



East
Northamptonshire
Council

Policy and Resources Committee – 02 July 2012

Northamptonshire County Council Residual Waste Treatment and Disposal Contracts

Purpose of report

This report relates to the procurement by Northamptonshire County Council (NCC) of new contracts for the treatment and disposal of residual waste. As part of the procurement process a Service Level Agreement (SLA) between NCC and the District and Borough Councils has been developed.

Appendix 1: SLA document

1.0 Background

- 1.1 In Northamptonshire, household and business waste collected by the District and Borough Councils (collection authorities) is then deposited at and through disposal arrangements put in place by Northamptonshire County Council (disposal authority). This disaggregation of responsibilities is set out in statute, with powers available to disposal authorities to direct collection authorities where to deposit their residual waste.
- 1.2 The arrangements set out in 1.1 do not apply to materials collected by the collection authority as part of recycling arrangements. The arrangements for the disposal of these materials are determined by the collection authority. However, collection authorities are compensated by the disposal authority for all the materials that are diverted from the designated residual waste disposal point, currently landfill sites. This 'compensation' is in the form of 'recycling credits', which are monies that NCC has not had to pay through landfill disposal and landfill tax.
- 1.3 As indicated earlier, NCC instructs ENC where to take the residual waste. Currently this is to the landfill sites at Weldon and Sidegate Lane, Wellingborough.
- 1.4 NCC has recognised that a combination of escalating landfill disposal costs and the rapidly decreasing amount of landfill sites available to receive residual waste means that they must identify and procure alternative arrangements for disposal.
- 1.5 In recent years NCC commenced this process through an aborted PFI project. The approach now being taken is for a number of smaller scale, more local facilities across the county. This recognises the need for local solutions and the fact that many disposal solutions have developed across the county in the intervening period. The length of the contract period has also been shortened to encourage smaller scale operators to bid.

2.0 Purpose of the SLA

- 2.1 An SLA is required in order to act as an interface between the waste collection services provided by the District and Borough Councils (D & B's) and the waste disposal arrangements provided by the County Council.
- 2.2 Legislation sets out the statutory duties of the two tiers of waste management and the relevant statutory payments. However, the SLA goes beyond what is set out in legislation by:

- making provision for payments which are not statutory, such as compensation payments in the event that one of our collection vehicles is unduly delayed when depositing its waste;
- defining the payments that would be applicable in the event that we were required to deposit waste in a different location or unreasonably far from East Northamptonshire.

3.0 Development of the SLA

- 3.1 The development of the SLA has been led by NCC with input from D & Bs' officers from an early stage. The input from the D & Bs has been with both waste and legal officers representing each Council. Progress of the SLA has also been reported to this Council's Waste and Recycling Working Party.
- 3.2 NCC has a target of having the SLA agreed in principle with all its partner Councils by 6 July 2012. This has been set to fall in line with the procurement project timetable and NCC's consideration of tender submissions.
- 3.3 It is recognised that some of the detail of the SLA cannot be settled until NCC has identified its preferred bidder(s), which is expected in November 2012. This will inform the location of the disposal points for each District and Borough. Once final details are included within the SLA, a report will be prepared for this committee to give formal agreement.

4.0 Equality and Diversity Implications

- 4.1 There are no equality and diversity implications arising from the proposals.

5.0 Legal Implications

- 5.1 Legal Officers representing ENC have been involved in the development of the SLA and we await their advice based on the latest draft of the SLA document.

6.0 Risk Management

- 6.1 The SLA will provide greater certainty for both NCC and ENC, which will provide better management of risk and facilitate procurement of NCC's new contracts.
- 6.2 The SLA does not transfer risk between NCC and ENC. As the collection authority we will simply be required to communicate any significant planned service changes to the County Council and agree them through a review procedure. ENC as the collection authority has been assured as part of this process that NCC does not intend to hold us to either fixed tonnages or specific waste composition.

7.0 Financial Implications

- 7.1 There are no financial implications at this stage. However, if, as a result of the procurement process, ENC is directed to take its residual waste to a location which results in the Council incurring additional cost, then there will be a mechanism to ensure that the Council is not financially disadvantaged. The detail of any such implications will be set out in the report later this year seeking members' final approval of the SLA.

8.0 Corporate Outcomes

- 8.1 The recommended decision will help deliver the corporate outcome:
- Effective Partnership Working

9.0 Recommendation

9.1 That the Committee notes the content of this report and the accompanying SLA and that it agrees the SLA in principle.

9.2 That a further report be made to enable formal agreement of the SLA.

Legal	Power: Environmental protection Act 1990				
	Other considerations:				
Background Papers:					
Person Originating Report: Mike Deacon, Head of Environmental Services. Tel: 01832 742060					
Date: 30 May 2012					
CFO		MO		CX	

DATED

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- (1) Corby Borough Council**
- (2) Daventry District Council**
- (3) East Northamptonshire District Council**
- (4) Kettering Borough Council**
- (5) Northampton Borough Council**
- (6) South Northamptonshire District Council**
- (7) Borough Council of Wellingborough**
- (8) Northamptonshire County Council**

DRAFT VERSION 2 SP June 2012

SERVICE LEVEL AGREEMENT

**relating to residual waste collection
and disposal in Northamptonshire**

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- (D) The WDA has procured services for the treatment and disposal of residual municipal waste, which are subject to the terms of the Residual Waste Treatment Contract(s) entered between the WDA and the Residual Waste Treatment Contractor(s).
- (E) The Parties wish to work together to manage the collection and disposal of waste in a co-ordinated manner and in a way which is consistent with the Residual Waste Treatment Contract(s) and builds on the terms already agreed by the Parties in the MOU.
- (F)

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the meanings given to them below:

Ad Hoc Review means a review conducted in accordance with clause 9;

Agreement means this service level agreement (including its schedules);

Annual Review means a review conducted in accordance with clause 10;

Business Day means a day means any day other than a Saturday or Sunday, Christmas Day or Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971

in England

Change in Law means the coming into effect after the date of this Agreement of:

- (a) Legislation;
- (b) any binding guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent'

Commencement Date	means the date of this Agreement;
Commercial Waste	means as defined under Section 75(7) Environmental Protection Act 1990 together with Regulation 6 and 7 and Schedule 4 of the Controlled Waste Regulations 1992;
Compensation Payments	means the compensation payments liable to be paid by the WCAs to the WDA as described in Schedule 4 (Payment and Performance);
Compost	means, the product derived from composting or anaerobic digestion as both are defined in National Indicator 192 (as amended or replaced from time to time). If NI 192 (or its replacement) is repealed with no further substitute, then the definition shall remain the definition extant at the date on which the NI (or its replacement) was repealed;
Confidential Information	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), and includes information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA;
Contaminant	<p>means the presence of material in a Contract Waste load which:</p> <p>(a) cannot lawfully be processed in the facility to which it is delivered; or</p> <p>(b) cannot be processed in the facility to which it is delivered without detriment to that facility or its efficiency,</p> <p>and in both cases which a reasonable contractor operating similar facilities, acting diligently and in accordance with Good Industry Practice could not remove from that load;</p>

as such definition is augmented in the Waste Acceptance Protocols as developed in accordance with Schedule 5;

Contingency Delivery Point

means the alternative Delivery Points set out in Schedule 7 (Delivery Points) or where no Contingency Delivery Points are set out (or the relevant Contingency Delivery Point is unavailable) an alternative Delivery Point meeting the Delivery Point Standards as agreed between the relevant WCA and the WDA;

Contract Waste

means all Municipal Waste delivered to a RWT Contractor by or on behalf of the WDA or the WCAs or their contractors but not including:

- (a) the WCA Retained Waste; nor
- (b) other commodities of Waste not to be included in the definition of contract waste in the Residual Waste Treatment Contract;

Contractual Targets

[Drafting note: these are the targets, e.g. landfill diversion targets, which the RWT Contractor(s) will need to comply with under the RWT Contract(s) as set out in the appendix to Schedule 5.]

Delivery Point¹

means a facility, site or transfer station, which is licensed to receive Waste, which meets the Delivery Point Standards and which is located as further described in Schedule 7 (Delivery Points);

Delivery Point Standards

means the standards as agreed between the Parties as further described in Schedule 7 (Delivery Points);

Dispute Resolution Procedure

means the procedure for the resolution of disputes set out at clause 22;

DPA

means the Data Protection Act 1998;

Dry Recyclables

means for each WCA the commodities described

¹ The legal position is that the WDA is required to meet the additional costs of a WCA if the WDA directs that the WCA deliver its waste to a remote location (i.e. outside the WCA's area). There is no statutory requirement on the WDA to provide such Delivery Points within each WCA's area. The practice varies from area to area. In some areas the WDA chooses to pay the extra transport costs of the WCAs. In other areas the WCAs operate their own collection points, and the WDA pays the RWT contractor to collect the waste from such collection points. In other areas the WDA provides such collection points..

	as dry recyclables in the relevant WCA Baseline together with any other dry recyclable materials agreed from time to time between the WDA and a WCA in accordance with this Agreement;
EPA	means the Environmental Protection Act 1990;
Expiry Date	means [] years from the date of this Agreement;
Facility(ies)	means the facility or facilities for the treatment and disposal of Residual Waste, which the WDA will procure;
Forecast Tonnages	[means the minimum tonnages in the RWT Contracts]
Force Majeure Event	means the occurrence after the date of this Agreement of: <ul style="list-style-type: none"> a) war, civil war, armed conflict or terrorism; or b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any actions or breach of the WCA; or c) pressure waves caused by devices travelling at supersonic speeds; or, and which directly causes either Party or (in the case of a WCA) all or any of them (the Affected Party) to be unable to comply with all or a material part of its obligations under this Agreement
Guidance	means any applicable guidance or directions which a RWT Contractor is required to comply with or have regard to as a matter of law;
Household Waste	has the meaning attributed to it in Section 75(5) and Section 89 of the EPA and Schedules 1 and 2 of the Controlled Waste Regulations 1992;
HWRC	means a household waste recycling centre;
Joint Municipal Waste Management	means the Northamptonshire Joint Municipal Waste Management Strategy 2008, being the

Strategy or JMWMS	strategic framework for the management of Municipal Waste, jointly developed and subscribed to by the WCAs and WDA;
Landfill	<p>(a) for the purposes of diversion of biodegradable Waste has the meaning given to it in Waste Emissions Trading Act 2003; and</p> <p>(b) for the purposes of Landfill Tax has the meaning attributed to it by Section 65(1) of the Finance Act 1996;</p> <p>and "Landfilled" and "Landfilling" shall be interpreted accordingly;</p>
Landfill Tax	has the meaning set out in Section 39(1) of the Finance Act 1996;
Legislation	<p>means:</p> <p>(a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;</p> <p>(b) any exercise of the Royal Prerogative; and</p> <p>(c) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,</p> <p>in each case in the United Kingdom;</p>
Memorandum of Understanding or MOU	means the memorandum of understanding relating to the Northamptonshire Waste Partnership, dated [] 2011 between the Parties
MSW	means municipal solid waste;
Municipal Waste	means all waste which by virtue of Legislation a local authority has a statutory duty or power to collect, including (without limitation) Household Waste, Commercial Waste, fly tips and street cleansing arisings (and, in relation to Commercial Waste, which the Authority or relevant WCA does in fact collect);

Mutual Aims	means the shared objective of the Parties to secure the most effective collection and disposal of waste in accordance with this Agreement and the Residual Waste Treatment Contracts;
NWP Board	Means [drafting note: NCC to confirm]
Personal Data	means personal data as defined in the DPA which is supplied to the Parties or obtained by the Parties;
Recyclable Materials	<p>means any materials collected separately or otherwise separated from Contract Waste for the purposes of Recycling, including the materials below:</p> <ul style="list-style-type: none"> (a) paper and cardboard; (b) plastics; (c) ferrous and non-ferrous materials; (d) textiles; (e) glass; (f) wood; (g) organic kitchen and garden waste; (h) tyres; (i) waste electrical equipment, <p>or such other materials as shall be agreed in writing between the Parties from time to time;</p>
Recycling and Composting Plans	means those plans set out in Schedule 6 to this Agreement;
Recycling	shall have the meaning set out in National Indicator 192 and unless and until NI 192 is amended or replaced, the definition shall remain the definition extant at the date on which the NI was repealed, and the terms Recycle and Recycled shall be construed accordingly;

Recycling Credit	means as section 52 of the EPA as amended by section 49 of the Clean Neighbourhoods and Environment Act 2005 and with the Environmental Protection (Waste Recycling Payments) (England) Regulations 2006;
Request for Information	shall have the meaning set out in the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 as relevant (where the meaning of “ Request ” shall apply);
Residual Waste	means Municipal Waste remaining after the removal of any Recyclable Materials by or on behalf of the WCAs;
Residual Waste Treatment Contract(s) or RWT Contract(s)	means each agreement so named (together with its schedules) for the treatment and disposal of Residual Waste, and if relevant, financing agreements entered (or to be entered) into between the WDA and a RWT Contractor;
Residual Waste Treatment Contractor(s) or RWT Contractor(s)	means any contracting counter party appointed or to be appointed by the WDA to deliver the Residual Waste Treatment Contract(s);
Review	means the activity described in Clauses 10, 11 and 12;
Review Notice	means the notice as described in Clause 9.2
Review Procedure	means the procedure for review set out at Clauses 10, 11 and 12;
Steering Group	Means [drafting note: NCC to confirm];
Tipping Away Payments	means a payment made by the WDA to a WCA as described in Schedule 4 (Payment and Performance);
Waste	has the meaning ascribed to it in Section 75 of the EPA and in the Waste Framework Directive 2006 together with the attendant subordinate legislation;
Waste Composition	means the composition of Waste that is delivered to the Delivery Points or Facility(ies) by the WCAs,

including how the Waste delivered is constituted, its bio-fraction, the commodities which it comprises, the amount of Recyclable Material contained within it and whether it is Household Waste or Commercial Waste, Dry Recyclables or other materials;

WCA means a waste collection authority pursuant to section 30(3) of the EPA, and for the purposes of this Agreement means Corby, Daventry, East Northamptonshire, Kettering, Northampton, South Northamptonshire and Wellingborough;

WCA Baseline means the baseline Waste and Recycling service to be delivered by each WCA as set out in Schedule 6 as shall be amended from time to time in accordance with the Review Procedure;

WCA Default means a material breach by a WCA of the terms of this Agreement;

WCA Retained Waste means the Recyclable Materials which from time to time each WCA notifies the WDA that it intends to retain for their own Recycling schemes pursuant to section 48 of the EPA;

WDA means a waste disposal authority pursuant to section 30(2) of the EPA, and for the purposes of this Agreement means Northamptonshire County Council;

WDA Default means a material breach by the WDA of the terms of this Agreement;

WET Act means the Waste Emissions Trading Act 2003, as amended from time to time.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

1.2.1 the masculine includes the feminine and vice-versa,

1.2.2 the singular includes the plural and vice-versa,

- 1.2.3 a reference in this Agreement to any Clause, Subclause, Paragraph, Schedule, Appendix or Annex is, except where it is expressly stated to the contrary, a reference to such clause, subclause, paragraph, schedule, appendix or annex of this Agreement,
- 1.2.4 save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment, or supplement to such document,
- 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted,
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees,
- 1.2.7 headings are for convenience of reference only,
- 1.2.8 words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words,
- 1.2.9 any obligation on a Party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.2.10 subject to any express provisions to the contrary, the obligations of either Party are to be performed at that Party’s own cost and expense.

2 COMMENCEMENT AND DURATION

- 2.1 This Agreement will commence on the Commencement Date and continue in full force and effect until the earlier of:
 - 2.1.1 the Expiry Date;
 - 2.1.2 the early termination of all Residual Waste Treatment Contracts howsoever pursuant to the provisions for termination therein;
 - 2.1.3 the relevant provisions of the EPA and WET Act (other than in relation to Landfill Allowances and Trading Scheme (England) Regulations 2004) being amended or repealed or other enactment made so that this Agreement is rendered ineffective, inappropriate or unlawful as agreed between the Parties;
 - 2.1.4 an agreement is reached pursuant to the Review Procedure that this Agreement should end in respect of one or more WCAs (in which

circumstance it shall be terminated in part in respect of the removed WCA and shall continue to have effect in respect of the remaining WCAs (if any));

2.1.5 termination by any Party accordance with clause 24 (Break Clause).

2.2 The Parties may agree to extend the term of this Agreement for such further period or periods as the Parties may at their discretion agree.

3 **THE WDA'S RESPONSIBILITIES AND COMMITMENTS**

The WDA shall comply with its obligations set out in this Agreement and the responsibility and commitments set out in **Schedule 1**.

4 **THE WCAS' RESPONSIBILITIES AND COMMITMENTS**

The WCAs shall each comply with their obligations set out in this Agreement and the responsibility and commitments set out in **Schedule 2**.

5 **MEMORANDUM OF UNDERSTANDING**

[Drafting note: This Agreement is intended to be read alongside the MOU (and other specific existing arrangements) and is not to replace the MOU. This Agreement aims to provide certainty and detail about the arrangements under the Residual Waste Treatment Contract(s).]

6 **STATUTORY DIRECTIONS AND NOTICES**

6.1 The Parties acknowledge that they have entered into this Agreement on a voluntary basis rather than issuing either:

6.1.1 a direction of the WDA under Section 51(4) of the EPA, directing the WCAs to deliver the Waste collected by it to the Delivery Points and to separate such waste before delivery;

6.1.2 a notice under Section 48(3) of the EPA that a WCA intends to make recycling arrangements; and/or

6.1.3 a notice under Section 48(4) of the EPA that the WDA objects to any recycling arrangements made by the WCAs other than those identified in this Agreement.

6.2 The Parties acknowledge that nothing in this Agreement will prevent them from carrying out their respective statutory duties and responsibilities or unduly restrict the decisions to be made with regard to their respective functions.

6.3 The WCAs acknowledge and agree that the payments and costs set out in Schedule 4 (Payment and Performance) are the payments agreed by the Parties to be made by the WDA to the WCAs pursuant to the EPA and WET Act and, subject to any further Review or agreement in accordance with this Agreement, for so long as this Agreement is in place, the WCAs shall make no other claims for payment against the WDA in respect of:

6.3.1 such amounts as may be due pursuant to section 52(1) of the EPA (Recycling Credits);

6.3.2 such amounts as are needed to be paid pursuant to section 52A of the EPA (WET Act payments for delivering Waste pre-separated);

6.3.3 a reasonable contribution towards expenditure reasonably incurred by the WCAs in delivering Waste in pursuance of a direction to a place which is unreasonably far from the WCAs' areas pursuant to section 52(10) of the EPA (Tipping Away Payments)

7 **PARTNERSHIP WORKING**

7.1 The Parties shall act at all times in a way that promotes effective partnership working and that promotes the aims, objectives and effectiveness of the JMWMS, and in accordance with the MOU.

7.2 Each Party shall provide relevant information to the other Parties in a form that is readily usable and in a full and timely manner. Relevant information shall include, subject to any statutory restriction or limitation:

- (a) details of contractual arrangements (or amendments to existing arrangements) entered into by the Parties in their roles as WCAs or WDA;
- (b) early warning of potential failure by a Party or its contractor in meeting their obligations under this Agreement;
- (c) details of actual failure by a Party or its contractor in meeting their obligations under this Agreement;
- (d) new initiatives, policies or emerging policies relating to the minimisation, collection, recycling and disposal of Waste;
- (e) any other information that could reasonably be expected to impact upon this Agreement or the Parties to this Agreement; and
- (f) details of any external funding opportunities which are available (and where appropriate, the Parties shall work together to submit joint bids for such funding);

7.3 The Parties shall:-

7.3.1 take all reasonable steps to mitigate any losses arising from a Party's failure under this Agreement;

7.3.2 The parties shall work together to achieve the Contractual Targets as far as is reasonable or practicable, to reduce the detrimental impact on the Parties and council tax payers of any one of them failing to carry out its obligations under this Agreement. The WDA will forward details of any changes to the Contractual Targets within 7 calendar days of any change being finalised.

7.3.3 work together to ensure that the WDA is not put in breach of, and does not incur additional costs under, the Residual Waste Treatment Contract(s) as a result of an act or omission of a WCA or WCAs.

and any requirement on a Party under this Agreement to act reasonably shall be interpreted in the context of the Parties endeavouring to achieve the Mutual Aims while minimising any detrimental impact on the public purse.

8 **REPORTS AND RECORDS**

8.1 The Parties agree to provide and share information necessary to monitor and measure any data collection relating to this Agreement and the WCA Baselines.

8.2 Each WCA shall be responsible for providing accurate data and supporting evidence to demonstrate its performance hereunder and for keeping records of such matters as the WDA may from time to time reasonably require for the purposes of monitoring waste arisings and waste management.

8.3 Each WCA shall submit monthly monitoring reports to the WDA which report shall include (but not be limited to the weight of household waste collected, the weight of household waste removed from the waste stream through the activities of the WCA and the weight of household waste delivered to the WDA.

8.4 The Parties shall ensure that there is a regular reconciliation between any records kept by the WDA and WCAs.

9 **AD HOC REVIEW PROCEDURE**

9.1 Notwithstanding the Annual Review process set out in clause 10 below any Party to this Agreement shall be entitled to call for a review of this Agreement under this clause 9 ("an Ad Hoc Review") to consider:

9.1.1 changes to a WCA Baseline;

9.1.2 changes in the Mutual Aims;

- 9.1.3 a Change in Law which is likely to or does require a WCA to change its WCA Baseline;;
 - 9.1.4 improvements in the services delivered by the Parties and/or the RWT Contractors;
 - 9.1.5 in the two years prior to the Expiry Date, any possible extension of this Agreement;
 - 9.1.6 other variations to this Agreement
- 9.2 An Ad Hoc Review shall be called by a Party on notice in writing (a "Review Notice") sent to the delivery addresses for notices (contained in Schedule 8) to the other Parties setting out in detail and (if necessary providing evidence) of:
- 9.2.1 the nature of the Review;
 - 9.2.2 the reasons for it;
 - 9.2.3 the proposed action and/or solution;
 - 9.2.4 the Party or Parties potentially affected; and
 - 9.2.5 how the proposed solution could or should be implemented.
- 9.3 The Parties shall meet at a meeting of the Steering Group to discuss and carry out the Review and to agree actions (or to agree an action plan leading to a decision and subsequent action (if any) to implement the decision) within two months of the Review Notice having been served. Following such a Review meeting the Parties shall implement the actions (or action plan as the case may be) in accordance with the agreed timetable. The two-month notice period provided in this clause 9.3 may by agreement of the Parties be reduced by an appropriate time if the Party issuing the Review Notice reasonably considers the Review is urgent and states its reasons on the face of the Review Notice.
- 9.4 All Parties shall be issued with any Review Notice and shall be entitled to participate in any Review unless the relevant WCA and the WDA acting reasonably determine that the Review applies only to them and:
- (a) will not affect any other Party; and
 - (b) is not relevant to any other Party; and
 - (c) the issues in question do not similarly apply to any other Party; or

- (d) a Party affected by the Review, acting reasonably, considers the subject matter confidential or sensitive (which shall include funding arrangements between the WDA and WCA).

10 ANNUAL REVIEWS

- 10.1 The Parties shall meet annually to review the levels of performance under this Agreement, in particular to review the performance of the schemes set out in the WCA Baselines (the “Annual Review”). The Annual Review dates shall be on or about [each anniversary of the Commencement Date].
- 10.2 An Annual Review shall be initiated by the WDA sending a notice in writing to the delivery addresses for notices (contained in Schedule 8 (Delivery Addresses for Notices)) setting out items for the agenda of the Annual Review to be held at a meeting of the Steering Group and inviting each WCA to include items for the agenda of the Annual Review meeting.

11 PROVISIONS RELEVANT TO ALL REVIEWS

- 11.1 Where, as a result of a call for an Ad Hoc Review in accordance with clause 9.2 or the circulation of the agenda for an Annual Review meeting in accordance with clause 10.1, the likely consequences of the Ad Hoc Review or the issues arising from the Annual Review are such as may result in changes being proposed to a RWT Contract or a RWT Contract being affected, the WDA shall in advance of the Ad Hoc Review meeting or Annual Review meeting, review and where reasonably possible confirm if any changes or the effects of such changes can be accommodated at no additional cost to the WDA or in the event that they cannot be so accommodated, ascertain from the RWT Contractor(s) the Compensation Payment (if any) that would be payable pursuant to Schedule 4 if the change were implemented. Sufficient time shall be allowed for this process so that the RWT Contractor(s) can respond to the WDA requested change, calculate its no better/no worse position and liaise (as necessary) with its funders (if any) and subcontractors and if necessary, the Ad Hoc Review or Annual Review will be delayed to facilitate this process.
- 11.2 Where a change is proposed that has no immediate material impact on a RWT Contract, the relevant WCA(s) and the WDA shall consider whether future changes by the same or other WCAs would cumulatively lead to such impact and the payment of any Compensation Payment pursuant to Schedule 4 in the future. This shall enable the WCAs to understand and plan for any future contingent liabilities.
- 11.3 The Parties shall attend and participate in the Annual Reviews and any Ad Hoc Review in good faith, fairly, reasonably, in the spirit of partnering set out in clause 7 above, having regard to each other’s budgets and resources and the WDA’s

commitments to its RWT Contractors, and having regard to any Party's obligation to consult its contractors on matters in the Annual Reviews and Ad Hoc Reviews which might affect its contracts.

- 11.4 Following the meeting of the Steering Group to carry out an Ad Hoc Review or Annual Review (and following any further work or subsequent correspondence required as a result of the meeting) the Parties shall expediently seek political/senior officer approval to any recommendations as necessary in accordance with their standing orders, including any approval required from the NWP Board. The Parties shall reconvene to discuss the impact if any WCA or the WDA is unable to secure such approval (or any further changes or impacts that emerge as a result of the approval process).
- 11.5 Following the approval process, the Parties shall make any changes, implement any actions, or create an action plan in accordance with a timetable for delivery that shall be agreed between the Parties.
- 11.6 Except as provided for otherwise in this Agreement no Party shall be required to agree to any amendment, termination, variation to this Agreement as a result of a Review but shall always act reasonably and promptly in issuing a response where requested to do so.
- 11.7 As a result of a Review the Parties may agree to vary this Agreement by way of a Deed of Variation or to terminate it in whole or in part.
- 11.8 Any proposed changes to the WCA Baseline shall be at the relevant WCA's absolute discretion provided always that if a WCA changes its WCA Baseline without the prior consent of the WDA, such consent not to be unreasonably withheld or delayed, the WDA may, acting reasonably and at its discretion, review or terminate any funding provided to the relevant WCA in respect of the relevant WCA as set out in Schedule 4 (Payment and Performance), if the change or variation to the WCA Baseline:
- 11.8.1 [has a detrimental impact on the ability of the RWT Contractor(s) to achieve their Contractual Targets; and/or]
 - 11.8.2 adversely affects the obligations of the WDA under a RWT Contract; and/or
 - 11.8.3 would create a liability (including but not limited to an increased payment, compensation event or indemnity) for the WDA to a RWT Contractor.

12 **WCA BASELINES**

- 12.1 Each WCA has agreed a WCA Baseline with the WDA as set out in Schedule 6.

- 12.2 The purpose of the WCA Baseline is to set out the baseline Waste and Recycling collection service to be delivered by the WCA, based upon which, the WDA shall agree wasteflow forecast with the RWT Contractor(s).
- 12.3 The Parties may review the WCA Baselines annually as part of the Annual Review conducted in accordance with clause 10.
- 12.4 It is agreed this Agreement shall stand as notice that for the time being the WCA Retained Waste shall be that set out in the WCA Baseline and shall only be varied or amended in accordance with this Agreement.

13 **FORECAST AND MINIMUM TONNAGES AND COMPOSITION RISK**

- 13.1 The WCAs hereby agree not to retain any Waste pursuant to section 48(2) of the EPA other than as provided for in Schedule 6 (WCA Baselines) unless the WCA Baselines are amended as part of a Review.
- 13.2 The WDA acknowledges that it accepts the risk of tonnage and Waste Composition fluctuation provided a WCA has complied with its WCA Baseline.
- 13.3 Provided that a WCA has complied with the activities in its WCA Baseline, that WCA shall not be liable to the WDA for any losses, additional costs, expenses whatsoever nor for the Forecast/Minimum Tonnages not being achieved (even if under the RWT Contract(s) the WDA is liable to the RWT Contractor(s) for the same).
- 13.4 If a WCA retains Waste other than in accordance with its WCA Baseline the direct result may be payment by the WDA pursuant to the Minimum Tonnage provisions under the RWT Contract(s) for the processing of more Waste than has been delivered to the RWT Contractor, or payment by the WDA under compensation provisions in the RWT Contract. To the extent that there is such a direct result, the WCA shall be liable to make Compensation Payments to the WDA in accordance with the provisions of Schedule 4 (Payments and Costs).
- 13.5 It is acknowledged that the impact of the actions of the WCAs pursuant to clause 13.4 may have a cumulative effect and the liability of the WCAs in clause 13.4 and Schedule 4 (Payments and Costs) shall be divided fairly between those WCAs whose actions have directly contributed to the cumulative effect. The WDA shall demonstrate openly how it has shared any contribution between the relevant WCAs.
- 13.6 Where any WCA's actions pursuant to clause 13.4 may have a future impact on the cumulative liability of all of the WCAs, the WDA shall notify the WCAs and shall where possible state the likelihood of the change causing an impact on this Agreement in the future. For the avoidance of doubt, the WCA or WCAs whose actions pursuant to clause 13.4 may have a future impact on the cumulative

liability of all of the WCAs shall remain liable for their share of any payment to the WDA in accordance with Schedule 4 (Payments and Costs).

13.7 The WCA shall be relieved of any obligations under this clause 13 to the extent that the WDA is relieved from its obligations to deliver Contract Waste under a RWT Contract.

13.8 Each Party acknowledges that the WDA may deliver Waste with a Waste Composition similar to Contract Waste (Substitute Waste) to meet its guaranteed Minimum Tonnages obligations under the Residual Waste Treatment Contract. In such circumstances, the WCA will provide reasonable assistance to the WDA in meeting such delivery requirements of the WDA.

13.9 Without prejudice to clauses 13.6 and 13.7 above, in no circumstance shall this Agreement create any liability between a WCA and any other WCA and nothing shall be construed or deemed otherwise.

13.10 Where a WCA delivers Waste to a Delivery Point that contains Contaminants the provisions of Schedule 5 (Waste Acceptance Protocol) shall apply.

13.11 In the event of dispute arising in relation to this clause, the Dispute Resolution Procedure shall apply.

14 **STEERING GROUP**

14.1 Each Party agrees to participate in the Steering Group as set out in Schedule 3 to this Agreement.

15 **OWNERSHIP OF WASTE AND DUTY OF CARE**

15.1 The RWT Contract(s) will provide that, as between the WDA and the RWT Contractor(s), all Waste received by or in the possession of the RWT Contractor(s) (or any of their sub-contractors) from or on behalf of the WDA shall upon receipt be acquired by, in the ownership and at the risk of the RWT Contractor(s), which shall take full responsibility for it.

15.2 For the purposes of this Agreement, until the RWT Contractor(s) take ownership of any Waste in accordance with the provisions of the RWT Contract, all Waste collected by the WCAs shall be deemed to held at the entire responsibility of the WCAs and the WDA shall have no responsibility for such Waste.

15.3 The WCAs shall keep consignment and transfer notes in respect of all Waste delivered to a Delivery Point for a period of at least two years, and the WCA shall ensure that it is given correct and accurate transfer notes by the RWT Contractor(s).

16 **COSTS**

16.1 Each party shall bear its own expenses, costs, risks and liabilities arising out of, or pursuant to, the preparation of this Agreement, and the preparation of any proposals or contracts pursuant hereto.

17 **DECISION MAKING**

Without prejudice to any formal Elected Member decision making requirements for any of the Parties they will work together to ensure there is clear accountability for all decisions made and actions taken, that decisions are made and actions taken in the best interests of local people and that such decisions and actions take into account what is fair and equitable between the Parties.

18 **INTELLECTUAL PROPERTY/OWNERSHIP OF DOCUMENTS**

18.1 Subject to the rights of any third parties, the Parties will share equally all data, reports, drawings, specifications, designs, invitations or other material produced or acquired including copyright in the course of their joint work under this Agreement. The Parties agree that any proposal by one party to utilise the documents and materials produced by the Parties shall be subject to the agreement of all other Parties such agreement not to be unreasonably withheld or delayed. The

18.2 Any changes, amendments or updates made to the documents and materials, if made under the terms of this Agreement, shall be jointly owned by the Parties.

19 **DATA PROTECTION**

19.1 In relation to all Personal Data, the Parties shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with this Agreement.

19.2 The Parties shall only undertake processing of Personal Data reasonably required in connection with this Agreement and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

20 **CONFIDENTIALITY**

20.1 Subject to Clause 20.2, the Parties shall keep confidential all Confidential Information received by them in connection with this Agreement.

20.2 Clause 20.1 shall not apply to:

20.3 any disclosure of information that is in the public domain at the time of disclosure or the receiving party can show is in, or comes into, the public domain after disclosure otherwise than by a breach of these conditions;

- 20.4 the receiving party can show was already in its possession free of any such restriction prior to receipt from the disclosing party;
- 20.5 the receiving party can show it has lawfully received from a bona fide third party without breach of any obligation to the disclosing party;
- 20.6 any disclosure which is required by Legislation or by an order of a court of competent jurisdiction, any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory board having the force of law;
- 20.7 any disclosure of information by the Parties to any other department, office or agency of the Government or their respective advisers for the purpose of the examination and certification of the Parties' accounts or any examination or investigation; or
- 20.8 any disclosure that is required to ensure compliance with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.
- 20.9 Subject to Clause 21 (FOIA and EIR), in respect of all Confidential Information which may be disclosed by one party to the other or acquired by one party from the other under this Agreement, the receiving party undertakes:
- 20.10 to keep the Confidential Information in strict confidence, and not to use the Confidential Information herewith other than for the purposes of this Agreement;
- 20.11 only to disclose the Confidential Information to such of its employees on a genuinely need-to-know basis for the purposes of this Agreement, and then only on the understanding that they agree to be similarly bound by the provisions of this Agreement. The receiving party shall be responsible for ensuring that all such employees comply with the confidentiality obligations of this Agreement;
- 20.12 not to disclose the Confidential Information to any third party whomsoever except with the prior written consent of the disclosing party;
- 20.13 not to copy or reduce the Confidential Information to writing except as may be strictly necessary for the purposes of this Agreement; and
- 20.14 to return to the disclosing party on demand or termination all Confidential Information held in any form whatsoever including all copies thereof, and to destroy all notes and any other written reports or documents which may have been made by the receiving party and which contain any part of the Confidential Information, except as authorised in writing by the disclosing party, or as is strictly necessary to complete any outstanding obligations relating hereto between the parties.

20.15 The property in all Confidential Information disclosed by either party to the other pursuant to this Agreement shall, subject to any right of any other owner, remain vested with the disclosing party.

20.16 No licence or other rights are granted in the Confidential Information by the disclosing party to the receiving party.

21 **FOIA AND EIR**

21.1 The Parties acknowledge that, as public authorities, each Party is subject to the requirements of the Freedom of Information Act 2000 (the "FOIA") and the Environmental Information Regulations 2004 (the "EIR") and shall facilitate each other Party's compliance with its information disclosure requirements pursuant to the FOIA or the EIR in the manner provided for below.

21.2 Where the Party receiving a Request for Information (the "Responding Party") receives a Request for Information that another Party (the "Other Party") is holding and which the Responding Party does not hold itself the Responding Party shall refer to the Other Party such Request for Information that it receives as soon as practicable and in any event within five Business Days of receiving a Request for Information and the Other Party shall:

21.2.1 provide the Responding Party with a copy of all such Information in the form that the Responding Party reasonably requires as soon as practicable and in any event within ten(10) Business Days (or such other period as the Responding Party acting reasonably may specify) of the Responding Party's request; and

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

21.3 Following notification under Clause 21.2, and up until such time as the Other Party has provided the Responding Party with all the Information specified in Clause 21.2.1, the Other Party may make representations to the Responding Party as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, provided always that:

21.3.1 the Responding Party shall be responsible for determining at its absolute discretion whether Information is exempt from disclosure under the FOIA and the EIR;

21.3.2 the Responding Party shall be responsible for determining at its absolute discretion whether Information is to be disclosed in response to a Request for Information; and

21.3.3 in no event shall the Other Party respond directly, or allow its contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Responding Party.

21.4 In the event of a request from the Responding Party pursuant to Clause 21.2, the Other Party shall as soon as practicable, and in any event within 5 Business Days of receipt of such request, inform the Responding Party of the Other Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Responding Party under Section 12(1) of the FOIA and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations"). Where such costs (either on their own or in conjunction with the Responding Party's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Responding Party shall inform the Other Party in writing whether or not it still requires the Other Party to comply with the request and where it does so require the Other Party to comply with the request the 10 Business Days period for compliance shall be extended by such number of additional days for compliance as the Responding Party is entitled to under Section 10 of the FOIA. In such case, the Responding Party shall notify the Other Party of such additional days as soon as practicable after becoming aware of them and shall reimburse the Other Party for such costs as the Other Party incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

21.5 The Parties acknowledge that (notwithstanding the provisions of this Clause 21 the Responding Party may, acting in accordance with the Department of Constitutional Affairs' Code of Practice (the "Code") on the discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA or the EIR to disclose Information concerning the Other Party or the Residual Waste treatment and disposal project:

21.5.1 in certain circumstances without consulting with the Other Party, or

21.5.2 following consultation with the Other Party and having taken their views into account.

21.6 Where Clause 21.5.1 above applies the Responding Party shall, in accordance with the recommendations of the Code, draw this to the attention of the Other Party prior to any disclosure.

21.7 Where a Party receives a Request for Information in relation to Information which it does not hold but believes may be held by another Party, it shall transfer the Request for Information to the other Party, in accordance with Part III of the Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA.

22 DISPUTE RESOLUTION

22.1 Consultation

22.1.1 Any dispute or difference concerning this Agreement shall be first referred to a meeting of each of the Parties involved in the dispute. The Parties agree to discuss and, in good faith, attempt to resolve any such dispute or difference in accordance with the spirit of partnering described in Clause 7.

22.1.2 If the dispute or difference is not resolved by consultation under clause 22.1.1, it shall be referred to Director level of each of the Parties involved in the dispute. The Directors will meet, and in good faith, attempt to resolve any such dispute or difference.

22.1.3 If the dispute or difference is not resolved by consultation at Director level under clause 22.1.2, it shall be referred to Chief Executive level of each of the Parties involved in the dispute. The Chief Executives will meet, and in good faith, attempt to resolve any such dispute or difference.

22.2 Mediation

22.2.1 If at any time either Party is of the opinion that any dispute is not likely to be resolved by consultation under Clause 22.1.3 that Party may invite the other to attempt to resolve the dispute through mediation administered by the Centre for Effective Dispute Resolution, International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU.

22.2.2 If the Parties fail to resolve the dispute through consultation under Clause 22.1 within fourteen (14) days or, where the dispute was referred to mediation pursuant to Clause 22.2.1 and the dispute has not been resolved through that process, either Party may refer the matter to an Adjudicator selected in accordance with Clause 22.3 below.

22.3 Adjudication

Without prejudice to Clauses 22.1 (Consultation) and 22.2 (Mediation) above, either Party may give the other notice of the intention to refer the dispute to

adjudication and the adjudicator (“Adjudicator”) shall be selected in accordance with Clause 22.4 (Identity of Adjudicator).

22.4 Identity of Adjudicator

The Adjudicator nominated to consider a dispute referred to him shall be agreed by the Parties to the dispute or in default of agreement selected by the Centre for Effective Dispute Resolution.

22.5 Referral of the dispute

Within five (5) Business Days of appointment in relation to a particular dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

22.6 Adjudicator's decisions

In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within twenty (20) Business Days of appointment (or such other period as the Parties may agree after the reference, or thirty (30) Business Days from the date of reference if the Party which referred the dispute agrees). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Adjudicator, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to the decision.

22.7 Adjudicator's costs

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses unless otherwise specified by the Adjudicator.

22.8 Adjudicator as expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

22.9 Adjudicator's powers

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

22.10 **Confidentiality**

All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by the provisions of this Agreement, disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.

22.11 **Liability of Adjudicator**

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

22.12 **Parties' obligations**

22.12.1 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this Clause 22.

22.12.2 Nothing in this Clause 22 shall prevent either Party from resisting enforcement of any decision on the grounds that the decision is invalid in law, whether through excess of jurisdiction by the Adjudicator or by breach of the rules of natural justice or in conflict of interest or in bad faith or otherwise.

23 **WCA DEFAULT AND CONSEQUENCES**

23.1 If a WCA Default has occurred and the WDA wishes to terminate this Agreement in respect of the relevant WCA(s), the WDA must serve a termination notice on the relevant WCA(s), copied to all of the other WCAs (for information purposes only) within 30 Business Days of becoming aware of the WCA Default.

23.2 The termination notice must specify the type of WCA Default which has occurred entitling the WDA to terminate.

23.3 This Agreement shall terminate in respect of the relevant WCA(s) on the day falling 50 Business Days after the date the relevant WCA(s) receives the termination notice, unless the WCA(s) rectify the WCA Default within 30 Business Days of receipt of the termination notice.

23.4 Termination shall be without prejudice to any right or remedy of the WDA which accrued prior to the date of termination.

23.5 In the event of a dispute in respect of this clause, the Dispute Resolution Procedure shall apply.

24 **WDA DEFAULT AND CONSEQUENCES**

24.1 If a WDA Default has occurred and a WCA wishes to terminate this Agreement, it must serve a termination notice on the WDA, copied to all of the other WCAs (for information purposes only) within 30 Business Days of becoming aware of the WDA Default.

24.2 The termination notice must specify the type of WDA Default which has occurred entitling the WCA to terminate.

24.3 This Agreement shall terminate on the day falling 50 Business Days after the date the WDA receives the termination notice, unless the WDA rectifies the WDA Default within 30 Business Days of receipt of the termination notice.

24.4 Termination shall be without prejudice to any right or remedy of a WCA which accrued prior to the date of termination. Save for the foregoing, the liability of the WDA upon termination shall be limited to the reasonable and proper costs of each WCA which has implemented its WCA Baseline.

24.5 In the event of dispute in respect of this clause, the Dispute Resolution Procedure shall apply.

25 **BREAK CLAUSE**

25.1 Any Party may at any time after the [] anniversary of the Commencement Date be entitled to serve a termination notice on the rest of the Parties confirming its intention to terminate this Agreement.

25.2 If a termination notice is served pursuant to Clause 25.1, this Agreement shall terminate on the day falling [3] months after the date the termination notice was served pursuant to above.

25.3 On termination of this Agreement on notice pursuant to this Clause 25.3 the WDA shall not be liable to any other Party for any losses suffered as a result of or arising from the termination.

25.4 For the avoidance of doubt, no Party may voluntarily terminate this Agreement pursuant to this clause 25 if that Party is in breach of its obligations under this Agreement such that any other Party would be entitled to terminate for breach pursuant to clause 23 or 24 as applicable.

26 **CONSEQUENCES OF TERMINATION**

26.1 In the event of the termination of this Agreement in whole or in part:

26.1.1 the WCAs shall be entitled to payment including non-statutory funding prior to termination but shall not be entitled to payment post termination pursuant to Schedule 4 (Payment and Performance) and all non-statutory funding by the WDA shall be withdrawn;

26.1.2 the WDA shall be entitled to issue:

- (a) a direction of the WDA under section 51(4) of the EPA, directing the relevant WCA(s) to deliver the Waste collected by it to the Delivery Points and to separate such Waste before delivery; and
- (b) a notice under section 48(3) of the EPA that the WDA objects to any recycling arrangements made by the WCAs other than those identified in this Agreement.

26.2 Where this Agreement or part of this Agreement is terminated in respect of a specific WCA this Agreement or the relevant parts of this Agreement shall be terminated only in respect of the relevant WCA and the remaining provisions of this Agreement shall continue to have effect in respect of the remaining WCAs.

27 **INVOICING AND PAYMENT**

27.1 The Parties shall make payments, pay compensation and make contributions to costs in accordance with Schedule 4 (Payment and Performance).

27.2 The relevant Party shall submit an invoice to the other Party(ies) at the time or frequencies set out in Schedule 4 (Payment and Performance) for the relevant items.

27.3 Each invoice shall contain:

27.3.1 the Party's name and contact address;

27.3.2 an invoice or purchase order reference number; and

27.3.3 the invoicing period to which the invoice relates.

27.4 The Party issuing the invoice must ensure that the invoice (in each case in respect of the relevant invoicing period) details:

27.4.1 item description;

- 27.4.2 number of units (e.g. number of tonnes);
- 27.4.3 unit rate (e.g. Recycling Credit rate);
- 27.4.4 any adjustments to the sum to reflect previous over-payments and/or under-payments (each adjustment stated separately)
- 27.4.5 any interest payable in respect of any amounts outstanding and/or paid after their due date
- 27.4.6 standard terms and conditions;
- 27.4.7 if a WCA is invoicing the WDA the relevant purchase order number; and
- 27.4.8 If the WDA is invoicing a WCA the relevant account number.

27.5 Each invoice shall be accompanied by the relevant supporting information required in accordance with this Agreement (including but not limited to the information set out in Schedule 4 (Payment and Costs))

27.6 If any Party (acting in good faith) disputes all or any part of any sum due, the undisputed amount of such sum shall be paid in accordance with this Agreement and the disputed part shall be determined by the Parties acting reasonably failing which the dispute shall be determined in accordance with Clause 22 (Dispute Resolution). For the avoidance of doubt, during the period of any such dispute the other Party shall continue to perform all of its obligations under this Agreement notwithstanding any such withholding of payment by the other Party.

27.7 Any amount agreed or determined to have been payable shall be paid forthwith by the WDA or the WCA (as the case may be) together with interest on such amount calculated in accordance with Clause 27.8.

27.8 If any sum is owed to any Party and remains outstanding for more than 20 Business Days from the date that it was due, there shall be added to the sum interest at a rate of two per cent above the base lending rate of the Bank of England per annum calculated from the date that the payment became due up to and including the day of payment whether before or after judgment. In the event of dispute, the Dispute Resolution Procedure shall apply.

28 **FORCE MAJEURE**

28.1 **Obligations**

No Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party (the "Affected Party") to the extent that a

Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.

28.2 **Notification of Force Majeure Event**

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

28.3 **Consultations**

As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.

28.4 **Failure to agree**

If no such terms are agreed on or before the date falling [80] Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than [125] Business Days, then either Party may terminate this Agreement by giving 20 Business Days' written notice to the other Party. In such circumstances no liability shall be owed by either party to the other arising out of the termination.

28.5 **Mitigation**

The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of a Force Majeure Event.

28.6 **Cessation of Force Majeure Event**

The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

29 **AMENDMENTS**

Following the execution of this Agreement, no amendment or variation to this Agreement shall be effective unless it is in writing and signed by a representative of each Party duly authorised (and notified to each Party) for that purpose.

30 **NOTICES**

30.1 No notice required to be served upon any of the Parties under this Agreement shall be valid or effective unless it is in writing and served either by delivering the notice by hand or by posting the notice in a pre-paid envelope sent by recorded delivery to that Party at the relevant address set out in **Schedule 8** to this Agreement or to such other address as that Party may notify the other Party in writing, and the notice if delivered by hand shall be deemed to have been duly served at the time it is so delivered provided a receipt is obtained and if delivered by recorded delivery the notice shall be deemed to have been served two (2) Business Days after the date of posting.

30.2 Where any notice is deemed served pursuant to Clause 30.1 after 4.00pm on any day, the notice shall be deemed to have been served on the next working day.

31 **ENTIRE AGREEMENT**

31.1 Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and, in the absence of fraud, supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

31.2 The Parties acknowledge that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

31.3 Without limiting the generality of the foregoing, no Party shall have any remedy in respect of any untrue statement made to him upon which he may have relied in entering into this Agreement, and a Party's only remedy is for breach of contract. Nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

32 **WARRANTIES**

Each Party warrants to the other that it has the necessary powers and has obtained all relevant approvals in accordance with its internal governance procedures to enter into this Agreement.

33 **MITIGATION**

The Parties shall, at all times, take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other

Party pursuant to this Agreement and to take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under this Agreement which would otherwise entitle that Party to relief and/or claim compensation hereunder.

34 **AGENCY**

Nothing in this Agreement shall constitute a legal partnership or agency between the Parties.

35 **PUBLICITY**

In so far as is practical the Parties agree to consult prior to issuing or agreeing to the issue of any press releases or communicating with representatives of the press, television, radio or other communications media on any matter concerning the subject matter of this Agreement and agree that any such publicity should recognise the involvement of all Parties.

36 **ASSIGNMENT**

This Agreement is personal to the Parties and the rights and/or obligations under this Agreement shall not be assigned, novated or otherwise transferred to any person other than to a successor body following a reorganisation within government or to a body which substantially performs any of the functions that previously had been performed by the affected Party. The Parties shall enter into such agreement and/or deed as may reasonably be required to give effect to such assignment, novation or transfer.

37 **WAIVER**

Failure by one Party to enforce the provisions of this Agreement or to require performance by the other Party of any of the provisions contained in this Agreement shall not constitute or be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Agreement or any part thereof or the right of the former Party to enforce any provision in accordance with its terms.

38 **SEVERABILITY**

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent by a Court of competent jurisdiction, such term, condition or provision shall be severed and shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

39 **RIGHTS OF THIRD PARTIES**

The Parties agree that this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

40 **LAW AND JURISDICTION**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Clause 22 (Dispute Resolution), the English courts shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

41 **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have executed and delivered this document as a deed the day and year first above written.

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[sealing pages]

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SCHEDULE 1

Waste Disposal Authority Responsibilities and Commitments

- 1) The WDA will provide the Delivery Points listed in Schedule 7.
- 2) The WDA will provide the Delivery Points to the Delivery Point Standards set out in Schedule 7, and where a Delivery Point is not available, the WDA will provide the Contingency Delivery Points within the parameters set out in Schedule 7.
- 3) The WDA will provide adequate reception facilities and personnel at the Delivery Points to receive the WCAs' vehicles.
- 4) The WDA has and will retain the responsibility for the disposal of Municipal Waste delivered to the Delivery Points or HWRCs and for the provision and maintenance of HWRCs within its authority boundary.
- 5) The WDA will make payments to the WCAs in accordance with Schedule 4 and subject to the terms of this Agreement.
- 6) The WDA will seek to implement best practice where ever practicable to comply with this Agreement, the JMWMS and the Mutual Aims.
- 7) The WDA will act reasonably in administering the RWT Contracts and enforcing the terms thereof and fulfilling its obligations thereunder and procuring the delivery of the service therein, in so far as they are relevant to this agreement.
- 8) The WDA will act reasonably in administering any other contracts or similar arrangements entered into by the WDA in relation to similar or related services and enforcing the terms thereof and fulfilling WDA's obligations thereunder in so far as they are relevant to this agreement.

SCHEDULE 2

Waste Collection Authority Responsibilities and Commitments

- 1) The WCAs have and will retain the responsibility for the collection of all municipal waste within their own authority boundary.
- 2) The method and frequency of the chosen collection system shall remain the sole responsibility of each WCA. However, the WCAs agree to work together through this Agreement to deliver the current and any future Municipal Waste collection strategy for the area in accordance with their WCA Baselines and in a way that acting reasonably does not adversely affect the obligations of the WDA under the RWT Contracts.
- 3) The WCA will seek to implement best practice (as reasonably expected of a competent waste collection authority) wherever practicable to comply with this Agreement, the JMWMS and the Mutual Aims.
- 4) The WCAs shall use reasonable endeavours to not (and shall procure that their collection contractors do not) damage any Delivery Points, Contingency Delivery Points or parts thereof.
- 5) The WCAs shall use reasonable endeavours to comply with the WCA Baselines.
- 6) The WCAs shall not make changes to the WCA Baselines agreed by the WDA other than in accordance with the Review Procedure.
- 7) Each WCA shall use reasonable efforts to deliver or procure that its contractor delivers Contract Waste to the Delivery Point or Contingency Delivery Point (as appropriate).

SCHEDULE 3

Not Used

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SCHEDULE 4

Payment and Performance Schedule

1. Definitions and Interpretation

1.1.

2. Recycling Credits Payment

2.1.

3. Mileage Payments in respect of Residual Waste

3.1.

4. Performance Failure Payments

4.1.

5. Payments and Invoicing

5.1. [for discussion]

6. Indexation

6.1. [for discussion]

7. Compensation Payments

7.1. Where:

7.1.1. Waste is retained by the WCAs other than in accordance with their WCA Baseline; and/or

7.1.2. the WCAs do not carry out their collection services in accordance with the WCA Baseline; and/or

7.1.3. the WCAs fail to comply with the Waste Acceptance Protocol referred to in Schedule 5;

and this directly results in an increase to the payment due from the WDA to a RWT Contractor, a payment due from the WDA pursuant to the Minimum Tonnage provisions under the RWT Contract(s) for the processing of more Waste than has in fact been delivered to the RWT Contractor, or a compensation payment due from the WDA under the RWT Contract(s), then the relevant WCA may be required to make a Compensation Payment to the WDA calculated in accordance with this paragraph 7. The Compensation Payment shall be shared fairly between any number of WCAs whose activity pursuant to paragraphs 7.1.1 and 7.1.2 contributed (simultaneously or cumulatively) to the payment or increase in the payment due from the WDA to the RWT Contractor(s).

- 7.2. Without prejudice to the provisions of paragraph 7.1 above, a WCA shall be liable to make a Compensation Payment to the WDA where, as a direct result of that WCA's failure in accordance with paragraphs 7.1.1, 7.1.2 or 7.1.3, the WDA is required under a RWT Contract to make a payment to the RWT Contractor(s) which would not have been payable under the RWT Contract but for the circumstances set out in those paragraphs.
- 7.3. For the avoidance of doubt the WCAs shall only be liable for Compensation Payments for their own WCA Baselines and changes thereto. In no circumstance shall this Agreement create any liability or right of action between a WCA and any other WCA and nothing shall be construed or deemed otherwise.
- 7.4. The WCA shall not, pursuant to any provision of this Schedule 4, be liable to the WDA (nor the RWT Contractor(s)):
- 7.4.1. for reduction in the tonnages of Contract Waste except to the extent that the result of the matters in paragraph 7.1 causes the Contract Waste to fall below the Forecast Tonnages;
 - 7.4.2. for any of WDA's own losses, costs, expenditure, damages, fines or taxes other than the WDA's liability to the RWT Contractor(s) in accordance with clause 14.4.
- 7.5. In respect of any sums claimed by the WDA in respect of this paragraph 7, the WDA shall:
- 7.5.1. be under a duty to mitigate any sums claimed by the RWT Contractor(s); and
 - 7.5.2. pursue or defend any claim made/or against the RWT Contractor(s) in respect of the sums claimed by the RWT Contractor(s) with the same effort and care as if the WDA was unable to recover a Compensation Payment from the relevant WCA.
- 7.6. In respect of any payments due from a WCA under this paragraph 7, the WCA shall make such payments on the same basis as such payments are required to be made to the RWT Contractor(s). Where the WDA has a choice over the frequency of such payments it shall consult with the relevant WCA as to its preferred method and frequency of payment.
- 7.7. In respect of any payments due from a WCA under this paragraph 7, the WDA shall submit an invoice or invoices to the relevant WCA based on the method and frequency agreed between the WDA and WCA in accordance with clause 29.

SCHEDULE 5

WASTE ACCEPTANCE PROTOCOL

1. INTRODUCTION

The RWT Contract(s) entered into by the WDA will provide that if the RWT Contractor(s) identify Contaminants in the Contract Waste delivered by the WCAs or their contractors that cannot be processed by the RWT Contractor(s) or can be processed but at an additional cost, this Contract Waste will be processed at an additional cost or may be rejected by the RWT Contractor(s) and the WDA shall be liable for the additional cost of processing the relevant Contract Waste.

2. RESIDUAL WASTE

2.1 The Waste Acceptance Protocol and procedure for dealing with Contamination in the RWT Contract(s) is set out in Schedule [] of the RWT Contracts and incorporated into this Agreement as an Appendix to this Schedule 5.

3. DISPUTE RESOLUTION PROCEDURE

3.1 Any disputes relating to the application of this Schedule 5 including the:

- 3.1.1 preparation, agreement and review of the Waste Acceptance Protocol;
- 3.1.2 presence or otherwise of Contamination;
- 3.1.3 the definition of Contamination;
- 3.1.4 compliance by any party or by the RWT Contractor(s) with the agreed Waste Acceptance Protocol;
- 3.1.5 the legal requirements for a Delivery Point to be closed as a result of Contamination;
- 3.1.6 the amount (if any) of any additional cost incurred by the WDA,

shall be referred to the Dispute Resolution Procedure.

SCHEDULE 6

WCA Baseline

WCA Baseline

WCA: []

	2013/14	2014/15	2015/16	2016/17	2017/18 and on-going
RESIDUAL WASTE	General Household Waste	General Household Waste	General Household Waste	General Household Waste	General Household Waste
Material type					
Container Type					
Number of (approx.) properties served					
Frequency of collection					
Delivered to	Delivery Points	Delivery Points	Delivery Points	Delivery Points	Delivery Points
FOOD & GARDEN					
Material type					
Container type					
Number of (approx.) properties served					
Frequency of collection					
Delivered to					
GARDEN WASTE ONLY					
Material type					
Container type					
Number of (approx.) properties					

served					
Frequency of collection					
Delivered to					
DRY RECYCLING					
Container type					
Number of (approx.) properties served					
Frequency of collection					
Delivered to	Retained by WCA	Retained by WCA	Retained by WCA	Retained by WCA	Retained by WCA
PUBLIC RECYCLING SITE					
Materials					
Container type					
Number of sites					

SCHEDULE 7

Delivery Points

[Name of Delivery Point]	
Delivery Point address	
WCA(s) to deliver	
Opening Days and Hours	
Maximum Vehicle waiting times from the time the vehicle arrives at the weighbridge, or enters the queue to the weighbridge, to the time of the vehicle crossing the exit weighbridge.	
Facilities (mess facilities, vehicle washing	
Restrictions, if any, on vehicle type or size	
Parameters for location of Delivery Points	
Parameters for location of Contingency Delivery Point.	

SCHEDULE 8

Delivery Addresses for Notices

All Notices in respect of this Agreement shall be sent to the following addresses:

Party	Address
Corby Borough Council	[confirm address and addressee]
Daventry District Council	[confirm address and addressee]
East Northamptonshire District Council	[confirm address and addressee]
Kettering Borough Council	[confirm address and addressee]
Northampton Borough Council	[confirm address and addressee]
South Northamptonshire District Council	[confirm address and addressee]
Borough Council of Wellingborough	[confirm address and addressee]
Northamptonshire County Council	[confirm address and addressee]

SCHEDULE 9

REPORTS AND RECORDS

[Drafting note: Parties to list reports/records required from each party, in accordance with clause 8]

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