

LONDON WASTE ACTION

CAPITAL WASTE MINIMISATION AND RECYCLING FUND

(THE LONDON RECYCLING FUND)

ECONOMIC DEVELOPMENT - INFRASTRUCTURE BUILDING PROGRAMME

ROUND 11A and ROUND 12 only

GRANT TERMS & CONDITIONS

JANUARY 2005

INTRODUCTION

1. These terms and conditions set out the framework of control under which grant monies will be made by London Waste Action ("**LWA**") to the GLA, London Waste Authorities, private sector companies and not-for-profit organisations from the London Recycling Fund ("the **Fund**") through the Fund's Economic Development-Infrastructure Building Programme. The LWA has been/will be put in funds for the purpose of running the overall Fund Programme by the Department for Environment, Food and Rural Affairs ("**DEFRA**") acting pursuant to the Waste Minimisation and Recycling Programme ("the Programme"), the Waste and Resources Action Programme ("**WRAP**") and the London Development Agency ("the **LDA**").
2. The overall Fund Programme (The DEFRA element of which is provided for under section 153 of the Environmental Protection Act 1990) has been established to help Waste Authorities minimise waste and increase recycling rates. WRAP has allocated monies to the Fund under its local communications fund and the LDA has allocated monies pursuant to its economic development and regeneration powers under the Regional Development Agency Act 1998 (as amended).
3. The Greater London Authority ("the **GLA**") is permitted to apply for grant monies from the Fund by virtue of the Mayor of London's statutory responsibilities in relation to waste management. It is intended that all Approved Projects should conform to the long-term targets and objectives of the Waste Strategy 2000, the Mayor of London's Municipal Waste Management Strategy and the LDA's Economic Development Strategy for London and should support DEFRA's National Public Service Agreement to enable 25% of household waste to be recycled or composted by 2006.

The LWA will evaluate applications for grant monies through a committee of its board of directors ("the **LWA Programme Board**") upon which members of the GLA, the Association of London Government ("**ALG**"), WRAP, the LDA and others will be represented. LWA, upon the specification of the LDA has appointed London Remade Limited ("**LR**") to assist in the capacity building and Fund bid development of the LDA element of the Fund.

4. In recognition of the challenges associated with achieving the aims of the LDA and to enhance the chances of success of the Fund's Economic Development-Infrastructure Building Programme the LDA is making available to potential applicants and (where successful) Approved Applicants assistance and support through a bespoke support programme to be delivered by LR.

This programme includes (but is not limited to) the following:

- (a) support to potential applicants during the application stage to assist in the development of the application with the aim of ensuring high quality bid development, implementation and delivery;
- (b) access to partnerships (a mandatory requirement of the application process) through a partnership building programme, which includes engagement and brokering with boroughs, the private sector and not-for-profits sector;
- (c) advice on additional sources of funding;
- (d) the provision of expertise in linking economic development and environmental objectives an important aspect of grant applications; and
- (e) for Approved Applicants and their partners, support and assistance during project implementation to specifically monitor and report to LWA (and the LDA where required) on core LDA targets and additional outputs required by LWA as a condition of grant funding.

An important aim of this support programme, freely provided through an LDA grant, is that Approved Applicants fulfill their contractual grant obligations.

For the avoidance of doubt the support programme is independent of the process of managing and administering the Fund and the grant award process

5. Applicants whose requests for grant monies are approved by the LWA will be responsible for ensuring that the grant monies are used solely for the purposes approved by the LWA in an accountable and transparent manner and in conformity with these Terms and Conditions. In particular, any targets set by the LDA must be achieved within stipulated timescales. Approved Applicants must repay to LWA (or should the LWA cease to exist, to DEFRA, WRAP or the LDA as the case may be, depending upon which entity has sourced the grant monies) on demand any Cash Advance or part thereof which is applied for a purpose not approved by the LWA.

LWA reserves the right to reduce, suspend or withhold grant monies in whole or in part if any Approved Applicant fails to comply with these terms and conditions. In certain circumstances LWA may require all or part of a Cash Advance to be repaid.

6. Grant monies will be utilised to meet Approved Project costs and may be made up of an element of capital grant and revenue grant, depending upon the nature of the project. Where funds from the budget of the European Union ("**EU Funds**") are made available for the purposes of a Project, grant monies and EU Funds shall not exceed the lesser of the total cost of the Project and the limit set for public support by the relevant EU

Programme. In any event, the total aggregate Cash Advance paid to an Approved Applicant shall be the lower of:

- (a) 100% of the Approved Applicant's actual expenditure incurred on the approved project; and
- (b) 100% of the Approved Project costs.

APPLICATIONS FOR GRANT MONIES

- 7. Applications for grant monies shall be judged by the LWA Programme Board in accordance with criteria agreed between LWA and the LDA. The evaluation process to be followed by the LWA Programme Board has been agreed with the LDA.
- 8. Officials from DEFRA and/or the Government Office for London may attend and observe meetings of the LWA Programme Board.
- 9. Any Applicant who is represented either directly or indirectly on the board of LWA or the LWA Programme Board shall be responsible for putting in place adequate procedures to ensure that there is no impropriety or conflict of interest in connection with applications for grant monies and for notifying the LWA thereof. Applicants must declare any interest they may have in connection with their applications.
- 10. Applicants shall notify LWA immediately of any attempt by any person (including, but not limited to, an employee or agent of the Applicant) to offer any inducement (including gifts or hospitality) in relation to an application for a Cash Advance. Applicants shall ensure that all persons who may be involved or have an interest in any such application are made aware of the criminal offences under the Prevention of Corruption Acts 1889-1916.
- 11. Applicants shall ensure that applications for grant monies:
 - (a) are for the minimum amount of financial support which LWA can grant to ensure compatibility with the achievement of an effective result in respect of the Project;
 - (b) do not displace funding originally earmarked for the Project;
 - (c) lever in the maximum private sector and other finance; and
 - (d) do not displace funding more properly provided by some other agency or Government department in respect of the Project.

12. Applicants shall be solely responsible for the preparation and contents of their applications for grant monies, all reports required by these Terms and Conditions and their Grant Claim Forms (and for all costs and expenses incurred in so doing, including the evaluation of potential partners) and LWA, members of the LWA Programme Board and LR shall have no responsibility for any advice or assistance they or any of them may give or fail to give in relation to any such application provided that such advice and assistance (where given) is given in good faith and without bias. LWA will not enter and cannot be required to enter into any correspondence with unsuccessful Applicants regarding unsuccessful applications for grant monies.
13. LWA shall have sole discretion in determining what constitutes an Approved Project and Applicants shall have no right of appeal from LWA's decision on the matter which shall be final.

SUBMISSION OF CLAIMS FOR GRANT MONIES

14. Unless otherwise agreed by LWA, all claims for grant monies for spending in Quarter 1, Quarter 2 and Quarter 3 in either financial year 2004/5 or 2005/6 shall be made within 14 days of the end of each Quarter. Claims for grant monies for spending in Quarter 4 shall be made on the basis of a projection of expenditure for the Quarter period to 31 March in the relevant year and shall be made no later than 28 February in the relevant year. All claims shall be made on a Grant Claim Form accompanied by the following :
 - (a) a certificate signed by the Project Officer nominated by the Approved Applicant and the Approved Applicant's Chief Financial Officer (or representative) stating that the amount claimed is due or, in the case of the final Quarter, expected to be defrayed before 31 March in the relevant year, in accordance with these Terms and Conditions;
 - (b) evidence of expenditure actually incurred (distinguishing between revenue and capital expenditure, as appropriate) for the purposes of the Approved Project; and
 - (c) a progress report as required by paragraph 29 below.
15. All claims and finance related queries should be sent to the Project Director, London Recycling Fund, c/o London Waste Action, 1 Hobhouse Court, Suffolk Street, London SW1Y 4HH and be copied to the LRF Project Manager, as notified to the Approved Applicant by LWA
16. It is anticipated that all claims will be processed within 30 Working Days of receipt of a valid claim form from Approved Applicants accompanied by the documents referred

to in paragraph 13 above subject to LWA being put in funds by LDA. LWA accepts no liability for any losses incurred by Approved Applicants attributable to any delay in making grant monies where funds have not been made available by LDA. All payments shall be made by means of the Bankers Automated Claims System (BACS) directly into the bank account specified by the Approved Applicant after deduction of bank charges, if any.

17. All claims for grant monies are subject to the approved maximum limits on expenditure set by LWA Programme Board at the time of approving the application for the Cash Advance. If at any time thereafter the Approved Applicant obtains EU Funds or other public sector monies for the purposes of the Approved Project, it shall immediately notify LWA of the same and the amount of the available Cash Advance shall be reduced by the value of the EU Funds or public sector monies so obtained.

PAYMENT OF GRANT MONIES

18. Subject to these Terms and Conditions and LWA being put in funds by the LDA and any other relevant fund contributors for such purpose, LWA will pay the agreed revenue element and capital element of any Cash Advance Quarterly in arrears against evidence of expenditure actually incurred by the Approved Project as claimed in the claim form submitted pursuant to paragraph 13 above. LWA may, in exceptional circumstances, pay a portion of a Cash Advance in advance for use as 'start-up' monies.
19. Grant monies shall be paid solely in respect of the expenditure on the Approved Project identified in the relevant LWA Decision Sheet and for no other purpose and are subject in addition to any specific conditions placed on the Approved Project by LWA as set out in the LWA Decision Sheet.
20. LWA shall have the right to suspend, reduce, withhold or re-schedule payment or require repayment of any Cash Advance if:
 - (a) the Approved Applicant fails to comply with these Terms and Conditions or the terms of any applicable LWA approval; or
 - (b) the Approved Project is not making satisfactory progress and in particular the agreed outcomes or Targets are not being achieved within stipulated timescales; or
 - (c) there is any financial irregularity (which expression shall have the meaning ascribed thereto in paragraph 53 below); or

- (d) LWA is not satisfied that the Approved Applicant has achieved, is achieving or is likely to achieve the performance levels set out or referred to in these Terms and Conditions or any Project specification.
- 21. LWA may deduct from any payment due to an Approved Applicant any amount due to LWA under these Terms and Conditions.
- 22. If at any time it is agreed or determined that the Approved Applicant has been overpaid on prior grant monies the amount of such overpayment (including interest thereon at the prevailing rate from time to time under the Supreme Court Act 1981) shall be deducted from the next payment due or shall be recoverable by the LWA from the Approved Applicant as a debt due to LWA on demand.
- 23. All payments shall be made in pounds sterling but if the United Kingdom becomes a participating member state for the purposes of the European Monetary Union and the Euro becomes the lawful currency of the United Kingdom, then:
 - (a) that shall not affect the validity of these Terms and Conditions or the rights and obligations of the LWA and the Approved Applicant under them; and
 - (b) with effect from the date on which it occurs, any amount referred to in an Approved Project appraisal or other document in pounds sterling shall be re-denominated in Euros at the rate and in the manner determined by the relevant legislation or LWA.

PROJECT MANAGEMENT, MONITORING AND FINANCIAL SYSTEMS

- 24. The Approved Applicant shall:
 - (a) establish effective appraisal, project management, project monitoring and financial systems so that the costs of the Approved Project and the projected financial and non financial outputs (eg; jobs created, tonnes of waste processed) in respect of such Project can be clearly identified and the proprietary, regularity and value for money of all transactions relating to the Fund ensured. LWA and LR shall have no responsibility for the day to day management or execution of the Approved Project which shall be the sole responsibility of the Approved Applicant.
 - (b) ensure on going compliance with the economic development outputs that have been agreed as a condition of the grant, or as part of the approved project plan.

- (c) comply with any Project Implementation Evaluation arrangements recommended by LWA so as to assist in the evaluation of the quality of the outputs delivered by the Approved Project and consistency of reporting.
25. At the commencement of the Approved Project, the Approved Applicant shall prepare a project plan that specifically sets out the planned outputs for the Project, in a form approved by LWA. The plan shall include the planned financial outputs (income and expenditure) and non-financial outputs for the Approved Project. The project plan shall include a spending profile that shows Quarter by Quarter, the total projected expenditure for the Project and the amounts of spending that represent the approved funding. The planned non financial outputs (e.g. jobs created, tonnes of waste processed) and milestones that are planned to be achieved for each Quarter shall also be identified.
26. If during the life of the Project the Approved Applicant wishes to vary the details set out in the approved project plan, the Approved Applicant shall submit an amended project plan to LWA for approval.
27. LWA for itself and on behalf of LDA reserves the right to commission an independent evaluation of activities relating to the Fund and the Approved Applicant agrees to assist with any such evaluation at its own cost and expense.
28. The Approved Applicant shall keep a record of all income and expenditure generated and incurred in respect of an Approved Project and shall retain all accounting records relating thereto for a period of at least 6 years after the completion of the Project or earlier termination of this Agreement. For this purpose 'accounting records' include all information relating to accounts in documents of any description, whether in paper or electronic format.
29. The Approved Applicant shall make available for inspection by LWA, LDA and/or the NAO or any person acting on their behalf or any of them all accounting records referred to in paragraph 27 above and such other information relating to the Approved Project as they may from time to time reasonably require.

SUBMISSION OF PROGRESS REPORTS

30. The Approved Applicant shall submit to LWA quarterly progress reports , in a form and content specified by LWA, outlining progress on the Approved Project. Upon notice by the LWA, Approved Applicants may be required to submit Quarterly reports to the LDA and where appropriate DEFRA and/or WRAP . In particular such reports shall report on the financial and non-financial outputs included in the approved project plan. In reporting outcomes the Approved Applicant shall refer to appropriate project

milestones, specific economic development indicators and other outputs given in guidance published by LWA

31. The quarterly progress report shall as a minimum include a completed copy of the Quarterly Project Monitoring Form. Guidance on Project Performance Reporting and the provision of progress reports will be provided by LWA. Approved Applicants shall follow this guidance closely when completing the quarterly progress monitoring forms and making progress reports, in order to enable easy and consistent analysis of progress.
32. If the actual expenditure incurred by an Approved Applicant in a Quarter is different from that previously approved by the LWA, Approved Applicants will reflect such changes in their progress report, provide an explanation of the reason for the variation and what impact the variation might have on project delivery. The Approved Applicant shall also put forward proposals to re-phase project expenditure in future by agreement with LWA.
33. The quarterly progress reports shall be submitted at the same time as the Quarterly claim required to be submitted under paragraph 13 above. In the case of the progress report for Quarter 4, the report shall be on the basis of a projection of the financial and non-financial outputs and milestones for the Quarter period to 31 March in the relevant year and shall be made no later than 28 February in the relevant year. If a nil claim for payment is made for a Quarter, Approved Applicants will nevertheless be required to submit a Quarterly progress report.
34. The Approved Applicant shall cooperate with LWA and LR on the completion and submission of any reports which LWA is required to submit to LDA and provide LWA with such information in relation thereto and other matters as LWA may from time to time reasonably require.
35. The Approved Applicant undertakes that the contents of its reports and any information it provides to LWA pursuant to these Terms and Conditions shall be true and accurate and not misleading.
36. LWA shall have the right at any time to require an Approved Project to be tested for "best value" by an independent third party. The reasonable costs of any such evaluation may be deducted by LWA from the amount of any Cash Advance due to be made to the Approved Applicant.
37. The Approved Applicant undertakes to achieve the project outputs within the stipulated timescales that have been agreed as a condition of the grant, or as part of the approved project plan

FINAL CLAIM AND ANNUAL REPORT FOR EACH YEAR

38. The Approved Applicant shall complete a final claim form (the "**Final Claim**") in respect of each financial year in which the Approved Applicant made a Quarterly claim as described in paragraph 13 above confirming that all expenditure incurred on the Approved Project has been properly incurred in accordance with these Terms and Conditions and that the entries in the form are accurately stated. The Final Claim shall be certified by the Project Officer and the Approved Applicant's auditors and shall be submitted by 30 June following the end of the relevant financial year , together with the annual report required by paragraph 39 below.
39. No final claim form shall be used for the purpose of enabling the Approved Applicant to adjust the amount of any claim already made unless to correct an error, make an adjustment necessary following the projections made in a Quarter 4 claim, or to make some other adjustment agreed with LWA. Where such an adjustment is necessary a full written explanation of the reasons shall be prepared by the Approved Applicant and appended to the final claim.
40. For each financial year in respect of which quarterly claims are made and thereafter up to and including in respect of the financial year ending 31 March 2008 the Approved Applicant shall prepare and submit an annual report in respect of progress on the Approved Project during the preceding year at the same time as making the Final Claim (if applicable). The annual report shall summarise progress to date and shall be in a form and content that accords with the guidance available from LWA. The LWA shall issue further guidance to Approved Applicants on the required nature and content of the annual report. Upon notice by the LWA, Approved Applicants may be required to submit annual reports to the LDA and where appropriate DEFRA and/or WRAP.
41. Where there are discrepancies between the amounts originally projected to be expended on the Approved Project and actual expenditure, and where the amounts to be contributed by third parties to the Approved Project differ from the amounts originally projected in the approved project plan, the annual report shall contain an explanation of such discrepancies and differences together with an assessment of the implications for the success of the Project and the agreed measurable outcomes.

SUBMISSION OF FINAL PROJECT REPORT

42. The Approved Applicant shall prepare and submit for approval by LWA in a form and content to be specified by LWA, a Final Project Report (the "**Final Project Report**") that gives an overview of the entire Project and key details of the Project, such as outputs, outcomes, total projects costs and the benefits achieved. The Final Project Report shall be submitted at the same time as the Final Claim for the last financial year in which the Approved Applicant made a Quarterly claim. A template upon which the

Final Project Report should be based will be sent to the Approved Applicant by LWA before completion of the Project.

43. If the draft Final Project Report is not approved by the LWA, the Approved Applicant shall make such amendments thereto as the LWA may reasonably require and resubmit the draft to the LWA for approval so that it complies with the form and content specified by the LWA
44. The LWA may withhold payment of the sum of up to £10,000 of the Cash Advance until the Final Project Report has been submitted and approved by LWA in accordance with these Terms and Conditions

INVENTORY OF ASSETS

45. The Approved Applicant shall keep and maintain for a period of seven years after the completion of the Approved Project or earlier termination of this Agreement a register of all fixed assets and all land and buildings purchased with grant monies showing the date of purchase, the description of and price paid (net of recoverable VAT) for the asset, the serial and/or identification numbers identifying the asset, the location of the asset and of the title deeds to the asset, the details of any loss or damage to the asset, and the date of the disposal of the asset and the sale proceeds (net of VAT) thereof.
46. LWA, LDA and/or the National Audit Office ("NAO") and persons acting on their behalf or any of them shall have the right to inspect the asset register maintained by the Approved Applicant and to take copies thereof and extracts therefrom.

EXTRA INCOME OR DISPOSAL OR SALE OF ASSETS

47. The Approved Applicant shall ensure that when it purchases capital goods, such as vehicles, these forthwith become the unconditional property of the Approved Applicant free from all charges and encumbrances. This will enable the Approved Applicant to utilise such capital goods for the purposes of the Approved Project irrespective of any changes of contractor or supplier.
48. Should the Approved Project not achieve the Targets or deliver the outcomes approved by LWA the Approved Applicant shall consult immediately and on an on-going basis with LWA over the future use of capital goods purchased from grant monies. It will be the responsibility of the Project Officer nominated by the Approved Applicant to liaise with LWA regarding the use of such assets, particularly where it is intended that they should be used in any alternative recycling or waste minimisation project which the Applicant may wish to put forward to LWA for approval.

49. The Approved Applicant shall forthwith notify LWA in writing and subsequently in the next Quarterly and annual reports of any unexpected income, profit or receipt arising out of the use, sale or disposal of any asset purchase from a Cash Advance or otherwise accruing in relation to the Approved Project. The notice shall specify how the Approved Applicant intends to use such income, profit or receipt.
50. If required by LWA, the Approved Applicant shall surrender to LWA (or if LWA so directs, then to the LDA) a share of such unexpected income, profit or receipt calculated in proportion to the share of the relevant cost covered by the Cash Advance. Subject to the approval of the LDA, LWA will not require surrender in cases where the income, profit or receipt is intended to be used and a plan is put in place to so use the funds for purposes falling within the stated objectives of the Programme.

AUDITING ARRANGEMENTS.

51. Grant monies will be made available to the Approved Applicant on the condition that each annual Final Claim is certified by the Approved Applicant's auditors to the effect that all claims for grant monies during the year in question have been fairly stated and made in accordance with these Terms and Conditions.
52. The Approved Applicant shall ensure that there are procedures in place to establish an effective audit trail so that all costs incurred in connection with the Approved Project and the outputs generated therefrom can be clearly identified and measured so as to ensure the propriety, regularity and value for money of all payments from the Fund. The Approved Applicant shall be responsible for setting out its proposals in respect thereof when making an application for a Cash Advance.
53. The Approved Applicant will be responsible for arranging at its own cost and expense the necessary annual audit of the approved Project accounts required with each annual Final Claim.

FINANCIAL IRREGULARITY

54. The Approved Applicant shall notify LWA immediately in writing if any irregularity is suspected or otherwise brought to its notice and indicate the steps being taken to deal with such irregularity. For this purpose 'irregularity' means any fraud or other impropriety, mismanagement or use of the Fund or any Cash Advance for purposes other than those referred to in these Terms and Conditions or approved by LWA.
55. The Approved Applicant shall at its own cost and expense take such steps as LWA may reasonably require to recover any sum from any person responsible for a financial irregularity.

LETTING CONTRACTS

56. The Approved Applicant shall, where appropriate, comply strictly with all European Union and national rules on procurement (the "**Public Procurement Rules**") relating to the provision of work, supplies and services in respect of Approved Projects.
57. The Approved Applicant shall ensure that all contracts let by it or on its behalf shall be let through arrangements that achieve "Value for Money". The Approved Applicant shall maintain a register of any contracts which have been let without having been subject to a competitive tendering process. The register shall include a brief justification for the action taken and shall be made available to LWA, LDA and the NAO or any person acting on their behalf or any of them for inspection at any time on reasonable advance notice.
58. The Approved Applicant shall be solely responsible for thoroughly assessing the financial standing of all third parties with whom it contracts either directly or indirectly.

STATE AID

59. The Approved Applicant shall be entirely responsible for its own assessment of whether any grant monies it may receive constitute State Aid.
60. In the event that any grant monies are deemed by the European Commission or any national or European Court to constitute unlawful State Aid, the Approved Applicant agrees that it will repay on demand any such grant monies to LWA.

CONFLICT OF INTEREST

61. The Approved Applicant shall ensure that it puts in place adequate procedures to ensure that there is no impropriety or conflict of interest in connection with the administration of the Fund or the way in which grant monies are applied. The Approved Applicant shall declare forthwith any interest it may have in connection with any Approved Project.
62. The Approved Applicant shall notify LWA immediately in writing of any attempt by or on behalf of any person or organisation which stands to benefit from a Cash Advance to offer any inducement (including gifts or hospitality). The Approved Applicant shall ensure that any one to whom this paragraph applies is made aware of the criminal offences under the Prevention of Corruption Acts 1889-1916.
63. LWA may terminate the grant upon the giving of reasonable notice if the Approved Applicant has breached any of the provisions of Clause 60 and/or Clause 61 and if the

breach is capable of remedy, the Approved Applicant has failed to take reasonable steps to remedy such breach.

TERMINATION

64. If the Approved Applicant uses any Cash Advance or part thereof for purposes other than those for which it was approved by LWA or becomes insolvent or is otherwise in breach of these Terms and Conditions, LWA may at its sole discretion:
- (a) terminate this agreement to make grant monies forthwith by notice in writing to the Approved Applicant;
 - (b) recover from the Approved Applicant all or any part of any Cash Advance previously made as a debt due on demand;
 - (c) recover from the Approved Applicant any expenses which LWA or LDA may incur as a result of the act or default of the Approved Applicant; and
 - (d) suspend all further payments from the Fund without incurring any liability to the Approved Applicant howsoever arising.
65. Without prejudice to the actions which LWA decides to take under paragraph 63 above, the Approved Applicant shall within 21 days of the notice of termination provide to LWA:
- (a) a report on the progress made by the Approved Applicant in administering the Approved Project up to the date of termination together with such accounting records, documents and other information as the LWA may reasonably require;
 - (b) a statement containing details of all payments made and sums which the Approved Applicant has undertaken to pay in connection with the Approved Project prior to the date of the notice of termination; and
 - (c) payment in full, including interest at the rate specified in paragraph 21 above, of the outstanding amount of any Cash Advance and for this purpose 'outstanding amount' means the amount of any Cash Advance which has not been committed by the Approved Applicant in respect of the Approved Project.

UNDERTAKINGS AND INDEMNITY

66. The Applicant undertakes to discharge its obligations under these Terms and Conditions so as:

- (a) not to cause or contribute to any breach by LWA of its funding agreement with the LDA; and
- (b) not to hinder, obstruct or interfere with the exercise or enforcement by the LDA of its rights under such funding agreement

whether or not, in each case, the Applicant is or becomes an Approved Applicant.

67. The Applicant shall indemnify LWA, the LDA and LR against all claims demands proceedings damages costs charges and expenses which may be claimed from or payable by LWA, the LDA or LR as a result of any breach of these Terms and Conditions or in respect of any loss or damage suffered by any person or damage to any property or any person or injury or death of any person arising or in consequence of the making of any grant funding or otherwise in connection with the Project except to the extent that such loss damage or injury is caused by or contributed to by LWA, the LDA or LR and their respective servants or agents in which case LWA, the LDA and LR (as the case may be) shall not be, as between itself and the Applicant, entitled to the benefit of the indemnity, save to the extent that such loss or injury is not directly attributable to LWA's, the LDA's or LR's act, omission or other contribution.
68. LWA, its servants and agents shall have no obligation or liability whatsoever (including liability in negligence) for not approving a Project and/or for the non-granting of a Cash Advance, a series of grant monies to any Applicant or a reduced Cash Advance.
69. The benefit of every indemnity and limitation and exclusion of liability of LWA contained in these Terms and Conditions shall also extend to the benefit and protection of LR save to the extent that;
- (a) the loss damage or injury so indemnified against or limited or excluded in favour of LWA is caused by or contributed to by LR or its servants and agents;
 - (b) LR has already recovered under paragraph 66; or
 - (c) (iii) LR would not be entitled to recover under paragraph 66.

For the purpose of this clause LWA is, and shall be deemed to be, acting as agent and trustee for and on behalf of LR, its servants and agents and LR shall be entitled to enforce any such indemnity and rely upon any such limitation and exclusion of liability as if it were a party to these Terms and Conditions

PUBLICITY

70. The Approved Applicant shall ensure that in any publicity relating to the Approved Project conforms with the Guidance on Publicity issued from time to time by LWA and that the support of the Fund, the Fund Partnership (LWA, the GLA and the ALG) and the LDA contribution is evidenced:
- (a) in all press releases press materials and media releases prepared by an Approved Applicant by an acknowledgement that the LDA has made a contribution through the London Recycling Fund to the funding of the Approved Project; and
 - (b) in all publicity material (including without limitation signs, notices, flyers, bins, stickers, fridge magnets, vehicles' signage and other similar articles) in relation to the Approved Project by the use of the "Recycle for London" Campaign Logo as notified by LWA to the Approved Applicant.

GENERAL

71. Any notice or other communication to be given under or in relation to these Terms and Conditions shall be in writing and:

- (a) in the case of notices to be sent by LWA to the Approved Applicant, shall be sent to the address given by the Applicant in their application
- (b) in the case of notices to be sent by the Approved Applicant to LWA, shall be sent to:

London Recycling Fund,
c/o London Waste Action
1 Hobhouse Court
Suffolk Street
London
SW1Y 4HH

Marked for the attention of the Project Director.

Any notice so given shall be deemed to have been received:

- (a) in the case of delivery by hand, at the time of delivery;
- (b) in the case of post, 48 hours from the time of posting, when sent by recorded or guaranteed delivery; and

(c) in the case of facsimile transmission, at the time of despatch.

Provided that if a notice is or would (but for this proviso) be deemed to be received on a day that is not a Working Day or is received after 4.30 pm on a Working Day, it shall instead be deemed to be received at 10 am on the Working Day next following that day.

72. The maximum aggregate liability of LWA to the Approved Applicant under these Terms and Conditions and at law shall not exceed 20% of the value of grant monies made to the Approved Applicant for the purposes of the Approved Project.
73. LWA shall not be responsible for any indirect or consequential loss or damage howsoever arising including, but not limited to, loss of profits, loss of contracts, loss of use and/or loss of opportunity.
74. The Approved Applicant shall ensure that in administering the Approved Project it and any one acting on its behalf complies with the law for the time being applying in England and Wales (or Scotland or Northern Ireland, where applicable).
75. LWA expects the Approved Applicant as an employer, user of volunteers and provider of services to operate a policy of equal opportunity.
76. A person other than LR who is not a party to these Terms and Conditions shall not have any rights hereunder by virtue solely of the Contracts (Rights of Third Parties) Act 1999.

DEFINITIONS

77. In these Terms and Conditions the following words and expressions shall have the following meanings, unless the context otherwise requires:

"ALG" means the Association of London Government;

"Applicant" means the GLA, London Waste Authority or a private sector body which requests a Cash Advance;

"Approved Applicant" means an Applicant whose request for a Cash Advance has been approved by LWA;

"Approved Project" means a project which meets the criteria referred to in paragraph 6 above and in respect of which an application for a Cash Advance has been approved by the board of LWA as confirmed by the issue to the Approved Applicant of an LWA Decision Sheet;

"Best Value Performance Indicator" means the standards of measurement used in determining performance by local authorities delivering specific services as set out in the Local Government Act 1999 (as amended) legislative framework;

"Cash Advance" means an advance of cash made by LWA by way of grant to approved Applicants for application towards Approved Projects and whether in respect of 'start-up monies' or for the application towards the Approved Project on an on-going basis;

"DEFRA" means the Department for Environment, Food and Rural Affairs including the Secretary of State and those acting under their authority;

"Final Claim" has the meaning given to it in paragraph 37 above;

"Final Project Report" has the meaning given to it in paragraph 41 above;

"Fund" means the Capital Waste Minimisation and Recycling Fund, also known as the London Recycling Fund(LRF) and which includes funding contributions made or to be made available by the LDA;

"Fund Partnership" means LWA, the GLA and the ALG;

"Fund Programme" means the Waste Minimisation and Recycling Programme involving the allocation of £140 million as provided for in the Spending Review 2000 by Her Majesty's Treasury to help local authorities in England with waste management responsibilities to meet their statutory recycling, waste minimisation and composting targets;

"GLA" means the Greater London Authority;

"Grant Claim Form" means a claim form in a format approved by LWA;

"LDA" means the London Development Agency;

"London Waste Authority" means any Waste Disposal Authority in the Greater London Area as such is defined by section 30(2)(b) of the Environmental Protection Act 1990 and any Waste Collection Authority in Greater London as defined by section 30(3)(b) of the Environmental Protection Act 1990;

"LR" means London Remade, a company limited by guarantee;

"LWA" means London Waste Action, a company limited by guarantee and a charity;

"LWA Decision Sheet" means the document of that name issued by LWA to the Approved Applicant in respect of an Approved Project;

"LWA Programme Board" has the meaning given to it in paragraph 3 above;

"LWA Project Manager " means LWA's nominated representative (who will be the principal contact between the LWA and Approved Applicant), with responsibility for the co-ordination and administration of LWA's responsibilities in respect of the Approved Project;

"Monitoring and Grant Claim Form" means a project progress monitoring and claim form in the form issued from time to time by LWA.

"NAO" means the National Audit Office;

"Project" means a project in respect of which an Applicant has applied for a Cash Advance or series of grant monies;

"Project Officer" means the officer nominated by the Approved Applicant as having responsibility for the work undertaken or to be undertaken in relation to an Approved Project and the main contact for LWA;

"Quarter" means a period of three months ending on 30 June (Quarter 1), 30 September (Quarter 2), 31 December (Quarter 3) and 31 March (Quarter 4), and **"Quarterly"** shall be construed accordingly;

"Quarterly Project Monitoring Form" means a project progress monitoring report in a format approved by LWA;

"Quarterly Project Performance Form" means a project performance form in a format approved by LWA and LDA;

"Targets" means the performance targets and outputs in respect of the Project as identified in the Project Application form, the Project Plan, (and any amendment agreed by the LWA) and in any conditions applied to the grant award for the Approved Project

"Working Day" means a day on which commercial banks in London are open for business.