

Company Number: 2619506

THE COMPANIES ACTS 1985 AND 1989

PRIVATE COMPANY LIMITED BY SHARES

RESOLUTION IN WRITING

OF

COUNTY ENVIRONMENTAL SERVICES LIMITED (THE "COMPANY")



WRITTEN RESOLUTION

We, the undersigned, being the sole member of the Company, agree, pursuant to regulation 53 of Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (as amended) ("Table A") incorporated into the articles of association of the Company pursuant to article 1 of such articles, that the following resolution be passed and have effect as a special resolution:

SPECIAL RESOLUTION

That in accordance with regulation 70 of Table A, the directors of the Company are directed and authorised to enter into and execute the Loan and WDC Amendment Agreement (in the form specified by the County Solicitor a draft of which is appended to this special resolution) on behalf of the Company.

Signed:

*Don Kennedy*  
For and on behalf of

Date:

*4th July 2005*

Cornwall County Council

DATED

2005

**CORNWALL COUNTY COUNCIL**

- and -

**COUNTY ENVIRONMENTAL SERVICES LIMITED**

**LOAN AND WDC AMENDMENT AGREEMENT**

Draft: 28 June 2005

**Lovells**

F4/PB/LD/1428655.09

R3846/00013

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**BETWEEN:**

- (1) **Cornwall County Council** of County Hall, Truro, Cornwall TR1 3AY (the "**Authority**"); and
- (2) **County Environmental Services Limited**, a company registered with number 02619506 whose registered office is at United Mines Landfill Site, United Downs, St. Day, Redruth TR16 5HU ("**CES**").

**WHEREAS:**

- (A) All of CES' shares are owned by the Authority.
- (B) The Authority and CES entered into a waste disposal contract (the "**WDC**") in May 1992 and wish to amend the provisions of the WDC as set in this Agreement.
- (C) In consideration for CES agreeing to the proposed amendment to the WDC the Authority has agreed to make available to CES a working capital loan facility denominated in Sterling, subject to the terms and conditions of this Agreement, and enter into a guarantee in the form appended to this Agreement.
- (D) The proposed amendment to the WDC is made pursuant to the Authority's powers provided (inter alia) by Schedule 2, Part II, paragraph 22 of the Environmental Protection Act 1990 ("**EPA**") and section 2(1)(c) of the Local Government Act 2000 ("**LGA**"). The provision of the Working Capital Facility and the Guarantee is within the power of the Authority pursuant (inter alia) to section 51 of the EPA and section 2(1)(c) of the LGA, and such provision falls within exceptions to the general prohibition on providing loans and guarantees, pursuant to the Local Government and Housing Act 1989.

**IT IS AGREED:**

**1. INTERPRETATION**

- 1.1 Conditions 1.2 to 1.6 (inclusive) of the WDC shall apply to this Agreement.
- 1.2 In this Agreement, a reference to a document is a reference to that document as from time to time amended, supplemented or varied.
- 1.3 Any phrase introduced by the terms "including" or "include" or any other similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 Terms defined in Condition 1.1 of the WDC shall, unless the contrary is stated, have the same meanings when used in this Agreement.
- 1.5 In addition, in this Agreement the following expressions shall have the following meanings:

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for business in London;

**"Business Plan"** means the business plan of CES in the form approved by the Executive of the Authority on 19 May 2004 with such further supplements or amendments as may be approved by the Authority in writing from time to time;

**"Drawdown Date"** means in respect of each Drawing the date stated in the Notice of Drawdown;

**"Drawing"** means each amount drawn under the Working Capital Facility pursuant to clause 7;

**"Encumbrance"** includes any charge, debenture, mortgage, lien, security assignment or any other encumbrance whatsoever;

**"Event of Default"** means any of the events referred to in clause 13;

**"Excess Expenditure"** means all Permitted Expenditure, which is incurred by CES after the date hereof, only to the extent that such Permitted Expenditure exceeds the threshold attributed to such item of expense or liability in the Business Plan;

**"Guarantee"** means a guarantee to be entered into by the Authority in the form of the deed poll set out in Schedule 3 to this Agreement;

**"Interest Payment Date"** means every 31 March, 30 April, 30 September and 31 December, but if such day is not a Business Day then Interest Payment Date shall mean the next Business Day;

**"Integrated Waste Management Contract"** means an agreement to be entered into by the Authority and another for the provision of waste management services pursuant to a Notice of the Official Journal of the Economic Union dated October 2003;

**"Loan"** means the amount of the Drawing for the time being outstanding and any other amounts outstanding hereunder including rolled-up interest;

**"Permitted Expenditure"** means any expense or liability incurred by CES, which is of a type permitted by the Business Plan; and

**"Sites"** means the landfill sites and any other waste disposal sites owned by the Authority and operated by CES pursuant to the WDC, and any sites leased by the Authority or CES pursuant to a Civic Amenity Contract, dated 17 August 1998, entered into by the Authority and CES.

## **2. WDC AMENDMENT**

2.1 In consideration for the Authority agreeing to provide the Working Capital Facility and the Guarantee pursuant to this Agreement, CES agrees that with effect from the date of this Agreement, the WDC shall be amended as set out in clauses 2.2 to 2.4 below.

2.2 A new Condition 11.1A shall be inserted into the WDC immediately after the existing Condition 11.1:

"11.1A Notwithstanding Condition 11.1, the Authority may terminate the Contract by not less than two months' notice in writing provided that the date of termination is not before 1 November 2005 and the Authority has passed a resolution to enter into an Integrated Waste Management Contract. Termination of the Contract pursuant to this Condition 11.1A shall not entitle the Contractor to any compensation but shall not affect the rights and liabilities of the parties that have accrued at the date of termination."

2.3 The Authority shall in accordance with Condition 3.4 keep CES (defined as the "Contractor" in the WDC) reasonably informed as to the probable date on which it is intending to terminate the Contract pursuant to Condition 11.1A and shall in any event provide an update at each meeting referred to at Condition 3.4.4.

- 2.4 Condition 3.3 shall be deleted in its entirety and replaced as follows:

**"3.3 Sole provision of service**

Subject to the other terms of this contract, the Authority shall be permitted to tender for and enter into a contract with any other person for the disposal of the Waste, under an Integrated Waste Management Contract and any other agreements ancillary thereto (including a landfill subcontract between the Authority and any other party), without the consent of the Contractor."

**3. CO-OPERATION ON HANDBACK**

- 3.1 Following the service of a notice to terminate the WDC each party shall co-operate fully with the other and any other person designated by the other to achieve a smooth transfer of the Services, and where necessary shall agree additional steps to achieve such transfer.

- 3.2 CES shall as soon as practicable following the written request of the Authority:

- (a) transfer to the Authority, or any third party proposed by the Authority:

- (i) any of CES' property, assets or undertaking;
- (ii) the benefit of any manufacturer's or supplier's warranties; and
- (iii) any contract,

which the Authority considers reasonably incidental to the Sites or any part thereof or the provision of the Services (the **"Transferred Assets"**);

- (b) remove from the Sites all plant, temporary buildings, vehicles, spare parts and other property (except the Transferred Assets) not belonging to the Authority or to any employee, agent or subcontractor of the Authority and, if it has not done so within 28 days after notice from the Authority requiring it to do so, the Authority may (without being responsible for any loss) remove and dispose of any such property and shall hold all proceeds, less all costs incurred as a result of such removal and disposal, to the credit of CES; and

- (c) vacate each of the Sites and leave the Sites in an orderly condition consistent with CES' obligations under the WDC.

- 3.3 During the period from the service of a notice of termination until completion of the handover CES shall maintain the Transferred Assets and all property belonging to the Authority, which is in CES' possession, to the same standard applied to its own assets, and shall return any such property to the Authority in a good state of repair.

**4. WORKING CAPITAL FACILITY**

- 4.1 The Authority grants to CES upon the terms and subject to the conditions hereof a £1 million working capital facility (the **"Working Capital Facility"**).

- 4.2 The Working Capital Facility shall be used solely to enable CES to meet its trading liabilities as they fall due.

**5. SECURITY**

- 5.1 On or prior to the date hereof CES shall procure the release and reassignment to it of all the property, assets and undertaking of CES charged or assigned as security for its

current indebtedness in order that its assets shall be without Encumbrance, subject only to the security to be created pursuant to clause 5.2 below.

- 5.2 On or prior to the date hereof CES shall duly execute an instrument in a form agreed by the Authority securing CES' obligations under this Agreement creating a first-ranking fixed and floating charge in favour of the Authority over the whole of its undertaking.

6. **NEGATIVE PLEDGE**

- 6.1 CES hereby covenants that it shall not, without the prior written consent of the Authority create, or attempt to create, or allow to arise or subsist any Encumbrance over any or all of the rights and property assigned or charged to the Authority under the instrument contemplated by clause 5.2.

- 6.2 CES further covenants that it shall procure, to the extent within its control, that all CES' subsidiaries (as defined in s736 of the Companies Act 1985) comply with clauses 5, 6.1 and 12(c) of this Agreement as if that subsidiary were itself a party to this Agreement in the position of CES.

7. **DRAWINGS**

- 7.1 Each Drawing shall be made on the date specified in a written notice from CES to the Authority (in materially the same form as set out in schedule 2) requesting that the Drawing be made ("**Notice of Drawdown**").

- 7.2 The minimum amount of each Drawing shall be £50,000, or where the undrawn amount of the Working Capital Facility is less than £50,000, the minimum amount of the Drawing shall be the full undrawn amount of the Working Capital Facility.

- 7.3 Each Drawing shall be disbursed for value within three (3) Business Days of the Drawdown Date to such bank account as shall be specified in the Notice of Drawdown.

- 7.4 CES shall not make any Drawing under the Working Capital Facility after 1 June 2006.

- 7.5 CES shall take, or refrain from taking such action as is necessary in order to minimise its Drawings under the Working Capital Facility, having regard to the purpose of the Working Capital Facility.

- 7.6 CES may not deliver the first Notice of Drawdown in respect of the Working Capital Facility unless the Authority has received all of the documents and other evidence listed in:

- (a) Schedule 1 Part (a) (*Conditions precedent*); or
- (b) Schedule 1 Part (b) (*Conditions precedent*), in the event that the documents and evidence listed in Schedule 1 Part (a) (*Conditions precedent*) have been provided by CES to the Authority pursuant to clause 14.1,

in form and substance satisfactory to the Authority. The Authority shall notify CES promptly upon being so satisfied.

- 7.7 CES may not deliver any other Notice of Drawdown in respect of the Working Capital Facility unless the Authority has received all of the documents and other evidence listed in Schedule 1 Part (b) (*Conditions precedent*) in form and substance satisfactory to the Authority. The Authority shall notify CES promptly upon being so satisfied.

**8. INTEREST**

- 8.1 CES shall pay interest on the Loan at the rate of 1% per annum above the British Bankers' Association 3 month LIBOR Rate, prevailing on the relevant Interest Payment Date. Interest will accrue from day to day and will be calculated on the basis of actual days elapsed and a year of 365 days.
- 8.2 Interest on the Loan shall be calculated on each Interest Payment Date and added to the Loan. Where the date for repayment of the Loan, (pursuant to clause 10 or 13 of this Agreement), is not an Interest Payment Date the final interest payment shall be calculated on the date of repayment of the Loan. The aggregate amount of the Loan (including rolled-up interest added to the Loan under this clause) shall continue to accrue interest under clause 8.1.
- 8.3 A written statement by the Authority as to any amount of interest payable pursuant to this clause shall, in the absence of manifest error, be conclusive.

**9. PAYMENTS**

- 9.1 On the date on which this Agreement requires an amount denominated in sterling to be paid by the Authority to CES hereunder, the Authority shall make the same available to CES by payment in sterling and in immediately available, freely transferable, cleared funds to such account as CES may have specified for this purpose.
- 9.2 On the date on which this Agreement requires an amount denominated in sterling to be paid by CES, it shall make the same available to the Authority by payment in sterling and in immediately available, freely transferable, cleared funds to such account as the Authority may have specified for this purpose.
- 9.3 All payments required to be made by CES hereunder shall be calculated without reference to any set-off or counterclaim and shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

**10. REPAYMENT**

- 10.1 The Loan shall be immediately repaid in full on the first to occur of the following events:
- (a) on the winding up of CES, but only after all liabilities to all other creditors of CES have been satisfied in full; or
  - (b) if the issued shares of CES are sold or transferred, other than to an affiliate of the Authority or CES otherwise ceases to be a wholly owned subsidiary of the Authority (including any transfer of CES shares by way of a management buy out).
- 10.2 Unless the Loan has been repaid pursuant to clause 10.1, the Loan shall be repaid in a single repayment on 30 June 2006.

**11. LIMITED RECOURSE/NON-PETITION**

From and after the date hereof until the earlier of 30 June 2006 or such time as the Loan has been repaid in full neither the Authority, nor any person on its behalf or appointed by it shall take any steps, including to sue for or institute legal proceedings to recover all or any part of the Loan, nor petition or apply for or vote in favour of any resolution for the insolvent winding-up, dissolution, administration of or voluntary arrangement in relation to CES or appoint a receiver.



**12. UNDERTAKING**

CES undertakes that it will not without the prior written consent of the Authority:

- (a) subject to the extent permitted by sub-clauses (b) and (c) below, carry on the business other than as set out in accordance with the Business Plan and will not do anything inconsistent with the Business Plan;
- (b) incur any expense or liability which would result in Excess Expenditure greater than £20,000; or
- (c) do anything that would increase, or permit to be increased, any of its liabilities in aggregate (whether actual or contingent) existing at the date of this Agreement by more than £20,000.

**13. EVENTS OF DEFAULT**

If:

- (a) CES does not pay on the due date any amount payable pursuant to this Agreement, including interest or principal on 30 June 2006:
  - (i) unless CES' failure to pay is caused by administrative or technical error; and
  - (ii) payment is within two Business Days of its due date.
- (b) CES is unable to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors;
- (c) CES takes any corporate action or other steps are taken or legal proceedings are started for its winding-up, dissolution, administration or reorganisation (whether by way of voluntary arrangement, scheme or arrangement or otherwise) or for the appointment of a liquidator or receiver;
- (d) any representation, warranty or statement made by CES in this Agreement or in any notice or other document, certificate or statement delivered by it pursuant hereto or in connection herewith is or proves to have been incorrect or misleading when made;
- (e) CES fails duly to perform or comply with any of the obligations expressed to be assumed by it in clause 12;
- (f) CES fails duly to perform or comply with any other obligation expressed to be assumed by it in this Agreement and such failure is not remedied within fourteen days after the Authority has given notice thereof to it; or
- (g) CES commits a material breach of this Agreement or the WDC, other than pursuant to clause 13(a) above, (and, if such breach is capable of remedy, has failed to remedy the breach within 15 days of receiving written notice from the Authority specifying the breach and requiring the breach to be remedied),

then, and in any such case and at any time thereafter, upon written notice by the Authority to CES, the Loan shall become due and payable immediately upon demand and the Authority shall be entitled to enforce its security created pursuant to the instrument contemplated by clause 5.2.

**14. GUARANTEE**

- 14.1 Prior to the execution of the Guarantee by the Authority CES shall provide to the Authority all of the documents and other evidence listed in Schedule 1 Part (a) (*Conditions precedent*), unless previously provided pursuant to clause 7.6, in form and substance satisfactory to the Authority. The Authority shall notify CES promptly upon being so satisfied.
- 14.2 Subject to clause 14.1, on the date of execution of this Agreement the Authority shall enter into the Guarantee.
- 14.3 CES shall take, or refrain from taking such action as is necessary in order to mitigate the Authority's liability under the Guarantee, having regard to the purpose of the Guarantee.

**15. NOTICES**

- 15.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post in a pre-paid envelope to the party due to receive the notice or communication at its address set out in this Agreement or such other address as a party may specify by notice in writing to the other.
- 15.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:
- (a) if delivered personally, when left at the address referred to in clause 15.1; and
  - (b) if sent by first class post, two days after posting it.

**16. MISCELLANEOUS PROVISIONS**

**16.1 Invalidity**

If, at any time, any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**16.2 Assignment, Variation etc.**

None of the rights of the parties hereunder may be assigned. No variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

**16.3 Remedies and Waivers**

No failure to exercise, nor any delay in exercising, on the part of CES or the Authority, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**16.4 Third parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to confer any benefit on any third party or be enforceable by any third party.

**16.5 Law and Jurisdiction**

This Agreement shall be governed by, and is to be construed in accordance with, English law and the courts of England have exclusive jurisdiction.

EXECUTED BY THE PARTIES

**CORNWALL COUNTY COUNCIL**

By:

**COUNTY ENVIRONMENTAL SERVICES LIMITED**

By:

**SCHEDULE 1 PART (A)**

**CONDITIONS PRECEDENT**

1. **BORROWER' CERTIFICATE:** A certificate signed by a duly authorised director of CES, addressed to the Authority:-
  - (a) attaching a certified true, complete and up to date copy of:-
    - (i) its latest financial statements prepared as at the date of this Agreement and containing a balance sheet and profit and loss account;
    - (ii) a statement setting out all the existing liabilities of CES;
    - (iii) CES' most recent audited and management accounts;
    - (iv) the resolutions of its board of directors approving the execution, delivery and performance by CES of this Agreement and authorising a director or directors to execute this Agreement on behalf of CES and to approve any amendments to this Agreement, and authorising a specified person or persons to sign and despatch all notices, certificates and other communications required or permitted to be given by CES under this Agreement; and
  - (b) certifying that:-
    - (i) the resolutions referred to in (a)(iv) were duly and properly passed and such resolutions are still in full force and effect and have not been varied or rescinded;
    - (ii) CES has taken all corporate and other action necessary to authorise its execution of this Agreement and its obligations under this Agreement are legal, valid and binding obligations;
    - (iii) any borrowing limits of CES would not be exceeded if the Working Capital Facility made available or committed to be made available to it under this Agreement were fully utilised, or as the case may be, would not if fully called upon, exceed any limit contained in CES' constitutional documents or in any trust deed or other agreement or instrument to which it is a party; and
    - (iv) there has been no material adverse change in the financial condition of CES since the date of preparation of the financial statements delivered under the certificate.
2. **OTHER DOCUMENTS AND EVIDENCE**
  - (a) CES' revised business plan, updated to 19 May 2004, incorporating any material change, including any change in waste tonnages, made after the acceptance of the business plan by the Authority on such date.
  - (b) Form 395 duly completed in respect of the security to be created pursuant to clause 5.2 requiring registration at Companies House.
  - (c) A certified copy (or copies if applicable) of Form 403(a) duly executed and filed at Companies House, pursuant to clause 5.1 of this Agreement, evidencing the satisfaction in full of any and all mortgages or charges over any of CES' property,

assets or undertaking, subject only to the security to be created pursuant to clause 5.2 of this Agreement.

- (d) A deed of release in relation to each charge, pursuant to clause 5.1 of this Agreement, in a form approved by the Authority, duly executed by the relevant chargeholder, confirming that no sums are due to that chargeholder and that the relevant security has been released.

**SCHEDULE 1 PART (B)**

**CONDITIONS PRECEDENT TO EACH DRAWDOWN**

1. Notice of Drawdown; and
2. CES most recent audited and management accounts at the Drawdown Date.

**SCHEDULE 2**

**FORM OF NOTICE OF DRAWDOWN**

To: Cornwall County Council  
County Hall, Truro,  
Cornwall, TR1 3AY

Dated:

Dear Sirs,

Loan and WDC Amendment Agreement dated [Date] 2005 and made between Cornwall County Council and County Environmental Services Limited (the "**Agreement**"), including any amendments to it in force from time to time.

Terms defined in the Agreement shall have the same meaning when used in this notice.

This is a Notice of Drawdown.

We:

- (a) give you notice that we request a Drawing under the Working Capital Facility of an amount of [\*insert amount] on [\*insert date\*];
- (b) give you notice that the proceeds of this Drawing are to be made available by credit to account number [ \*\*\* ] in favour of [ \*\*\* ] at [ \*\*\* ];
- (c) confirm that on the date on which the Drawing is made and immediately afterwards there will exist no event of default, pursuant to clause 13; and
- (d) append to this Notice of Drawdown a copy of CES' most recent audited and management accounts as at the date of this notice.

This Notice of Drawdown is irrevocable.

Yours faithfully

County Environmental Services Limited

SCHEDULE 3

FORM OF GUARANTEE

THIS INSTRUMENT by way of deed poll is executed on [Date] by Cornwall County Council of County Hall, Truro, Cornwall TR1 3AY (the "**Guarantor**")

WHEREAS:

County Environmental Services Limited, a company incorporated in England (company number 2619506) whose registered office is at United Mines Landfill Site, United Downs, St Day, Redruth TR16 5HU ("**CES**"), has requested the Guarantor and the Guarantor has agreed to guarantee payment of all Obligations (as hereinafter defined) in accordance with, and as limited by, the terms and conditions of this Deed (the "**Guarantee**").

NOW THEREOF the Guarantor hereby covenants and agrees as follows:

1. In this Guarantee, unless the context otherwise requires:

**"Creditor"** means any person (other than CES or any subsidiary of CES (as defined in section 736 of the Companies Act 1985 (the "Act"))) or any individual who is a connected person of CES within the meaning of section 346 of the Act) to whom an Obligation is from time to time owed;

**"Financial Indebtedness"** means any indebtedness of CES, arising after the date hereof, for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee, indemnity or similar insurance against financial loss given in respect of the obligation of any person save where such guarantee, indemnity or similar insurance is given in the ordinary course of business of the person giving it;

**"GAAP"** means accounting principles, generally accepted in the United Kingdom;



**"Obligation"** means any obligation or liability, either primary or contingent (other than Financial Indebtedness), lawfully incurred by CES to any person on or before 31 March 2006 (whether before or after the execution of this Guarantee) under or in respect of any dealing, transaction or engagement whatsoever, including without prejudice to the generality of the foregoing, for:

- (i) any moneys lent, advanced or otherwise made available to CES (including, without limitation to the generality of the foregoing, the liability of CES for drawing or issuing bills of exchange, promissory notes, bonds, debentures, certificates of deposit, commercial paper or other negotiable instruments or securities);
- (ii) any moneys lent, advanced or otherwise made available to any person, the repayment or payments in respect of which have been guaranteed by CES or in respect of which CES has given an indemnity (including, without limitation to the generality of the foregoing, guarantees and letters of credit issued by CES and bills of exchange or other negotiable instruments accepted or endorsed by CES);
- (iii) any moneys which any person shall pay or become liable to pay, for or on account of CES, by reason of entering into or being party to any bond, indemnity, bill of exchange, guarantee, letter of credit or other engagement for the benefit or at the request of CES; or
- (iv) deposits made with CES (including, without limitation to the generality of the foregoing, certificates of deposit issued by CES),

and payments of interest due from CES with respect to any of the foregoing transactions (whether or not the liability to pay such interest arises on or before 31 March 2006) together with all reasonable costs, commissions and other expenses incurred by any person in connection with the enforcement of this Guarantee and for the avoidance of doubt, 'Obligations' shall include any such obligation or liability assumed under or incurred pursuant to any novation, transfer, assignment or other similar agreement between CES and any other person and references in this definition to 'CES' shall include persons whose obligations or liabilities have been so assumed by CES;

**"Person"** means any person, firm, trust estate, corporation, association, cooperative, government or government agency or other entity.

- 2. The Guarantor hereby unconditionally and irrevocably guarantees, for the benefit of each Creditor, in accordance with the terms and conditions of this Guarantee, the full payment by CES when due (whether at stated maturity, upon acceleration or otherwise) of each and every Obligation and in the event that CES shall default in the due and punctual payment of any Obligation, undertakes to pay, or procure the payment of, such Obligations in the currency in which the particular Obligation is denominated in the case of a payment upon written demand being made under this Guarantee by the relevant Creditor.
- 3. A Creditor shall only be entitled to take or obtain the benefit of this Guarantee upon the following conditions:
  - (a) the Creditor has first sought to recover the amount of the Obligation from CES, which has been due and payable for a period of 30 days and the Creditor has provided the Guarantor with reasonable evidence to substantiate the nature and quantum of the claim; and
  - (b) after receipt by the Guarantor of a written demand from the Creditor, the Guarantor shall be entitled to deal with the Creditor, and the Creditor shall be obliged to deal with the Guarantor with respect to the Obligation due to the

Creditor and this Guarantee without the necessity or duty to rely on, act through or otherwise involve or deal with CES to the intent that the Guarantor and the Creditor shall deal with one another as principals in relation to the same provided that the rights, powers, privileges and remedies of the Creditor under this Guarantee shall not thereby be in any way limited or otherwise affected.

4. No delay or omission on the part of the Creditor in exercising any right, power, privilege or remedy (hereinafter together called "**Rights**") in respect of this Guarantee shall impair any such Rights or be construed as a waiver of any thereof nor shall any single or partial exercise of any such Rights preclude any further exercise of any other Rights. The Rights herein provided are cumulative and not exclusive of any rights, powers, privileges or remedies provided by law. Nothing in this Guarantee shall be construed as voiding, negating or restricting any right of set-off or any other right whatsoever existing in favour of a Creditor or arising at common law, by statute or otherwise howsoever.
5. This Guarantee is a continuing guarantee and shall not be satisfied, discharged or affected by any intermediate payment or settlement of account.
6. The Guarantor will not exercise any rights of subrogation or any other rights or remedy (including, without limiting the generality of the foregoing, the benefit of any security or right of set-off) which it may acquire due to its payment of any Obligation pursuant to the terms of this Guarantee and will not prove in the liquidation of CES in competition with any Creditor unless and until all Obligations in respect of the relevant Creditor hereby guaranteed have been satisfied in full by the Guarantor or CES. In the event that the Guarantor shall receive any payment on account of such rights while any Obligation remains outstanding, the Guarantor shall pay all amounts so received to the relevant Creditor.
7. Payments hereunder shall be made free and clear of any deduction or withholdings other than those required by law and in that event the Guarantor shall pay such additional amount to the relevant Creditor as may be necessary in order that the actual amount received after all such deductions and withholdings shall equal the amount that would have been received if no such deduction or withholding were required provided that the Guarantor shall not be obliged to pay any such additional amount which would not have been payable if the payment which is the subject of the withholding or deduction had been made by CES. If the Guarantor makes a payment of an additional amount in compliance with its obligations under this paragraph and the Creditor determines that it has received or been granted a credit against or relief or payment of any tax paid or payable by it in respect thereof the Creditor shall to the extent that it can do so without prejudice to the retention of the amount of such credit, relief or repayment pay to the Guarantor such amount as shall be attributable to such deduction provided that nothing contained in this paragraph shall interfere with the right of any Creditor to arrange its tax affairs in whatsoever manner it thinks fit and, in particular, no Creditor shall be under any obligation to claim relief in respect of any such deduction in priority to any other claims for relief available to it.
8. Any demand or notice hereunder shall be given in writing addressed to the Guarantor or to the person to or upon whom the demand is to be made or the notice served at the registered or principal office or last known place of abode of the Guarantor or of such person, as the case may be. A demand so made shall be deemed to have been duly made if left at such address on the day it was so left or, if sent by post, two weekdays after the time when the same was put in the post and in proving delivery it shall be sufficient to prove that the same was properly addressed and put in the post.
9. The liability of the Guarantor under this Guarantee shall not be affected by the liquidation, winding-up or other incapacity of CES. In the event that any payment to a Creditor from

10. This Guarantee shall remain in full force and effect irrespective of the validity, regularity, legality or enforceability against CES of, or of any defence or counter-claim whatsoever, available in relation to, any Obligations whether or not any action has been taken to enforce the same or any judgement obtained against CES or any other person, whether or not any time or indulgence has been granted to CES or any other person by or on behalf of any Creditor, whether or not there have been any dealings or transactions between CES or any other person and any of the Creditors, whether or not CES or any other person has been dissolved, liquidated, merged, consolidated, become bankrupt or has changed its status, functions, control or ownership, whether or not CES or any other person has been prevented from making payment by foreign exchange provisions applicable at its place of registration or incorporation and whether or not any circumstances have occurred which might otherwise constitute a legal or equitable discharge of or defence to a guarantor.
11. In the event that any of the terms or provisions of this Guarantee are or shall become invalid, illegal or unenforceable, the remaining terms and provisions hereof shall survive unaffected,
12. The Guarantor shall be permitted from time to time and at any time to amend or vary the terms of this Guarantee PROVIDED THAT the liability of the Guarantor to a Creditor in respect of any Obligation incurred before or arising out of an Obligation entered into, before the date of such variation or amendment, shall not be in any way reduced or limited by such variation or amendment. Any person shall be entitled to rely on a certificate given by a duly authorised officer of the Guarantor as to the existence and extent of this Guarantee and any such variation and/or amendment of this Guarantee on *entering into any dealing, transaction or arrangement with CES under or in respect of which an Obligation would or might be incurred by CES to that person.*
13. This Guarantee shall be governed by and construed in accordance with English law.



The common seal of )  
**CORNWALL COUNTY COUNCIL** )  
 was affixed to this deed in the presence of: )

**Authorised Signatory**

**Authorised Signatory**