

ANNEX 7

DATED

17 October

2018

(1) WESTERN RIVERSIDE WASTE AUTHORITY

- and -

(2) RIVERSIDE RESOURCE RECOVERY LIMITED

**AMENDMENT AND
RESTATEMENT DEED**
relating to

**RESIDUAL VALUE AGREEMENT
DATED 21 MARCH 2017**

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THIS DEED is made on

17 October

2018

BETWEEN

- (1) **WESTERN RIVERSIDE WASTE AUTHORITY** of Smugglers Way, Wandsworth, London SW18 1JS (the "**Authority**");
- (2) **RIVERSIDE RESOURCE RECOVERY LIMITED** (Company Registration No. 03723386) whose registered office is at 2 Coldbath Square, London EC1R 5AX (the "**Contractor**").

WHEREAS

- A On 21 March 2017 the Parties entered into a Residual Value Agreement (such agreement as hereinafter referred to as the "**RVA**").
- B The Parties have agreed to amend and restate the RVA on the terms set out below.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

Words and expressions defined in the Appendix to this Deed shall have the same meaning and construction in this Deed.

2. EFFECTIVE DATE

The terms of this Deed shall come into full force and effect on the Third Amended Agreement Date (as defined in the Amended and Restated Waste Management Service Agreement dated on or around the date hereof between the Authority and Cory Environmental Limited) (the "**Effective Date**").

3. AMENDMENT AND RESTATEMENT OF THE WMSA

3.1 The Parties agree that with effect from the Effective Date the RVA is amended and restated in the form set out in the Appendix.

3.2 Nothing in this Deed shall:

3.2.1 prejudice or adversely affect any right, power, authority, discretion or remedy arising under the RVA before the Effective Date; or

3.2.2 discharge, release or otherwise affect any liability or obligation arising under the RVA before the Effective Date.

4. THIRD PARTIES

No person other than a Party may enforce any term of this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999.

5. GOVERNING LAW

This Deed shall be governed by, and construed and performed in accordance with, the laws of England, and subject to the exclusive jurisdiction of the English courts.

IN WITNESS WHEREOF this Deed has been duly executed and delivered as a deed the day and year first above written

THE COMMON SEAL of)
WESTERN RIVERSIDE WASTE)
AUTHORITY was hereunto affixed in)
the presence of:)



EXECUTED as a deed by)
RIVERSIDE RESOURCE)
RECOVERYLIMITED acting by:)

Director

Director/Secretary



3.2.2 discharge, release or otherwise affect any liability or obligation arising under the RVA before the Effective Date.

4. THIRD PARTIES

No person other than a Party may enforce any term of this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999.

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RIVERSIDE RESOURCE)
RECOVERYLIMITED acting by:)

Director

Director/Secretary

APPENDIX

AMENDED AND RESTATED RVA

DATED

2018

(1) WESTERN RIVERSIDE WASTE AUTHORITY

- and -

(2) RIVERSIDE RESOURCE RECOVERY LIMITED

**AMENDED AND RESTATED
RESIDUAL VALUE
AGREEMENT**

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THIS AGREEMENT is made on

2018

BETWEEN

- (1) **WESTERN RIVERSIDE WASTE AUTHORITY** of Smugglers Way, Wandsworth, London SW18 1JS (the "**Authority**"); and
- (2) **RIVERSIDE RESOURCE RECOVERY LIMITED** (Company Registration Number 03723386) whose registered office is at 2 Coldbath Square, London EC1R 5AX (the "**Contractor**")

RECITALS

- A The Authority is constituted under the Waste Regulation and Disposal (Authorities) Order 1985 as a waste disposal authority.
- B On the First Amended Agreement Date the Authority entered into an amended and restated waste management services agreement with Cory Environmental Limited to facilitate the construction of the EfW Facility by the Contractor. This waste management services agreement is being further amended and restated on the date hereof as part of the refinancing of the Contractor, and it has been agreed to amend and restate this Agreement at the same time to conform it to the updated terms of the aforementioned waste management services agreement.
- C As part of the commercial arrangements on the First Amended Agreement Date, it was agreed that the Authority will receive the benefit of residual value rights in relation to the EfW Facility.
- D These residual value rights will take the form of a royalty to be payable for the duration of the Residual Value Period which is partially dependent upon the throughput of tonnage through the EfW Facility. Subject to a minimum payment equal to the Minimum Reduced Market Royalty, a Market Royalty shall be paid for each tonne of waste which is both transferred through the Authority Transfer Stations and processed at the EfW Facility, and a Reduced Market Royalty shall be paid for each tonne of waste which is processed at the EfW Facility but is not transferred through the Authority Transfer Stations.

- E Additional royalty payments will be owed to the Authority if and to the extent that both commercial terms are finalised for the use of the Authority Transfer Stations to transfer waste to the EfW Facility during the Residual Value Period and, once finalised, the Authority permits such use in accordance with the terms of this Agreement (the Transfer Station Payment).
- F The Authority will also be given the option, once commercial terms are finalised and subject to the satisfaction of any applicable legal requirements at the relevant time, as a partial or total alternative to taking the royalties stated above to have General Waste treated by the Contractor at the EfW Facility during the Residual Value Period (the General Waste Option Tonnage) at a predetermined rate (the General Waste Option Rate).

NOW IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS

1.1 For the purposes of this Agreement:

"Actual EfW Throughput" means the total tonnage of Waste processed by the EfW Facility in the relevant Residual Value Year;

"Additional Permitted Borrowings" has the meaning set out in Schedule 1 to the WMSA;

"Affiliate" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and **"holding company"** and **"subsidiary"** shall have the meaning given to them in section 1159 of the Companies Act 2006;

"ASS Contractor" means the operator of the Authority Transfer Stations from time to time;

"Authority Road Delivered Tonnage" has the meaning set out in clause 2.6;

"Authority Transfer Station" has the meaning set out in Schedule 1 to the WMSA;

"Available" has the meaning set out in Schedule 1 to the WMSA;

"Belvedere Lease" has the meaning set out in Schedule 1 to the WMSA;

"Belvedere Sub-Lease" has the meaning set out in Schedule 1 to the WMSA;

"Capital Expenditure" means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United

Kingdom from time to time;

"Commercially Sensitive Information" means the sub-set of Confidential Information listed in column 1 of Appendix 3, in each case for the period specified in column 2 of Appendix 3;

"Confidential Information" means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and
- (b) Commercially Sensitive Information;

"Constituent Councils" has the meaning set out in Schedule 1 to the WMSA;

"Contractor's Representative" means the individual whose details are set out in Appendix 2;

"Default Interest Rate" means two per cent (2%) above the base rate of Barclays Bank plc from time to time or such other Bank agreed by the Parties from time to time;

"Design Life" has the meaning set out in Schedule 1 to the WMSA;

"Directed" has the meaning set out in Schedule 1 to the WMSA;

"Direct Losses" means (to the extent reasonably and properly incurred) all damage, losses (including loss of profit), liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services), proceedings, demands and charges, whether arising under statute, contract or common law but excluding Indirect Losses. In each case such Direct Losses shall be demonstrated to the reasonable satisfaction of the paying Party and shall be subject to the obligation of the claiming Party to mitigate pursuant to clause 17 (*Mitigation*);

"Dispute Resolution Procedure" means the procedure set out in Schedule 13 to the WMSA applied mutatis mutandis to this Agreement;

"EfW Commissioning Date" has the meaning set out in Schedule 1 to the WMSA;

"EfW Contract" has the meaning set out in Schedule 1 to the WMSA;

"**EfW Contractor Default**" has the meaning set out in Schedule 1 to the WMSA;

"**EfW Facility**" means the energy from waste plant to be constructed at Norman Road, Belvedere, Bexley, Kent;

"**EfW General Waste Rate**" has the meaning set out in Schedule 1 to the WMSA;

"**EfW Residual Value Capacity**" means the annual tonnage calculated in accordance with the following formula:

Residual Value Percentage (RVP) * Actual EfW Throughput

RVP the lesser of 75.75% and (UA * EAQP)

UA Usage Adjustment of 1.055

EAQP EfW Authority Quotient Percentage (calculated at the Residual Value Calculation Date) in accordance with the following formula:

$$\frac{\sum \text{Aggregate Authority Waste EfW Throughput} \times 100}{\sum \text{Aggregate EfW Throughput}}$$

Aggregate Authority Waste EfW Throughput is the total tonnage of General Waste processed by the EfW Facility in the period from the EfW Commissioning Date to the Residual Value Calculation Date

Aggregate EfW Throughput is the total tonnage of Waste processed by the EfW Facility from the EfW Commissioning Date to the Residual Value Calculation Date

Actual EfW Throughput is the total tonnage of Waste processed by the EfW Facility in the relevant Residual Value Year;

"**EfW Road Capacity Surplus Tonnage**" has the meaning set out in clause 2.6;

"**Electricity Act Consent**" means the consent granted on 16th June 2006 under section 36 of the Electricity Act 1989 to construct and operate the EfW Facility;

"**Environmental Information Regulations**" means the Environmental Information Regulations 2004;

"EPA" means the Environmental Protection Act 1990;

"Expert Notice" has the meaning set out in clause 18.2.2;

"Fees Regulations" means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, SI 200413244;

"First Amended Agreement Date" has the meaning set out in Schedule 1 to the WMSA;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Act;

"General Manager" means the general manager of the Authority as notified in writing to the Contractor by the Authority from time to time and any deputy appointed by the General Manager for periods of absence of the General Manager and as notified to the Contractor in writing by the General Manager from time to time;

"General Waste" has the meaning set out in Schedule 1 to the WMSA;

"General Waste Option Rate" means the rate calculated in accordance with paragraph 1 of Appendix 1, as may be amended by the application of clause 4.3;

"General Waste Option Tonnage" means tonnage of General Waste which the Authority has opted to have processed at the EfW Facility pursuant to clause 2.4;

"Indexed" means indexed in accordance with Appendix 2.3B of the Payment Mechanism with a reference date for indexation of December 2006;

"Indirect Losses" means (to the extent reasonably and properly incurred) loss of use, loss of production, loss of business opportunity, and any other consequential or indirect loss of any nature. In each case such Indirect Losses shall be demonstrated to the reasonable satisfaction of the paying Party and shall be subject to the obligation of the claiming Party to mitigate pursuant to clause 17;

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000;

"Interface Agreement" has the meaning set out in Schedule 1 to the WMSA;

"Invoice" means an invoice in such form as the Parties shall agree (acting reasonably) from time to time;

"Law" means all Legislation and any applicable judgement of a relevant court of law which sets a binding precedent;

"Legislation" means:

- (a) any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (b) any exercise of the Royal Prerogative; and
- (c) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"Lighterage Rate" has the meaning set out in clause 4.6;

"Market Royalty" means the Market Royalty Rate multiplied by the Market Royalty Tonnage;

"Market Royalty Rate" means [REDACTED] per tonne;

"Market Royalty Tonnage" means, in any Residual Value Year, the EfW Residual Value Capacity or Reduced EfW Residual Value Capacity (as the case may be) less the General Waste Option Tonnage attributable to that Residual Value Year;

"Minimum Reduced Market Royalty" means the rate calculated in accordance with clause 2 of Appendix 1;

"Monthly Capex Residual Payment" means the payment calculated in accordance with paragraph 3 of Appendix 1;

"Monthly Report" means a report in the form set out in clause 5.1;

"Party" means one of the parties to this Agreement and the **"Parties"** means both the parties to this Agreement;

"Payment Mechanism" means the payment mechanism set out in Schedule 8 to the WMSA;

"Payment Period" means a calendar month;

"Post-Expiry Contractor" means any waste management contractor appointed by the Authority to undertake waste management and/or disposal services after the WMSA Expiry Date, or, in the absence of any such appointment, the Authority itself;

"Post-Expiry EfW Services" means equivalent services to the EfW Services following the WMSA Expiry Date agreed pursuant to clause 4.1;

"Project" has the meaning set out in Schedule 1 to the WMSA;

"Projected EfW Throughput" means the total tonnage of Waste projected by the Contractor to be processed by the EfW Facility in the relevant Residual Value Year pursuant to clause 2.3;

"Reduced EfW Residual Value Capacity" means the Reduced Residual Value Percentage multiplied by the Actual EfW Throughput;

"Reduced Market Royalty" means Reduced Market Royalty Rate multiplied by the Reduced Market Tonnage;

"Reduced Market Royalty Rate" means 50% of the Market Royalty Rate;

"Reduced Market Tonnage" shall have the meaning in clause 2.2;

"Reduced Residual Value Percentage" means the percentage (which shall be less than the Residual Value Percentage referred to in the definition of EfW Residual Value Capacity) as nominated by the Authority in accordance with clause 2.2;

"Relevant Event" has the meaning set out in Schedule 1 to the WMSA;

"Relevant Residual Value Capacity" means, in relation to a Residual Value Year, the EfW Residual Value Capacity or Reduced EfW Residual Value Capacity (as the case may be);

"Requests for Information" shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;

"Residual Value Calculation Date" means 5 October 2027;

"Residual Value Contractor Default" means a failure by the Contractor to honour a call for payment of an amount equal to or greater than the Residual Value Non-Payment Default Sum

properly owing to the Authority in accordance with the terms of this Agreement within 20 Working Days after such amount is requested in writing;

"Residual Value Non-Payment Default Sum" means [REDACTED];

"Residual Value Period" means the period commencing on the day following the WMSA Expiry Date, and finishing on the date falling 35 years from the EfW Commissioning Date;

"Residual Value Year" means the period from 5 October 2032 to 31 March 2033, and thereafter each year from 1 April to the following 31 March, with the final Residual Value Year comprising the period from 1 April to the date falling 35 years from the EfW Commissioning Date;

"River Transportation Services Rate" has the meaning set out in the Payment Mechanism;

"Senior Financing Agreements" has the meaning set out in Schedule 1 to the WMSA;

"Sterling" means the lawful currency of England from time to time;

"Third Amended Agreement Date" has the meaning set out in Schedule 1 to the WMSA;

"Third Party Waste" means any waste delivered to the Authority Transfer Stations other than by the Constituent Councils;

"Third Party Waste Entitlement Tonnage" has the meaning set out in clause 3.1.2;

"Transfer Station Payment" means the Transfer Station Rate multiplied by the Transfer Station Tonnage;

"Transfer Station Rate" means the Authority's reasonable and demonstrated cost for transferring a tonne of General Waste through the Authority Transfer Stations (as notified by the Authority to the Contractor from time to time) plus ten (10) per cent;

"Transfer Station Tonnage" shall equal the total tonnage as defined in 3.1;

"Waste" means household, industrial and commercial wastes as defined in Section 75 of the EPA and any regulations made thereunder, to include detritus, but excluding liquid waste;

"WMSA" means the Waste Management Services Agreement dated 30 May 2002, amended and restated on the First Amended Agreement Date, and as further amended from time to time;

"WMSA Expiry Date" means 4 October 2032; and

"Working Day" means a day (other than Saturday or Sunday) on which banks are open for domestic business in the City of London.

1.2 Except where expressly stated to the contrary, references to clauses and Appendices are to clauses and Appendices to or contained in this Residual Value Terms Agreement.

1.3 The EfW Residual Reserved Capacity in relation to the first and last Residual Value Years shall be reduced pro rata to reflect the reduced number of days in such Residual Value Years.

1.4 Capitalised terms used in this Agreement shall have the meaning given to them in this Agreement.

1.5 Words importing:

1.5.1 one gender only shall be construed as importing any other gender; and

1.5.2 the singular shall be construed as importing the plural and vice versa.

1.6 References to any statute or statutory provision include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations or other subordinate legislation made under any relevant statute or statutory provision.

1.7 The Appendices form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement.

1.8 References in this Agreement to the Authority or any other authority or public body shall include references to their successors in title from time to time.

1.9 References to a "person" shall include any individual, partnership, firm, trust, body corporate or incorporate, government or government body, authority or agency and a reference to a person includes a reference to that person's successors and assigns.

1.10 Words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words unless

inconsistent with the context, and the rule of interpretation known as ejusdem generis shall not apply.

- 1.11 References in this Agreement to "**expense(s)**", "**cost(s)**" or any similar word or expression relating to sums recoverable by a Party shall include that Party's reasonable charges in establishing the amount of such expense(s) or costs(s) and in recovering any such expense(s) or cost(s).
- 1.12 Save where stated to the contrary, any reference to this Agreement or to any other document (including the WMSA) shall include any permitted variation, amendment, or supplement to such document.

2. OPTION

- 2.1 Subject to clauses 2.2 and 2.4, for the duration of the Residual Value Period, the Authority shall have the right to receive and the Contractor shall pay the Market Royalty in relation to each tonne of the EfW Residual Value Capacity in accordance with the provisions of this clause 2.
- 2.2 No later than the date falling five (5) years three (3) months prior to the commencement of each Residual Value Year, the Contractor shall notify the Authority in writing of the projected EfW Residual Value Capacity for such Residual Value Year and enquire of the Authority whether it wishes to accept the EfW Residual Value Capacity or nominate a Reduced Residual Value Percentage. If the Authority does not respond within three (3) months of such notification, it shall be deemed to have nominated a Reduced Residual Value Percentage of zero (0) per cent. Following such nomination or deemed nomination, the Authority shall have the right to receive and the Contractor shall pay to the Authority both:
- 2.2.1 the Market Royalty in relation to each tonne of the Reduced EfW Residual Value Capacity; and
- 2.2.2 the Reduced Market Royalty in relation to the tonnage difference ("**Reduced Market Tonnage**") between the EfW Residual Value Capacity and the Reduced EfW Residual Value Capacity.
- 2.3 Three (3) months prior to the commencement of each Residual Value Year, the Contractor shall notify the Authority in writing of the Projected EfW Throughput for that Residual Value Year.

- 2.4 Based upon the Projected EfW Throughput, the Authority may, as a partial or full alternative to receiving the Market Royalty, and subject to any legal constraints to which the Authority may be subject at the relevant time, opt to take a part or all of the Relevant Residual Value Capacity as General Waste Option Tonnage. In default of any nomination, the Authority shall be deemed to have nominated a General Waste Option Tonnage of zero (0) tonnes.
- 2.5 The EfW Residual Value Capacity and nominated General Waste Option Tonnage shall, unless otherwise agreed by the Parties, be allocated evenly across the twelve months of the relevant Residual Value Year. If and to the extent that, in any Residual Value Year, the Contractor calculates (acting reasonably) that the Actual EfW Throughput will be greater or less than the Projected EfW Throughput, it shall notify the Authority as soon as reasonably practicable following such determination and both the General Waste Option Tonnage and (so far as reasonably practicable) the monthly allocations of General Waste Option Tonnage shall be adjusted upwards or downwards (as appropriate) to ensure that, over the course of the Residual Value Year, the Authority receives the same percentage of Actual EfW Throughput as it nominated in relation to the Projected EfW Throughput. Following any such adjustment, the Authority shall use its reasonable endeavours (if and to the extent that such General Waste is both available to the Authority to be diverted and not contractually committed to third parties) to divert additional or less General Waste to or from the Contractor (as appropriate) to meet its percentage entitlement.
- 2.6 Within 30 days of conditions 4, 5 and/or 41 of the Electricity Act Consent being amended to permit greater than 85,000 tonnes to be delivered by road to the EfW Facility ("**EfW Road Capacity Surplus Tonnage**"), provided that there is no other legal impediment to the Contractor allowing greater than 85,000 tonnes to be delivered by road the Contractor shall offer the EfW Road Capacity Surplus Tonnage to the Authority as part of its General Waste Option Tonnage before offering it to third parties. The offer notice shall, as a minimum, state the level of EfW Road Capacity Surplus Tonnage, and the date from which it becomes available. The Authority may exercise the option to take any all or any part of the EfW Road Capacity Surplus Tonnage by serving written notice on the Contractor within 60 Working Days of receipt of the offer, specifying the amount of EfW Road Capacity Surplus Tonnage it wishes to take (the "**Authority Road Delivered Tonnage**").

3. **AUTHORITY TRANSFER STATION CAPACITY**

- 3.1 The Authority shall, during the Residual Value Period, procure that capacity is made available to the Contractor at the Authority Transfer Stations for the transfer of:
- 3.1.1 a tonnage of General Waste up to the General Waste Option Tonnage; and
- 3.1.2 a tonnage of Third Party Waste up to the Relevant Residual Value Capacity less the General Waste Option Tonnage (the "**Third Party Waste Entitlement Tonnage**"). For the avoidance of doubt the capacity in relation to this clause 3.1.2 shall never be less than zero.
- 3.2 If, in relation to any Residual Value Year, the Authority permits the Post-Expiry Contractor to offer capacity to the Contractor for a tonnage of Third Party Waste at the Authority Transfer Stations which is in excess of the Third Party Waste Entitlement Tonnage, the price and terms on which such excess Third Party Waste capacity is made available to the Contractor shall be as agreed between the Post-Expiry Contractor and the Contractor, and shall not form part of this Agreement.

4. **GENERAL WASTE OPTION TONNAGE**

- 4.1 On or prior to 31 December 2018, unless otherwise agreed, the Parties shall, unless the Authority notifies the Contractor that the Reduced Residual Value Percentage for the entire Residual Value Period shall be zero (0) per cent, finalise the commercial terms on which, after the WMSA Expiry Date, the Contractor shall provide Post-Expiry EfW Services in relation to the General Waste Option Tonnage and Third Party Waste Entitlement Tonnage.
- 4.2 The commercial terms referred to in clause 4.1 above shall be consistent (to the extent applicable) with the terms of the EfW Contract (in relation to the General Waste Option Tonnage) and Interface Agreement (in relation to both the General Waste Option Tonnage and Third Party Waste Entitlement Tonnage) as at the date referred to in clause 4.1, subject to the following modifications:
- 4.2.1 references to "**EfW Annual Reserved Capacity**" shall be replaced by references to "**Relevant Residual Value Capacity**";
- 4.2.2 paragraphs 1, 2, 5, 13, 14.5, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30 and 33 of Schedule 15 shall not apply;

- 4.2.3 the "EfW Non-Payment Default Sum" shall equal two (2) consecutive monthly invoices outstanding for more than 20 Working Days;
- 4.2.4 the percentages in EfW Authority Defaults (f)(i) and (ii) shall relate to nominated General Waste Option Tonnages which the Post-Expiry Contractor fails to deliver in the relevant Residual Value Years rather than the General Waste required to be Directed or Made Available;
- 4.2.5 EfW Contractor Defaults (i) and (j) (non-incineration of General Waste) shall relate to the percentages of nominated General Waste Option Tonnage in the relevant Residual Value Year rather than EfW Contract Year Annual Reserved Capacity;
- 4.2.6 upon the occurrence of an EfW Authority Default which would otherwise cause the Agreement to terminate, the Authority shall (subject to the Default Contract Rate Compensation Cap and clause 15) pay to the Contractor its Direct Losses in relation to the outstanding nominated General Waste Option Tonnages at the time, and for the purposes of this Agreement the Authority shall be irrevocably deemed to have nominated a Reduced Residual Value Percentage of zero (0) per cent for the remainder of the Residual Value Period;
- 4.2.7 upon the occurrence of an EfW Contractor Default or corrupt gifts and fraud termination, the Contractor shall be liable for the Post-Expiry Contractor's Direct Losses arising from such termination (which will include the Authority's Direct Losses) and, upon non-payment of such Post-Expiry Contractor's Direct Losses, the Authority shall be entitled to terminate the Belvedere Sub-Lease;
- 4.2.8 the EfW Authority Quotient Percentage shall equal:

$$\frac{\text{Authority Average EfW Throughput} * 100}{\text{Total EfW Throughput}}$$

where

Authority EfW Throughput means the average annual tonnage of General Waste which is processed at the EfW Facility over the preceding five (5) years

Total EfW Throughput means the total tonnage of waste processed at the EfW Facility over the preceding five (5) years; and

4.2.9 such other amendments as the Parties may agree (acting reasonably).

For the avoidance of doubt, the commercial terms referred to in this clause 4.2 refer only to the Post-Expiry EfW Services in relation to General Waste Option Tonnage and Third Party Entitlement Tonnage. In particular, but without limitation, the termination of this Agreement shall be governed by the provisions of clause 7 and not by the arrangements agreed pursuant to this clause 4.2.

4.3 The Parties acknowledge that the General Waste Option Rate is based on the risk profile set out in the EfW Contract as at the First Amended Agreement Date (as modified as set out in clause 4.2), and that material changes to the EfW Contract following such date may require an adjustment to the General Waste Option Rate. In the event of any such material changes arising, the Authority or the Contractor may notify the other Party prior to such a change occurring, and the Parties (acting reasonably) shall agree a revised General Waste Option Rate. If no such notification is given on or before such material change is made, no adjustment shall occur to the General Waste Option Rate.

4.4 In default of agreement of all the outstanding terms by 31 December 2018, either Party may refer the terms to an Expert to impose on the Parties such terms as the Expert deems in its absolute discretion to be reasonable and appropriate in accordance with the procedure set out in clauses 18.2 to 18.8 inclusive. The Authority shall be entitled to include the agreed terms in its tender documentation for the replacement to the WMSA and the Contractor shall, at the request of the Authority, enter into such agreement with the Authority with effect from 5 July 2032.

4.5 The rate per tonne payable by the Authority for each tonne of General Waste Option Tonnage taken as Authority Road Delivered Tonnage shall be calculated in accordance with Appendix 1 (the "**General Waste Option Rate**").

4.6 In relation to General Waste Option Tonnage which is not Authority Road Delivered Tonnage, a fixed additional Lighterage Rate of [REDACTED], which shall be payable in addition to the General Waste Option Rate and:

4.6.1 indexed in accordance with Appendix 2.3A of Schedule 8 of the WMSA with a reference date for indexation of December 2006; and

4.6.2 otherwise escalated:

4.6.2.1 prior to the WMSA Expiry Date in the same manner (other than by indexation) as the River Transportation Services Rate under the EfW Contract, to the extent that such escalation is still relevant to the Residual Value Period; and

4.6.2.2 during the Residual Value period, in accordance with the commercial arrangements agreed pursuant to clauses 4.1 and 4.2.8.

The Lighterage Rate shall be reviewed in good faith in the event that, in a Residual Value Year, the Authority does not nominate the entire Relevant Residual Value Capacity as General Waste Option Tonnage, and/or opts to take Authority Road Delivered Tonnage, **PROVIDED THAT** there shall be no adjustment if, in the relevant Residual Value Year, the Contractor transports by river tonnage equal to or more than the Relevant Residual Value Capacity.

5. PRICE AND PAYMENT

5.1 The Contractor shall submit to the Authority a Monthly Report within not more than ten (10) Working Days following the last day of such Payment Period. The Monthly Report shall be in such form as the Authority may reasonably require from time to time and detail, in relation to the relevant Payment Period,

5.1.1 a statement detailing:

5.1.1.1 the tonnage of Waste which has been transferred through the Authority Transfer Stations and is eligible for the Market Royalty, multiplied by the Market Royalty Rate; and

5.1.1.2 the Reduced Market Tonnage which has not been transferred through the Authority Transfer Stations but has been processed by the EfW Facility and multiplied by the Reduced Market Royalty Rate;

PROVIDED THAT the sum of 5.1.1.1 and 5.1.1.2 shall always be greater

than or equal to the Minimum Reduced Market Royalty;

- 5.1.2 a statement detailing the Transfer Station Payment owing to the Authority;
- 5.1.3 a statement detailing the tonnage of General Waste which has been processed by the EfW Facility, multiplied by the General Waste Option Rate and (where applicable) the Lighterage Rate; and
- 5.1.4 a statement detailing the Monthly Capex Residual Payment.

Upon receipt of the Monthly Report, the Authority shall be entitled to submit an Invoice to the Contractor in relation to the items listed in clause 5.1.1 and 5.1.2. The Contractor shall invoice amounts owing in relation to the General Waste processed by the EfW Facility in accordance with the commercial terms agreed pursuant to clause 4.1.

- 5.2 The Contractor shall provide such further information relating to the Monthly Report as the Authority may reasonably require.
- 5.3 Invoices shall be due for payment twenty (20) Working Days following the date of presentation.
- 5.4 All payments under this Agreement shall be made in Sterling by electronic transfer of funds. Payments shall be made to such accounts as the Parties shall notify each other in writing from time to time.
- 5.5 If any amount due and payable by either Party to the other under this Agreement is not paid on the date due then:
 - 5.5.1 if such unpaid sum is undisputed, interest shall accrue on the sum at the Default Interest Rate from (and including) the date the sum became due and payable to (but excluding) the date the sum is paid; or
 - 5.5.2 if such unpaid sum is disputed (and unless otherwise determined pursuant to any reference to the Dispute Resolution Procedure in which case such determination shall apply and not this clause 5.6), interest shall accrue at the Default Interest Rate on such of the sum as is determined to be the proper sum due and payable from (and including) the date the disputed sum became due and payable (or would have been due and payable had the sum not been

disputed) to (but excluding) the date the sum determined to be the proper sum is paid.

5.6 Tonnages and payments shall be subject to annual reconciliation within twenty (20) Working Days from the end of each Residual Value Year.

6. VAT

6.1 All amounts due under this Agreement are exclusive of VAT.

6.2 If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply ("**the Recipient**") shall in addition pay the person making the supply ("**the Supplier**") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

6.3 Where under this Agreement any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set-off or repayment.

6.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority from time to time in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Authority to the Contractor.

7. TERMINATION

7.1 If a Residual Value Contractor Default has occurred and the Authority wishes to terminate the Agreement, it shall serve a notice ("**Residual Value Contractor Default Termination Notice**") on the Contractor.

7.2 The Residual Value Contractor Default Termination Notice shall specify:

7.2.1 reasonable details of the Residual Value Contractor Default; and

7.2.2 that this Agreement will terminate on the day falling 40 Working Days after the date the Contractor receives the Residual Value Contractor Default Termination Notice, unless the Contractor rectifies the Residual Value Contractor Default within twenty (20) Working Days.

- 7.3 If the Contractor rectifies or procures the rectification of the Residual Value Contractor Default within twenty (20) Working Days, the Residual Contractor Default Termination Notice shall be deemed to be revoked and this Agreement shall continue.
- 7.4 If the Contractor fails to rectify the Residual Value Contractor Default within twenty (20) Working Days, the Agreement will terminate on the date falling 40 Working Days after the date of receipt of the Residual Value Contractor Default Termination Notice.
- 7.5 Upon a termination of this Agreement pursuant to clause 7.4, the Contractor shall pay the Authority an amount equal to the aggregate of all the Authority's Direct Losses arising from such termination.
- 7.6 Termination of this Agreement shall be without prejudice to any pre-existing right of action of either Party in respect of any breach by the other Party of its obligations under this Agreement.

8. ASSIGNMENT

Neither Party shall give, bargain, sell, assign or otherwise deal with this Agreement without the prior written consent of the other Party.

9. AUDIT ACCESS

For the purposes of the examination and certification of the Authority's accounts and/or any examination pursuant to any Law to that effect of the economy, efficiency and effectiveness with which the Authority has used its resources the Authority's auditor may examine and take copies of such documents as he may reasonably require pursuant to any Law, and which are owned, held or otherwise within the control of the Contractor (who shall procure that any person acting on its behalf who has such documents and/or other information shall also provide access) and may require the Contractor to produce such oral or written explanation as he considers necessary. For the avoidance of doubt, the Contractor shall not be required to disclose any information or documentation where to do so would require the Contractor to breach a duty of confidentiality owed to a third party other than the Authority unless required to do so by Law.

10. VARIATIONS OF THIS AGREEMENT

Without prejudice to the rights and powers of the General Manager under this Agreement and

except as may be expressly provided no deletion from, addition to or variation of this Agreement shall be valid or of any effect unless agreed in writing and signed by the Parties.

11. SEVERANCE

11.1 If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

11.2 The Parties agree that the provisions of this Agreement relating to the payment of the Reduced Market Royalty, the Minimum Reduced Market Royalty and the Monthly Capex Residual Payment (which do not require the use of the Authority Transfer Stations) are independent of those relating to the Market Royalty and the General Waste Option Tonnage, and in particular but without limitation are not dependent upon the outcome of the finalisation of commercial terms in relation to the use of the Authority Transfer Stations pursuant to clause 4 or the agreement of the General Waste Option Rate.

12. COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses in relation to the preparation, execution and implementation of this Agreement, except where expressly provided to the contrary and except for any award of costs or expenses by a competent court.

13. FURTHER ASSURANCE

Each Party agrees to do all further acts and things and execute and deliver all instruments as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

14. THIRD PARTY RIGHTS

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.

15. WAIVER

15.1 The failure of the Authority or the Contractor to insist on strict performance of any provision of this Agreement or the failure of the Authority or the Contractor to exercise any right or remedy to which it is entitled hereunder shall not constitute a

waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

- 15.2 A waiver of any rights of remedy arising from a breach or disagreement shall not constitute a waiver of any right or remedy arising from a subsequent breach.
- 15.3 No waiver of any of the provisions of this Agreement shall be effected unless it is expressly stated to be a waiver and communicated to the Contractor or the Authority (as the case may be) in writing.
- 15.4 Notwithstanding any breach of this Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either Party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

16. SERVICE OF NOTICES

- 16.1 Any notice, consent or other communication given under this Agreement shall be in writing in the English language and shall be served by sending the same by pre-paid recorded delivery post or fax or by delivering the same by hand.
- 16.2 Until notified otherwise all notices, consents or other communications under this Agreement shall be sent to the persons, addresses and/or fax numbers as provided in Appendix 2, and shall be deemed to have been served as set out below, and in proving the service of the same it shall be sufficient to prove, in the case of a letter, that such letter was properly stamped, addressed and placed in the post and, in the case of fax, that such fax was duly dispatched to a fax number notified for such purpose and a valid transmission report confirming good receipt was generated. In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:
 - 16.2.1 if delivered personally, when left at the relevant address referred to above;
 - 16.2.2 if sent by recorded delivery post, two days after posting it; and
 - 16.2.3 if sent by fax, at the time of despatch.

16.3 Any notice given under or in connection with this Agreement shall be regarded as properly served when:

16.3.1 in the case of a notice to the Contractor it is delivered by hand or by post to the Contractor at the address set out in Appendix 2 or if it is sent by fax when received at the fax number set out in Appendix 2, in each case marked for the attention of the Contractor's Representative; or

16.3.2 in the case of a notice to the Authority, if it is delivered by hand or by post to the Authority at the address set out in Appendix 2 or if it is sent by fax when received at the fax number set out in Appendix 2, in each case marked for the attention of the General Manager.

16.4 In the case of any successor in title to the Authority then the reference in clause 15.2 to the address stated in this Agreement shall be a reference to such address as may be set out from time to time by the Authority in a notice in writing given to the Contractor from time to time.

16.5 If the day of service of any notice is not a Working Day or service takes place after 5:00 pm on a Working Day then the notice shall be deemed to be served on the following Working Day.

16.6 Either Party may change the details of its representative as set out in Appendix 2 by written notice to the other Party.

17. MITIGATION

Each of the Parties shall at all times take all reasonable steps to minimise and mitigate any loss, damage or expense for which the relevant Party is entitled to claim pursuant to this Agreement.

18. DISPUTE RESOLUTION

18.1 All disputes relating to this Agreement (other than in relation to a failure of the Parties to agree terms pursuant to clause 4.4 of this Agreement on or prior to 31 December 2018) shall be capable of referral by either Party to the Dispute Resolution Procedure, Any failure of the Parties to agree terms pursuant to clause 4.4 of this Agreement shall only be capable of referral by either Party to expert determination in accordance with

clause 18.2, and appeals of such expert determination shall only be permissible as expressly sanctioned by clause 18.7.

18.2 The following procedure shall apply in relation to a failure by the Parties to agree full legally binding details relating to the General Waste Option Tonnage by 31 December 2018:

18.2.1 This procedure may be instigated by either Party through the service of written notice to the other Party.

18.2.2 Any Party wishing to appoint an Expert shall give notice to that effect to the other Party (the "**Expert Notice**"). The Expert Notice shall include the identity of a proposed Expert.

18.2.3 No person, without the written agreement of both Parties, shall be appointed as the Expert who is (or has been at any time within the preceding 6 years) an employee of either Party or of an Associate of either Party or who is (or has been at any time within the preceding 3 years) a consultant to or contractor of either Party or of an Associate of either Party or who holds any financial interest in either Party.

18.2.4 If within 7 days from the date of service of the Expert Notice the Parties have failed to agree upon the identity of an Expert, then the matter may be referred by either Party to the President of the Law Society who shall be requested to propose an independent Expert meeting the criteria set out in clause 18.2.3 by notice to the Parties within 5 days.

18.2.5 The Parties shall forthwith notify such Expert of the selection and shall request advice within 5 days as to whether he/she is barred from appointment by virtue of clause 18.2.3 and, if not barred, whether the appointment will be accepted. The remuneration of the Expert shall be agreed with the Expert at the time of his or her appointment. The Parties agree that they will not act unreasonably to prevent an appointment of an Expert by disputing the reasonableness of the remuneration sought by the Expert provided that the Expert seeks an hourly rate of, or below, £500.

18.2.6 If such proposed Expert shall be either unwilling or (by virtue of clause 18.2.3 or otherwise) unable to accept such appointment or shall not have

confirmed his/her willingness and ability to accept such appointment within the said period of 5 days then (unless the Parties have in the meantime succeeded in agreeing upon the appointment of an alternative) the matter may again be referred (by either Party) in the aforesaid manner to the President of the [Law Society][Chartered Institute of Waste Management], who shall be requested to make a further proposal and the process outlined in clause 18.2.4 to this clause 18.2.6 inclusive shall be repeated until an Expert is found who is both willing and able to accept the appointment.

- 18.3 The terms of reference to the Expert shall be the imposition on the Parties of contractually binding terms relating to the General Waste Option Tonnage to the extent that the Parties have failed to agree such terms prior to the date of the Expert's appointment. The imposed terms shall be consistent with the framework and pricing principles and detail set out in this Agreement which, for the avoidance of doubt and without limitation do not permit the Contractor, directly or indirectly, to charge for any debt service or other cost of funding save as part of the CP component of the EfW General Waste Rate formula in Schedule 1. The Expert may request such data, information and submissions as the Expert thinks fit and the Parties shall use reasonable endeavours to comply promptly with such requests. All information supplied to the Expert in writing by a Party shall be served by notice simultaneously to the other Party. In the event that the Expert shall request oral submissions to be made, both Parties shall be notified by the Expert and each shall have the opportunity to address the Expert on the subject of his/her request.
- 18.4 The Expert shall make a determination in writing and in such determination give reasons for the determination, not later than 30 days after receipt of all information requested by the Expert. The Expert may fix a reasonable time within which information is to be supplied to him/her. The Expert shall be entitled, but not obliged, to disregard information submitted to him after the expiry of any such deadline.
- 18.5 The Expert may obtain such independent professional and/or technical advice as the Expert may reasonably require.
- 18.6 The Expert shall be deemed not to be an arbitrator but shall render a determination as an expert and the law or legislation relating to arbitration shall not apply to such Expert or the determinations or the procedure by which such determinations are reached.

- 18.7 The determination of the Expert shall be final and binding upon the Parties save in the event of fraud, manifest error, excess of jurisdiction, or failure by the Expert to disclose any relevant interest or duty which makes him/her ineligible by virtue of clause 18.2.3.
- 18.8 Each Party shall bear the cost and expenses of all counsel, witnesses and employees retained by it. The Expert determination shall address the proportions in which the Parties should bear the Expert's costs and expenses. The Expert's fees shall be funded in equal shares by the Parties pending such determination.

19. CONFIDENTIALITY

19.1 Confidential Information

- 19.1.1 The Parties agree that the provisions of this Agreement shall, subject to clause 19.1.2 below, not be treated as Confidential Information and may be disclosed without restriction.
- 19.1.2 Clause 19.1.1 above shall not apply to provisions of this Agreement designated as Commercially Sensitive Information and listed in Part 1 of Appendix 3 to this Agreement which, subject to clause 19.2 below, be kept confidential for the periods specified in that Part.
- 19.1.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of such Confidential Information.

19.2 Clause 19.1 shall not apply to:

- 19.2.1 any disclosure of information by either Party that is reasonably required by persons engaged in the exercise of its rights and the performance of its obligations under this Agreement;
- 19.2.2 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;

- 19.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its sub-contractors;
- 19.2.4 any disclosure which is required by any law (including any order of a court of competent jurisdiction), any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the Stock Exchange or governmental or regulatory authority concerned;
- 19.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 19.2.6 any disclosure of information to any Affiliate of the Contractor or any such Affiliate's professional advisers;
- 19.2.7 any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed Post-Expiry Contractor, its advisers and lenders, should the Authority decide to retender the EFW Contract following its termination;
- 19.2.8 any disclosure of information by the Authority to any department, office or agency of the Government;
- 19.2.9 any disclosure by the Authority of any document related to this Agreement to which it is a party and which the Contractor (acting reasonably) has agreed with the Authority contains no Commercially Sensitive Information; and
- 19.2.10 any disclosure for the purpose of:
 - 19.2.10.1 the examination and certification of the Authority's or the Contractor's accounts;
 - 19.2.10.2 any examination pursuant to the Audit Commission Act 1998; or

- 19.2.10.3 any examination in relation to the Authority's Best Value Duty;
- 19.2.10.4 (without prejudice to the generality of clause 19.2.4 and subject to clauses 19.9 to 19.14 inclusive) compliance with the FOIA and/or the Environmental Information Regulations;
- 19.2.11 any provision of information to the Parties' own professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor or may wish to acquire shares in the Contractor and/or Holdco, to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal.
- 19.3 Where the disclosure is permitted under clause 19.2, other than clauses 19.2.4, 19.2.8, 19.2.9 and 19.2.10, the recipient of the information shall be made subject to the same obligation of confidentiality as that contained in this Agreement.
- 19.4 For the purposes of the Audit Commission Act 1998, the Audit Commission and/or the auditor it has appointed to the Authority may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any sub-contractor and may require the Contractor and any sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under the Audit Commission Act 1998 in relation to the Contractor is not a function exercisable under this Agreement.
- 19.5 The Contractor shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purpose of this Agreement, except with the written consent of the Authority such consent not to be unreasonably withheld or delayed.
- 19.6 The Contractor shall note and facilitate the Authority's compliance with the Code of Practice on Access to Government Information (1994). In the event that the Authority is required to provide information to a person as a result of a request made to it under the Code, the Authority shall adhere to the requirements of the Code in disclosing information relating to this Agreement and the Contractor.

19.7 The Parties acknowledge that the auditor appointed by the Audit Commission has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports in the public interest.

19.8 Nothing in this clause shall prevent either Party from using, in the course of its normal business, any techniques, ideas or know-how gained during the preparation or performance of this Agreement to the extent that this does not result in a disclosure of Commercially Sensitive Information.

19.9 Freedom of Information

The Contractor acknowledges that the Authority may be subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 18.10 to 18.15 (inclusive) below.

19.10 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall transfer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five Working Days of receiving a Request for Information and the Contractor shall:

19.10.1 provide the Authority with a copy of all such Information in the form that the Authority requires within 10 Working Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

19.10.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

19.11 Following notification under clause 19.10 and up until such time as the Contractor has provided the Authority with all of the Information specified in paragraph 19.10.2 the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information

requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

- 19.11.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
- 19.11.2 whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

- 19.12 In the event of a request from the Authority pursuant to clause 19.10 above, the Contractor shall as soon as practicable, and in any event within five (5) Working Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in section 3 of the Fees Regulations ("**Appropriate Limit**") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) Working Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 19.13 The Contractor acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Public Authorities' Functions under part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:

- 19.13.1 without consulting with the Contractor; or

19.13.2 following consultation with the Contractor and having taken their views into account,

provided always that where clause 19.13.1 above applies, the Authority shall in accordance with recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

19.14 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least six years from the date it is acquired and shall permit the Authority to inspect such Information as requested from time to time.

20. ASSIGNMENT

20.1 The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) (other than in respect of the whole of the Agreement) to any person other than any public body (being a single entity) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement, the Belvedere Lease and the Belvedere Sub-Lease being:

20.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

20.1.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement, the Property Agreements, the Belvedere Lease and the Belvedere Sub-lease;
or

20.1.3 any other public body whose obligations under this Agreement, the Belvedere Lease and the Belvedere Sub-Lease are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement.

20.2 Subject to clauses 20.3 and 20.4, and subject always to the provisions of the Finance Direct Agreement the Contractor shall not assign, under let, charge, sell, bargain or

otherwise deal in any way with the benefit of this Agreement in whole or in part except with the prior written consent of the Authority.

- 20.3 The provisions of clause 20.2 do not apply to the grant of any security for any loan made to the Contractor under the Financing Agreements.
- 20.4 Nothing in this Agreement shall prohibit the Contractor from providing or procuring the provision of the Post-Expiry EfW Services from a subcontractor, provided that the Contractor shall remain primarily and directly liable for the Contractor's obligations under this Agreement.

21. LAW AND JURISDICTION

This Agreement shall be governed by, and construed and performed in accordance with, the laws of England, and subject to the exclusive jurisdiction of the courts of England.

IN WITNESS WHEREOF this Deed has been duly executed and delivered the day and year first above written.

THE COMMON SEAL of WESTERN)
RIVERSIDE WASTE AUTHORITY was)
hereunto affixed in the presence of:)
)
)

EXECUTED as a deed by RIVERSIDE)
RESOURCE RECOVERY LIMITED acting)
by:)

Director

Director/Secretary