5.1.1 the Initial Marston Vale Trust Contribution has been paid to the Marston Vale Trust; and

5.1.2 evidence thereof has been provided to the Councils.

5.2 Commercial Operation of the Development shall not be undertaken in any period of one year where the Annual Marston Vale Trust Contribution has not been paid to the Marston Vale Trust on the anniversary of Occupation.

6. Rights of Way Strategy

6.1 The Development shall not be Occupied unless and until:

6.1.1 the Rights of Way Strategy has been submitted for approval to the Councils; and

6.1.2 the Councils have approved the Rights of Way Strategy.

6.2 Except as otherwise agreed in writing by the Councils the Development shall not be Occupied other than in accordance with the Rights of Way Strategy.

6.3 The Rights of Way Strategy shall be prepared in accordance with the Rights of Way Strategy Outline and to the extent that such matters are not within the provision of Article 9 (rights of way) of the DCO shall include the following details:

6.3.1 the works to be carried out to upgrade the cycle tracks, footpaths and permissive rights of way as shown on the Rights of Way Strategy Plan;

6.3.2 a programme for carrying out the works to upgrade the cycle tracks, footpaths and permissive rights of way specified in paragraph 6.3.1 including any temporary closures or diversions; and

6.3.3 details of the measures to be taken to maintain the cycle tracks, footpaths and Permissive Rights of Way specified in paragraph 6.3.1.

7. Community Liaison

7.1 The Owner and/or Covanta shall use reasonable endeavours to ensure that the CLP remains constituted and continues to meet as reasonably required by the members thereof from time to time for the Operation Period in accordance with the CLP Terms of Reference PROVIDED THAT it is hereby agreed that the Owner and/or Covanta shall not be in breach of this

paragraph should the members of the CLP decide not to convene any meetings or instigate any other activities associated with the purposes of the CLP.

7.2 During the Operation Period the Owner and/or Covanta shall at its discretion disseminate information about the Project PROVIDED THAT it shall consult the CLP about the nature content and frequency of the dissemination of such information so as to meet the reasonable expectations of members of the public in the area of the Development.

7.3 The CLP shall be notified in each case within three working days of the date on which:

7.3.1 the Development is Implemented; and

7.3.2 the Development is first Commercially Operated.

7.4 During the Operation Period the Complaints Procedure shall be maintained and be available on the Website.

8. Community Trust Fund

8.1 The Development shall not be Occupied until the CTF has been established;

8.2 The Development shall not be Commercially Operated unless and until the CTF Initial Contribution has been paid into the Community Trust Fund.

8.3 The Development shall not be Commercially Operated in any period of one year where the CTF Annual Contribution has not been paid into the CTF by each anniversary of the payment of the Initial CTF Contribution under paragraph 8.2.

8.4 The CTF shall be established and administered in accordance with the CTF Principles PROVIDED THAT the Owner and/or Covanta shall be entitled to pass its obligations to establish and administer the CTF under this paragraph 8 (but not its obligations to make the payments to the CTF set out in paragraphs 8.2 and 8.3) to a third party with the prior approval of the Councils.

9. Emissions Data

9.1 Throughout the Operation Period:

9.1.1 the Emissions Data shall be displayed in accordance with the details in paragraph 9.2; and

- 9.1.2 the Environmental Permit Data shall be displayed in accordance with the details in paragraph 9.2.1;
- 9.2 The details referred to in paragraph 9.1 are as follows:
 - 9.2.1 the Emissions Data will be displayed:
 - 9.2.1.1 within the Visitor Centre;
 - 9.2.1.2 on the Website; and
 - 9.2.1.3 at other public buildings as may be agreed between the Owner and/or Covanta and the Councils PROVIDED THAT this does not result in unreasonable or disproportionate expense to the Owner and/or Covanta;
 - 9.2.2 Subject to paragraph 9.2.3 Covanta will consult with the CLP as to the most helpful way of displaying the Emissions Data;
 - 9.2.3 the Emissions Data will be provided in a form and of a frequency that enables the general public to review and consider the emissions into the atmosphere arising from the Development PROVIDED THAT nothing in this paragraph 9 shall be construed as requiring the publication of the Emissions Data in real time format; and
 - 9.2.4 the presentation of the data that comprises the Emissions Data will accord with the indices for limits for emissions from the stack comprised in the EfW Facility that relate to the Environmental Permit.

10. Visitor Centre

- 10.1 The Development shall not be constructed otherwise than by constructing the Visitor Centre as part of the Development in accordance with the Visitor Centre Specification as may be amended from time to time with the prior approval of the Councils.
- 10.2 Commercial Operation of the Development shall not be undertaken in any period of one year where the Visitors Centre is not provided in accordance with the Visitor Centre Specification as may be amended from time to time with the prior approval of the Councils.

11. Local Employment and Materials

11.1 The Development shall not be Implemented unless and until:

11.1.1 the Local Employment Scheme has been submitted to the Councils for approval;
and

11.1.2 the Councils have approved the Local Employment Scheme.

11.2 The Local Employment Scheme shall include so far as is reasonably practicable the following details:

11.2.1 how details of the initial staff/employment opportunities at the Development including in relation to the operation of the Visitors Centre will be advertised and how liaison with the Councils and other bodies including but not limited to Jobcentre Plus will take place in relation to maximising the access of the local workforce to information about employment opportunities ;

11.2.2 how suitable training procedures will be provided for those recruited to fulfil staff/employment requirements including the provision of apprenticeships;

11.2.3 a procedure setting out criteria for initial screening of candidates for employment, and for matching of candidates to the vacancies;

11.2.4 the measures to be taken to offer and provide college and/or work placement opportunities at the Development to students within the locality;

11.2.5 promotion of the Local Employment Scheme and liaison with contractors engaged in the construction of the Development to ensure that they also apply the Local Employment Scheme so far as is practicable having due regard to the need and availability for specialist skills and trades and the programme for constructing the Development;

11.2.6 a procedure for monitoring of the Local Employment Scheme and reporting the results of such monitoring to the Councils including details of the origins, qualifications, numbers and other details of candidates; and

11.2.7 a timetable for the implementation of the Local Employment Scheme.

- 11.3 The Owner and/or Covanta shall implement the Local Employment Scheme in accordance with the timetable contained in the approved Local Employment Scheme PROVIDED THAT the Owner and/or Covanta may from time to time seek approval for revisions of the Local Employment Scheme from the Council.
- 11.4 The Owner and/or Covanta shall use reasonable endeavours to procure that the contractors engaged in the construction of the Development interview and if appropriate recruit suitably qualified applicants as part of the Local Employment Scheme including providing such assistance as is reasonably practicable to those contractors.
- 11.5 The Owner and/or Covanta shall:
- 11.5.1 advertise invitations to tender for all contracts for the provision of services and materials to the Development in at least one local newspaper with a circulation in all areas within a 25 mile radius of the Site; and
 - 11.5.2 invite at least two companies who have responded to an advertisement published in accordance with paragraph 11.5.1 and whose principal offices are located within a 25 mile radius of the Site to tender for each contract in relation to the construction of the Development including in relation to the supply of materials and services

PROVIDED THAT nothing in this paragraph shall require the Owner and/or Covanta to award any contract for the construction or operation of the Development to any such company.

- 11.6 The Owner and/or Covanta shall be under no obligation in respect of paragraph 11.5 to invite any company or advertise any contract for the provision of services and materials where there is no company within a radius of 25 miles of the Site that is capable of fulfilling any such contract PROVIDED THAT it notifies the Councils of the contracts to which this paragraph applies.

12. Marketing Combined Heat and Power

- 12.1 The Owner and/or Covanta shall use reasonable endeavours to obtain customers for heat and power from the Development and covenants to provide the Council with copies of advertisements, correspondence and any other documentation as evidence of such marketing within 28 days of demand from the Council PROVIDED THAT the Owner and/or Covanta shall not be obliged to provide such copies more than twice in any calendar year.

- 12.2 Notwithstanding the provisions of paragraph 12.1 the Owner and/or Covanta shall inform the Councils as soon as reasonably practicable if it has entered into discussions with a potential customer of heat and power and if it has signed a contract with a customer for the provision of heat and power from the Development
- 12.3 In discharging its obligations under this paragraph the Owner and/or Covanta may stipulate that the Councils do not publicise or distribute or otherwise provide to any person other than the Councils any information in relation to such discussions that the Owner and/or Covanta has first identified as being commercially sensitive and/or confidential and the Councils shall not publish distribute or otherwise provide to any other person such information as been identified by the Owner and/or Covanta as being commercially sensitive and/or confidential.
- 12.4 The provisions of paragraph 12.3 are subject to the Councils' obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 as amended from time to time

13. [Development Management

- 13.1 The Development shall not:
- 13.1.1 be Implemented until it has paid the Development Management Contribution to each of the Councils; and
- 13.1.2 be Commercially Operated in any period of one year where the Development Management Contribution has not been paid to each of the Councils by each anniversary of the payment of the first Development Management Contribution under paragraph 13.1.1.]

14. Electricity Subsidy

- 14.1 The Development Covanta shall not be Commercially Operated unless and until the Electricity Subsidy Scheme has been submitted to the Councils for approval and the Councils have approved that Scheme.
- 14.2 The Electricity Subsidy Scheme shall include:
- 14.2.1 details of the method for publicising the Electricity Subsidy to households within the Electricity Subsidy Area in order to ensure (using reasonable endeavours) that as many Eligible Households as is practicable register for the Electricity Subsidy;

- 14.2.2 confirmation of the Electricity Subsidy Eligibility Criteria;
 - 14.2.3 details of what information shall be provided to Eligible Households including:
 - 14.2.3.1 details of how to register for the Electricity Subsidy including what information is required to demonstrate that any household meets the Electricity Subsidy Eligibility Criteria;
 - 14.2.3.2 confirmation of the Electricity Subsidy Eligibility Criteria;
 - 14.2.3.3 details of the Electricity Subsidy;
 - 14.2.3.4 any requirements for an Eligible Household to demonstrate that it remains so at any time; and
 - 14.2.3.5 how the Electricity Subsidy will be paid to Eligible Households.
 - 14.2.4 Except as otherwise agreed by the Councils the Electricity Subsidy Eligibility Criteria shall be as follows:
 - 14.2.4.1 that a household is within the Electricity Subsidy Area; and
 - 14.2.4.2 that household is occupied by the same person or persons at the Electricity Subsidy Scheme Start Date who occupied that household as at the date of this Agreement.
 - 14.2.5 The Owner and/or Covanta may request such evidence from any household in the Electricity Subsidy Area as is reasonably necessary to confirm that any such household meets the Electricity Subsidy Eligibility Criteria at any time and such evidence may include details from the Electoral Roll or invoices or other information relating to the payment of any Council Tax or the provision of utilities services to the relevant household.
 - 14.2.6 The Owner and/or Covanta shall commence payments of the Electricity Subsidy during the first year of Operation of the Development but such payments shall cease on the earlier of the 35 (thirty-fifth) anniversary of Operation of the Development or the date on which the Development ceases to Operate permanently.
- 14.3 The Development shall not be Commercially Operated in any calendar year unless:

14.3.1 the Electricity Subsidy is made available to Eligible Households; and

14.3.2 any payments of the Electricity Subsidy are paid to Eligible Households as are applicable

PROVIDED THAT the Councils give the Owner and/or Covanta reasonable opportunity to address any dispute relating the obligations in this paragraph including but not limited to as a result of an administrative mistake.

14.4 The Electricity Subsidy shall only be required to be paid to those Eligible Households that have registered for the Electricity Subsidy by the date specified in accordance with paragraph 14.2 and the benefit of registration including payments of the Electricity Subsidy shall be personal to the named householder(s) as at the date of registration and shall not be capable of being passed on to any subsequent occupier.

15. Highway Improvements

[Under discussion between Covanta/the Councils]

SCHEDULE 2: COUNCILS' COVENANTS

1. Consent

Subject to Clause 9.2 of this Deed neither Council shall unreasonably withhold or delay any consent or approval in relation to any matter provided for in this Deed where reference is made to the consent or approval of the Councils or either of them being required.

SCHEDULE 3: COMMUNITY TRUST FUND PRINCIPLES

APPENDIX 1

HGV ACCESS AND ROUTEING STRATEGY

PART 1

1. HGV Routeing

- 1.1 The following paragraphs are to be read in conjunction with the HGV Access and Routeing Plan shown in Part 2.
- 1.2 All HGVs travelling to and from the Rookery Pit will do so via Green Lane and the existing A421. All HGVs accessing the site during both the construction phase and during the normal operation periods will be instructed to access the site via existing A421/Green Lane junction. Only local RCVs (Refuse Collection Vehicles) will be permitted to access the Rookery Pit via Stewartby as these vehicles will already be on the local highway network. Those travelling south would be directed via the new A421 to the M1. Vehicles travelling north are likely to use the existing A421 to the new Marsh Leys junction.
- 1.3 The operators of all HGVs travelling to and from the Rookery Pit will be informed in writing by Covanta of the terms of the HGV Access and Routeing Strategy and will to the extent possible ensure that compliance is secured with HGV operators through appropriate arrangements.
- 1.4 The HGV Access and Routeing Plan will be enforced through the provision of appropriate signage the location of which will be agreed with the local highway authority. Signage to inform drivers that they are not permitted access to the Rookery Pit via Stewartby will be provide at the B530/A421 junction and B530/A507 junction. As a further deterrent, CCTV will be in operation at the site access which will be monitored by the site security, vehicles accessing via Stewartby will be reprimanded and subject to disciplinary action. This excludes local RCVs as these vehicles will already be on the local network.
- 1.5 The Owner and/or Covanta may itself operate HGVs from the site. Where it does so these vehicles will be fitted with GPS systems (Global Positioning Satellite), allowing Covanta to monitor the routes that their vehicles use, ensuring they do not use unauthorised routes.

1.6 CCTV infrastructure will be installed at the Site Access to ensure compliance with the terms of the Strategy at that access.

2. Decommissioning

2.1 At the decommissioning stage of the project, the process of demolition will be less involved than the construction phase and will involve fewer HGV movements. Exact details of the likely trip generation are difficult to assess at this stage and would be subject to review at the time the decommissioning takes place.

PART 2

THE HGV ACCESS AND ROUTEING PLAN

APPENDIX 2

ECOLOGICAL MANAGEMENT STRATEGY OUTLINE

APPENDIX 3

RIGHTS OF WAY STRATEGY OUTLINE

1. The following paragraphs are to be read in conjunction with the Rights of Way Strategy Plan
2. The Development will establish a comprehensive upgrading of the existing and approved rights of way network across Rookery North Pit and Rookery South Pit provided under the low level restoration scheme ("**LLRS**").
3. New rights of way links will also be established, connecting existing rights of way and footways to the east and west of The Rookery Pits as shown on the Rights of Way Strategy Plan. These comprise:
 - 3.1.1 upgrading the dedicated circular footpath around Rookery North Pit established under the LLRS to include dedicated cycle rights;
 - 3.1.2 upgrading the dedicated footpath that crosses the north-east corner of Rookery North Pit to include dedicated cycle rights;
 - 3.1.3 two new dedicated footpaths with cycle rights between the circular footpath around Rookery North Pit and the Green Lane within the vicinity of Green Lane junction;
 - 3.1.4 a new dedicated footpath between Green Lane and the circular path around the edge of Stewartby Lake (FP72), improving access to the Millennium County Park from Green Lane and Stewartby railway station; and
 - 3.1.5 a new footway provided along Green Lane, enhancing connectivity between Stewartby, Stewartby Station and the Marston Vale Millennium Country Park.
4. The LLRS is the low level restoration scheme that forms part of the Renewal of Old Minerals Permission in relation to the Site and additional areas of land in Rookery Pits (reference BC/CM/2000/8).

APPENDIX 4

VISITOR CENTRE SPECIFICATION

APPENDIX 5

TRAVEL PLAN