

SCHEDULE 10-

Article 38

Article 39

PROTECTIVE PROVISIONS [SM Mark-Up: 18 June 2019]

PART 1

FOR THE PROTECTION OF RRRL AND LESSEES OF RRRL LAND

1. For the protection of RRRL as referred to in this part of this Schedule the following minimum provisions have effect, unless otherwise agreed in writing between the undertaker and RRRL, may act to reduce (but may increase) the protection afforded by these provisions.

2. In this part of this Schedule—

“access road” means that part of the access road known as Norman Road between points C and D on the access and rights of way plan;

“alternative apparatus” means alternative apparatus adequate to enable RRRL to fulfil its functions in a manner not less efficient and cost effective than previously;

“apparatus” means any electric cables or electrical plant or drains, mains, sewers, pipes, conduits or any other apparatus belonging to or maintained by RRRL (including any replacement apparatus) and used for, or for purposes connected with, waste treatment and disposal and the generation, transmission, distribution or supply of electricity and/or heat generated at the RRRL facility, and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development;

“commence” has the same meaning as in article 2 of the Order and commencement shall be construed to have the same meaning save that for the purposes of this part of the Schedule only the term commence and commencement shall include any below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“internal street” means any roads that service the RRRL facility and which are located within the RRRL facility perimeter;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of RRRL including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed

“RRRL” means:

- (i) in relation to any RRRL land which is not leased to a third party at the applicable time, Riverside Resource Recovery Limited (together with its successors in title of that part of the Order land identified in the book of reference); and

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(ii) (on a several basis) in relation to any RRRL land which is leased by Riverside Resource Recovery Limited to a third party which is also a lessee of all or part of the RRRL Facility at the applicable time, both Riverside Resource Recovery Limited (together with its successors in title of that part of the Order land identified in the book of reference) and in addition any lessee(s) of all or any part of the RRRL land at the applicable time;

“RRRL facility” means the energy from waste facility and associated infrastructure at Norman Road, Belvedere, Bexley, Kent;

“RRRL facility perimeter” means that part of the Order land identified as plots 02/01, 02/03, 02/10, 02/13, 02/14, 02/15, 02/18, 02/19, 02/25, 02/29, 02/31 and 02/32 on the land plans;

3-“RRRL land” means Order land the freehold of which is held by Riverside Resource Recovery Limited (company number 03723386) immediately prior to the date upon which this Order comes into force pursuant to Article 1; and

“undertaker” has the same meaning as in article 2 of the Order.

3. Upon the permanent stopping up of the access road pursuant to article 1314 (permanent stopping up of streets), the undertaker must grant legal easements and rights of way reasonably satisfactory to RRRL to afford to RRRL the rights for RRRL and all persons authorised on its behalf to enter and pass and re-pass on foot and/or with or without vehicles, plant and machinery, for all purposes in connection with its occupation and use of the RRRL facility.

4.4-The undertaker must not install pipes for the offtake of waste heat from the authorised development without first consulting giving RRRL over whether such the option to combine its pipes should be combined with any pipes for the offtake of waste heat from the RRRL facility. The If RRRL notifies the undertaker must have regard to any consultation responses received from RRRL when finalising that it wishes to combine its pipes with those of the undertaker, the undertaker shall not finalise the location of pipes for the offtake of waste heat from the authorised development until the undertaker and RRRL have agreed the detailed arrangements relating to such works (each party acting reasonably).

5.5-Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 1213 (temporary prohibition or restriction of use of streets and public rights of way), RRRL is at liberty at all times to take all necessary access across any stopped up access road and internal street and/or to execute and do all such works and things in, upon or under any such stopped up access road and internal street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction is in that stopped up access road or internal street.

6.6-Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus within the RRRL facility perimeter land otherwise than by agreement.

7.-(1) If, in the exercise of the powers conferred by this Order, the undertaker—

(a) (a)-acquires any interest in the RRRL facility perimeter land in which any apparatus is placed or over which access to any apparatus is enjoyed; or

(b) (b)-requires that RRRL’s apparatus within the RRRL facility perimeter land is relocated, diverted or removed,

any right of RRRL to any part of the RRRL land and/or to maintain that apparatus in that land and to gain access to it must not be extinguished, and that apparatus must not be relocated, diverted or removed, until ownership in the equivalent alternative land and equivalent alternative apparatus has vested in RRRL and (in relation to apparatus) has been constructed and is in operation, and access to it has been provided. The equivalent alternative land, equivalent alternative apparatus and the location thereof and access thereto shall in each case be agreed between the undertaker and RRRL before any step is taken to extinguish, relocate, divert or remove as aforesaid.

(2) (2)-If, for the purpose of executing any works in, on or under the RRRL facility perimeter land, the undertaker requires the relocation, diversion or removal of any apparatus placed in the RRRL facility perimeter land, the undertaker must give to RRRL for approval written notice of that requirement, a plan and section of the work proposed and of the proposed position of the alternative apparatus together with a timetable for when the alternative apparatus is to be provided or

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constructed by the undertaker.

~~(3)~~ ~~(3)~~ The approval of RRRL under sub-paragraph (2) must not be unreasonably withheld and if by the end of the period of ~~2856~~ days beginning with the date on which the notice, plan, section and timetable have been supplied to RRRL, RRRL has not intimated approval or disapproval of such notice, plan, section and timetable and the grounds of disapproval, RRRL is deemed to have approved the said notice, plan, section and timetable as submitted.

~~(4)~~ ~~(4)~~ When giving its approval under sub-paragraph (2), RRRL may specify such reasonable requirements which in ~~RRRL's~~ opinion are necessary in the provision or construction of the alternative apparatus.

~~(5)~~ ~~(5)~~ In the event that RRRL issues a disapproval to the notice, plan, section and timetable within the ~~2856~~ day period referred to in sub-paragraph (3), the undertaker may refer the matter to arbitration in accordance with article ~~4442~~ (procedures in relation to certain approvals etc.).

~~(6)~~ ~~(6)~~ Subject to sub-paragraph (8), any alternative apparatus to be provided or constructed pursuant to this paragraph must be provided or constructed by the undertaker within a timescale, to a standard and in such manner and in such line or situation as is agreed with RRRL or in default of agreement settled by arbitration in accordance with article ~~4442~~ (procedures in relation to certain approvals etc.).

~~(7)~~ ~~(7)~~ Where the alternative apparatus is to be provided or constructed on land of the undertaker and once the undertaker has provided or constructed the alternative apparatus, the undertaker must grant RRRL the necessary rights to access and maintain the alternative apparatus on that land.

~~(8)~~ ~~(8)~~ If in the approval to the notice, plan, section and timetable under sub-paragraph (2) or by the end of the period of ~~2856~~ days beginning with the date on which the arbitrator settles the alternative apparatus to be provided or constructed, RRRL gives notice to the undertaker that it desires to provide or construct the alternative apparatus and this is agreed to by the undertaker ~~(acting reasonably)~~, RRRL, after the grant to RRRL of the rights as are referred to in sub-paragraph (9), must proceed without unnecessary delay to provide and construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

~~(9)~~ ~~(9)~~ Where RRRL is to provide or construct the alternative apparatus, and the alternative apparatus is to be provided or constructed on land of the undertaker, the undertaker must grant RRRL the necessary rights to provide or construct the alternative apparatus on that land and grant RRRL the necessary rights to access and maintain the alternative apparatus on that land.

~~8~~ ~~(1)~~ Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to RRRL rights in land of the undertaker for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those rights must be granted upon such terms and conditions no less favourable on the whole to RRRL than the rights enjoyed by it in respect of the apparatus to be removed and as may be agreed between the undertaker and RRRL or in default of agreement settled by arbitration in accordance with article ~~4442~~ (procedures in relation to certain approvals etc.).

~~(2)~~ If the rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to RRRL than the rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those rights are subject, the arbitrator must make such provision for the payment granting of compensation rights, terms and conditions by the undertaker to RRRL as appears to the arbitrator to be reasonable having regard to all the circumstances leave RRRL with rights, terms and conditions which are equally favourable to those rights enjoyed by it in respect of the particular apparatus to be removed.

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9. ~~(1)~~ (1) Not less than 2856 days before starting the execution of any works in, on or under the RRRL ~~facility perimeter~~land that may materially affect the operation of the RRRL facility, the undertaker must submit to RRRL for approval a plan, section and description of the works to be executed and a timetable for when such works are to be carried out.

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~~(2)~~ (2) The approval of RRRL under sub-paragraph (1) must not be unreasonably withheld and if by the end of the period of 2856 days beginning with the date on which the plan, section, description and timetable have been supplied to RRRL, RRRL has not intimated disapproval of such plan, section, description and timetable and the grounds of disapproval, RRRL is deemed to have approved the said plan, section description and timetable as submitted.

~~(3)~~ (3) When giving its approval under sub-paragraph (1), RRRL may specify such reasonable requirements which in RRRL's opinion are necessary in the execution of the works.

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~~(4)~~ (4) The works described in sub-paragraph (1) must be executed only in accordance with the plan, section, description and timetable submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be given in accordance with sub-paragraph (3) by RRRL. Where RRRL requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to RRRL's satisfaction prior to the commencement of any part of the authorised development (or any relevant part thereof) for which protective works are required.

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~~(5)~~ (5) In the event that RRRL issues a disapproval to the plan, section, description and timetable within the 2856 day period referred to in sub-paragraph (1), the undertaker may refer the matter to arbitration in accordance with article 4442 (procedures in relation to certain approvals etc.).

~~(6)~~ (6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 2856 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

~~(7)~~ (7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works as defined in the New Roads and Street Works Act 1991 but in that case it must give to RRRL notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph ~~(23)~~ and ~~(4)~~ in so far as is reasonably practicable in the circumstances.

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10. ~~(1)~~ (1) Subject to the following provisions of this paragraph, the undertaker must repay to RRRL the reasonable expenses incurred by RRRL in, or in connection with, the inspection, removal, alteration or protection of any apparatus within the RRRL ~~facility perimeter~~land or the provision or construction of any alternative apparatus which RRRL elects to carry out itself as referred to in paragraph 7(8).

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(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

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(3) If in accordance with the provisions of this part of this Schedule—

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~~(a)~~ (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

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~~(b)~~ (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

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and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 4442 (procedures in relation to certain approvals etc.) to be necessary, then, if such placing involves cost in the construction of works under

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this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to RRRL by virtue of sub-paragraph (1) ~~is to~~will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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(4) For the purposes of sub-paragraph (3),—

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- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 7(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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(5) An amount which apart from this sub-paragraph would be payable to RRRL in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on RRRL any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

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~~11.44.~~ Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and RRRL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made. 11

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12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or RRRL requires the removal of apparatus or RRRL makes requirements for the protection or alteration of apparatus, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of RRRL's undertaking and RRRL shall use its best endeavours to co-operate with the undertaker for that purpose.

13. If in consequence of any agreement reached or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable RRRL to maintain or use the apparatus no less effectively than was possible before such obstruction.

14.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any part of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of RRRL, or there is any interruption in any service provided, or in the supply of any goods, by RRRL, or RRRL becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by RRRL in making good such damage or restoring the supply; and
- (b) indemnify RRRL for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from RRRL, by reason or in consequence of any such damage or interruption or RRRL becoming liable to any third party as aforesaid other than arising from any default of RRRL.

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(2) The fact that any act or thing may have been done by RRRL on behalf of the undertaker or in accordance with a plan approved by RRRL or in accordance with any requirement of RRRL or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless RRRL fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and RRRL.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of RRRL, its officers, servants, contractors or agents; and

(b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by RRRL as an assignee, transferee or lessee of a person with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any part of the authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 14.

(4) RRRL must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) RRRL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 14 applies. If requested to do so by the undertaker, RRRL shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 14 for claims reasonably incurred by RRRL.

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