

Terms and Conditions

1. Definitions and Interpretations

1.1 In this Agreement:

"Acceptable Waste" means all waste falling within the following codes of the European Waste Catalogue: 150101 paper and cardboard packaging, 150106 mixed packaging, 150107 glass packaging, 200101 paper and cardboard, 200102 glass, 200108 kitchen and canteen waste, 200301 mixed municipal waste, 200302 market waste, 200303 street cleaning residues, 200301 biodegradable garden and park waste, 200138 wood except chemically contaminated wood. "Agreement" means the Service Agreement, these Terms and Conditions together with any appendices or schedules referred to herein and/or attached. "Collection" means those collections of the Equipment and Material Waste set out in Section 3 of the Service Agreement and carried out by Westminster under this Agreement. "Customer" means the person or body/organisation identified in Section 1(a) of the Service Agreement. "Customer's Premises/Location" means those premises identified under. "Location" in Section 1(d) of the Service Agreement. "EIRs" means the Environmental Information Regulations 2004 together with any code of practice made pursuant to those Regulations and any related guidance issued by a Secretary of State or the Office of the Information Commissioner. "Equipment" means the container or containers to be provided by Westminster and any replacements or additions provided by Westminster from time to time to the Customer under this Agreement. "Excluded Waste": Builders waste, liquid waste, non-burnable construction material, demolition debris; especially plasterboard or gyproc board; Gas cylinders, beer kegs or any other pressure cylinders; Petrol, oils, greases, solvents or paints; Animal or human remains or waste; Acid or caustic substances; Clinical, pathological and biological wastes; Asbestos substances; Tree trunks; Sulphur containing materials in excess of []kg; Machinery other than small household items; Drugs or poisons, Motor vehicle batteries, motor cycles, motor engines, transmissions, rear ends, springs, fenders or major parts of motor vehicles, trailers, agricultural equipment, marine vessels or similar items, farm and other large machinery, items weighing more than 25kg each; items larger than 1.2m; items larger than 1.2m x 0.15m x 0.15; Domestic 'white goods' e.g. fridges, freezers and washing machines etc; All waste, which is not mentioned above and which is not Acceptable Waste "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act together with the FOIA code and any guidance and/or codes of practice issued by the Office of the Information Commissioner or relevant Government Department in relation to the Act. "FOIA Code" means the Department of Constitutional Affairs Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA or any revision or amendment or replacement of that Code. "Initial term" means the period set out in Section 3 of the Service Agreement and which for the avoidance of doubt shall commence on the Effective Date. "Legislation" means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972 relating to Waste. "Renewal Term" shall have the meaning identified in clause 2.1 below. "Services" means the following: The provision of the Equipment; The delivery of the Equipment to the Customer's Location; The collection of the Waste Material if contained within the Equipment from the Customer's Location and the disposal of the Waste Material. "Specialist Equipment" means any Equipment comprising a static compactor or a shredder or any Equipment which has been specifically designed or modified for the Customer's purposes. "Term" means the duration of this Agreement as set out in clause 2.1 below. "Waste" shall bear the meaning ascribed to it by section 75 of the Environmental Protection Act 1990. "Waste Description" means the description of the Waste Material in the Waste Transfer Note, or any subsequent description agreed in writing between the parties, or in respect of Special Waste the description of the Waste Material in the applicable consignment note. "Waste Material" means the commercial and other waste material excluding any Excluded Waste that the Customer shall place into the Equipment and that Westminster shall collect and dispose of in accordance with this Agreement. "Waste Transfer Note" means the Waste Transfer Note completed by the Customer and Westminster and any subsequent Waste Transfer Note completed for Waste Material under this Agreement. "Westminster" means the Lord Mayor and Citizens of the City of Westminster of City Hall, 64 Victoria Street, London SW1E 6GP and its officers and employees and its contractors and agents and their respective officers and employees.

2 Term

2.1 The Agreement shall commence on the Effective Date and shall subject to early termination under common law, statute or this Agreement remain in full force and effect for the Initial Term, and shall be renewed automatically and remain in full force and effect for further successive one year terms (the "Renewal Term"), unless and until either party gives notice of termination by written notice to the other at least 60 days prior to the expiration of the Initial Term or any Renewal Term such notice expiring on the expiration of the Initial Term or the Renewal Term as the case may be.

3 Services rendered by Westminster

3.1 Westminster shall provide the Services during the Term in accordance with the terms of this Agreement.

4 Waste Material

4.1 The Customer shall place all Waste Material in the Equipment and shall not place any Waste Material outside the Equipment or in the vicinity of the Equipment or in any other place for collection by Westminster.

4.2 The Customer warrants that it has absolute title to the Waste Material and has the right to deposit the Waste Material in the Equipment and to transfer the Waste Material to Westminster under the terms of this Agreement.

4.3 The Customer shall bear full responsibility for the identity of the Waste that is deposited in the Equipment, including in the event that this Waste is so deposited by a third party whether with or without the consent of the Customer.

4.4 The Customer undertakes that each Waste Transfer Note it completes in connection with Waste Material shall contain an accurate and adequate description (for the purposes of all Legislation) of the nature and characteristic of the Waste Material, and that Westminster at all times whilst it has custody or control of the Waste Material has an accurate knowledge of the composition of the Waste Material.

4.5 The Customer shall ensure that prior to the Waste Material being placed in the Equipment the Waste Material is lawfully and properly labelled and packaged and in any event so as to enable it to reach its final point of destination or disposal without escape.

4.6 Westminster shall acquire absolute title to the Waste Material when it is loaded into Westminster's collection vehicle.

5 Excluded Waste

5.1 Unless the parties agree otherwise in writing in advance, the storage and collection of Excluded Waste shall not form part of the Services.

5.2 The Customer therefore hereby agrees not to deposit in any Equipment and/or place for collection by Westminster any Excluded Waste and shall use all reasonable endeavours to ensure that no other person or persons deposits in the Equipment or places in the vicinity of the Equipment any Excluded Waste.

5.3 In the event however there is a breach of clause 5.2 above, the Excluded Waste shall not form part of the Waste Material and in particular clause 4.6 does not apply to any Excluded Waste deposited in the Equipment and/or collected by Westminster as a result of this breach. No title in any such Excluded Waste shall transfer to Westminster and the Customer shall indemnify, and hold harmless Westminster, for and against any and all claims, losses, damages, penalties, fines and liabilities whatsoever arising out of the deposit of Excluded Waste in the collection vehicle, containers and other equipment of Westminster, or any subsequent handling of such Excluded Waste by, and on behalf of, Westminster and its agents, contractors and employees.

6. Licence Waste Disposal Facility

6.1 Westminster shall use reasonable endeavours to ensure that the final destination of the Waste Material shall be a properly licensed or exempted facility for disposal, recovery, recycling, treatment or transfer of the Waste Material except for Excluded Waste.

7 Responsibility for Equipment

7.1 The Customer shall have the care custody and control of the Equipment, whilst absolute title in the Equipment shall remain with Westminster.

7.2 The Customer accepts responsibility for all loss, damage or defacement to the Equipment except for normal wear and tear and upon demand by Westminster shall pay to Westminster the cost of replacing any lost Equipment or repairing or reinstating any damaged or defaced Equipment.

7.3 The Customer shall inform Westminster immediately if the Equipment or any part of the Equipment is lost, damaged or defaced in any way whatsoever.

7.4 The Customer shall keep the Equipment safe and secured at the Customer's Location and shall use all reasonable endeavours to prevent any loss, damage or defacement of the Equipment or any part of the Equipment.

7.5 The Customer shall not do the following to the Equipment: Overload it by weight or volume; or move the Equipment from the Customer's Location or alter the Equipment; or affix anything to the Equipment; or use the Equipment for any purpose other than its proper and intended purpose; or load the Equipment so that any part of the Waste Material shall be above the level of the side of the Equipment.

7.6 The Customer shall take all proper precautions to prevent risk or injury to any person through the presence of the Equipment at the Customer's Location.

7.7 The Customer shall not create, or purport to create, or permit to subsist over the Equipment, any mortgage, lien, pledge, charge, assignment, adverse title or security interest, or trust arrangement, or any other encumbrance, or acknowledge any claim by any person and shall take all necessary action to protect Westminster's ownership of the Equipment.

7.8 The Customer shall not, unless with Westminster's prior written consent place any name, sign, marking, advertising or other device on the Equipment; and shall not remove, cover or deface any name, sign, marking, advertising or other device placed by Westminster on the Equipment.

7.9 The Customer hereby gives the irrevocable right and licence to Westminster and its nominees to enter its premises (including without limitation the Customer's Location) at any time with or without vehicles and with or without notice for the purpose of assessing and/or removing the Equipment.

7.10 The Customer shall provide unobstructed and safe access to the Equipment on any schedule or other collection day and if the Equipment is inaccessible, and the schedule pick-up cannot be made, Westminster will notify the Customer, and afford the Customer a reasonable opportunity to provide the required access. However, Westminster reserves the right to charge the Customer for any additional collection cost incurred due to the Customer's failure to provide access.

8. Insurance

8.1 The Customer shall at all times during the Term maintain with a reputable insurance company approved by Westminster adequate insurance coverage in respect of the Equipment in an amount not less than the full replacement value thereof against fire, theft, destruction and damage, from whatsoever cause and other risk and third party liability, and notify the insurer of Westminster's interest in the Equipment so as to be noted on the policy of insurance and agrees that all proceeds of any claim thereon are nominated to be paid directly by the insurer to Westminster.

8.2 The Customer shall, on demand from time to time, produce to Westminster such evidence of insurance as may reasonably be required.

8.3 If the Equipment or any part of the Equipment is lost or damaged such as to be incapable of economic repair in the opinion of the insurers, Westminster shall have the option to elect that, either the insurance money be applied as far as possible in replacing the Equipment or part of the Equipment involved with Equipment or part of a similar type and description, or to terminate this Agreement by giving at least 14 days written notice to the Customer.

8.4 If Westminster serves notice on the Customer under clause 8.3, then the Customer within 30 days of notification by Westminster shall pay the following sums to Westminster, (i) all amounts described in Clause 13.2(a) and (c) below; (ii) any deficiency between the full replacement cost of the Equipment or part of the Equipment concerned and the amount of insurance monies received by Westminster, which shall be notified by Westminster; and (iii) to make available for collection by Westminster any part of the Equipment not so lost or damaged.

9 Service Charges

9.1 Any changes to the type, size and amount of the Equipment, or the type or frequency of the collection in Services, shall require written agreement between the parties and may result in increases in Westminster's charges and rates.

9.2 Any agreed changes shall not affect the validity of this Agreement and this Agreement shall be amended accordingly.

9.3 This Agreement shall continue in effect during the Term, in respect of, and applied to, any agreed new service address location of the Customer (which shall from that time be the Customer's Location) within the area in which Westminster provides a collection service, subject to appropriate increases to the charges and rates in accordance with Westminster's scale of charges for that area.

10 Customer's Obligations/Warranties

10.1 The Customer shall ensure the Waste Transfer Note accurately records the Waste Material and is completed in accordance with all Legislation.

10.2 The Customer shall sign the Waste Transfer Note.

11 Payments

11.1 The Customer shall pay on a monthly basis, or as otherwise agreed, for the services provided in accordance with the published charges and rates enforced at the time.

11.2 Payments shall be made in full by the Customer to Westminster within 30 days of the date of the invoice.

12 Rate Adjustments

12.1 Westminster shall have the right to adjust the published charges and rates to reflect any increase in operating costs, including transportation costs, due to any changes whatsoever including locality changes.

12.2 Westminster shall have the right to increase such charges and rates, from time to time, by such amounts as Westminster shall determine taking into account but not limited to any increases in the Retail Prices Index as published by the Office for National Statistics; or any replacement, and/or any increase in the average weight or volume of the Customer's Waste Material, and/or any increases in Westminster's costs due to changes in local, national or international legislation, rules, ordinances or regulations as applicable to Westminster's operations of the Services or increases in taxes, duties, fees or other governmental charges assessed against or suffered by Westminster.

13 Default in Payment and Termination

13.1 If the Customer shall be more than 30 days late in payment of the invoice as set out in Clause 11.2, or shall be in breach of any provision of this Agreement, or becomes unable to pay its debt or otherwise as a result of insolvency, then Westminster may treat the Agreement as repudiated by the Customer, and either terminate the Agreement forthwith by written notice, or allow the customer a period of 14 days to remedy the breach; and the termination shall be without prejudice to any other rights and remedies of Westminster accrued at termination.

13.2 If Westminster terminates this Agreement under Clause 13.1, the customer shall forthwith make the Equipment available for collection by Westminster, and shall forthwith pay to Westminster; (a) all sums due under this Agreement; (b) as liquidated damages; (i) in a case of collection Services and/or Equipment other than Specialist Equipment, the Customer's latest total monthly charge for the Services multiplied by the number of months remaining in the Term, but subject to a maximum multiply of six, and/or; (ii) in the case of Specialist Equipment the Customer's latest total monthly charge multiplied by the number of months remaining in the Term, less in each case a discount at the rate of 2% per annum compounded quarterly for the accelerated payment; (c) all costs and expenses incurred by Westminster in locating, repossessing or recovering the Equipment or collecting any payments due hereunder or otherwise and obtaining due performance of the Customer's obligations including legal costs.

13.2.2 The Customer expressly acknowledges that in the event of termination of this Agreement under Clause 13.1 the payments set out in sub-clause 13.2.1 (b)

constitute a reasonable pre-estimate of the loss that Westminster will incur in such event and is not imposed as a penalty.

14. Damage to Surfaces and Third Party Property

Westminster shall not be held liable for any damage to the Customer Premises or other parties' premises resulting from Westminster providing or attempting to provide the Services at the Customer's Location.

15 Liability

15.1 Westminster shall not be liable to the Customer for any direct or indirect or consequential loss, or for any damage or expense, of any nature, whatsoever incurred or suffered by the Customer whether arising in contract, negligence, tort or otherwise arising out of or in connection with the provision of any services by Westminster, its employees, or agents, except arising out of Westminster's breach of duty of care pursuant to Section 34 of the Environmental Protection Act 1990 or the negligence of Westminster or its agents servants or employees.

15.2 The Customer acknowledges being subject to the duty of care under section 34 of the Environmental Protection Act 1990, and the Customer shall indemnify and hold harmless, Westminster from and against all claims, losses, damages, penalties, fines and liabilities, resulting from, arising out of the Customer's failure to comply with the duty of care pursuant to Section 34 of the Environmental Protection Act 1990.

16 Indemnity in relation to Equipment

The Customer shall indemnify, and hold harmless Westminster, against all claims, damages, losses and liabilities, whatsoever for injury or death to persons, or loss or damage to, property arising out of the Customer's use, location, operation or possession of Equipment except those caused by the negligence of Westminster or its agents, servants or employees.

17 Indemnity in relation to acts, defaults and negligence of the Customer

The Customer shall be liable, and shall fully and promptly indemnify, and hold harmless, Westminster, its officers, employees and agents against all liabilities, damages, costs, charges, expenses, losses, claims, demands and proceedings incurred or suffered whatsoever (including for the avoidance of doubt but without limitation), injury (including death) to any persons, loss, howsoever arising, be it directly, or indirectly, out of the act, default or negligence of the Customer, its employees or agents in connection with the Customer's rights under this Agreement

18 Assignment

The Customer shall not assign this Agreement without the prior written consent of Westminster and the Customer's account with Westminster being settled in full. However, Westminster may assign both the benefit and burden of the Agreement without restriction.

19 Force Majeure

If for any of the following reasons being fire, explosion, flood, acts of terrorism, war, rebellion, riot, strike, lock-out, adverse weather conditions, or any course beyond the control of the parties, or regulatory action, or any substantial similar reason in each case directly affecting either party ("Force Majeure Event") the affected party is at any time unable to perform an obligation contained in this Agreement, the affected party shall: (a) immediately inform the other party of such Force Majeure Event and its inability to perform its obligation; (b) use its best endeavours to mitigate the effects of such Force Majeure Event; and (c) be excused of the performance of the relevant obligation to the extent that it is prevented from performing such obligation as a direct result of such Force Majeure Event.

20 Entire Agreement

This Agreement constitutes the entire Agreement as to the subject matter thereof between the parties and supersedes all previous Agreements and understandings (if any) between them with respect thereto.

21 Amendment

No amendments to this Agreement shall be binding unless in writing and signed by the duly authorised representative of Westminster and the Customer and expressed to be for the purpose of such amendment or variation.

22 Waiver

Failure by Westminster at any time, or any period, to enforce any one or more of, the provisions of this Agreement, or to require performance by the Customer of any of the provisions of this Agreement, shall not (a) constitute or be construed as a waiver of such provision, or of the right, at any time to subsequently to enforce all terms and conditions of this Agreement; and (b) affect the validity of this Agreement of any part hereof or the right of Westminster to enforce any provision in accordance with its terms.

23 Severance

In the event of any provision of this Agreement being or becoming ineffective or unenforceable, either in its entirety, or in part, this shall be without prejudice to the validity of, and shall not invalidate, the remaining provisions of this Agreement that shall remain in full force and effect.

24 Third Party Rights

For the avoidance of doubt nothing in this Agreement shall confer on any third party any benefit, or the right to enforce, any term of this Agreement and the parties hereby agree to exclude the provisions of the Contract (Rights of Third Parties) Act 1999.

25 Notices

Any Notices to be served under this Agreement shall be sent by pre-paid first class post, or facsimile, and shall be deemed to be delivered: in the case of first class post forty eight hours after posting; and in the case of facsimile when the sender receives a notification of delivery.

26 Confidentiality

The Customer and Westminster shall both during the contract period, and at all times following the termination of this Agreement, keep private and confidential, and shall not use and disclose (whether for its own benefit or that of any third party), any confidential business of, and/or belonging to the other party which has come to its attention as a result of or in connection with the Agreement. In particular, confidential information in relation to the Services shall not be disclosed provided always that this obligation does not extend to any such information, which, (a) comes into the public domain or is subsequently disclosed to the public other than by breach of this clause; or, (b) is required to be disclosed by law including but not limited to the EIRs and the FOIA or by any regulatory authority, or, (c) was already in the possession of the disclosing party without obligations of confidentiality on the date of its receipt from the other party to this agreement.

27 Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of England, and, Westminster and the Customer agree irrevocably to submit to the exclusive jurisdiction of the English Courts

28 Time of the Essence

Time shall be of the essence only in respect of compliance by the Customer with its obligations under this Agreement.

29 Dispute Resolution

29.1 If there is a dispute between the Customer and Westminster concerning the interpretation or operation of this Agreement it shall be referred to a senior officer of Westminster and a senior representative of the Customer for resolution.

29.2 If any dispute is not resolved within 10 working days of the referral under clause 29.1 (or such longer period as Westminster and the Customer may agree), then the parties may attempt to settle it by mediation in accordance with the centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure 2001 (the "model procedure") or such later editions as may be in force from time to time. To initiate the mediation a party must give notice in writing (the "ADR notice") to the other party requesting mediation in accordance with this clause. The mediation is to take place not later than 20 working days after the date of the ADR notice. If there is any issue on the conduct of the mediation upon which the parties cannot agree within 10 working days after the date of the ADR notice, then CEDR will, at the request of any party, decide the issue of the parties having consulted with them.

29.3 If the dispute is not resolved within 10 working days of the mediation then the parties may refer the matter to the English Courts in accordance with clause 27 of this Agreement.