

Dated

2006

- (1) Merseyside Waste Disposal Authority
- (2) Knowsley Metropolitan Borough Council
- (3) Liverpool City Council
- (4) Metropolitan Borough of Wirral Borough Council
- (5) Sefton Metropolitan Borough Council
- (6) St Helens Metropolitan Borough Council

Waste Management Inter Authority Agreement

DISCUSSION DRAFT

DN: This Agreement assumes that the IAA might be entered into prior to completion of any of the three Waste Contracts to be procured by the Authority. This has the advantage that the "Partnering Ethos" etc is in place between the Authority and the WCAs during negotiations of the contracts.

Detailed obligations relating to the Waste Contracts will then be "flowed down" in the IAA when their precise term are known, and the IAA contains provisions dealing with this future agreement. However, if the provisions of one or more of the Waste Contracts are known with sufficient certainty at the time of agreeing the IAA, detailed terms relating to such contract(s) could be flowed down into the IAA before it is entered into.

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BETWEEN

- (1) Merseyside Waste Disposal Authority of [ADDRESS]; (“the Authority”)
- (2) Knowsley Metropolitan Borough Council of [ADDRESS];
- (3) Liverpool City Council of [ADDRESS];
- (4) Metropolitan Borough of Wirral of [ADDRESS];
- (5) Sefton Metropolitan Borough Council of [ADDRESS];
- (6) St Helens Metropolitan Borough Council of [ADDRESS] (“each being a “WCA”, and which we collectively referred to as “the WCAs”).

BACKGROUND

- (A) The National Waste Strategy 2000 issued by the Secretary of State pursuant to the Environmental Protection Act 1990 (the EPA) requires Local Authorities to achieve certain targets for recycling which have been enshrined in Best Value Performance Indicators (BVPIs). The 1999 Landfill Directive (99/31/EC) requires all Local Authorities to divert prescribed amounts of biodegradable municipal waste from landfill and this is enforced by the Waste Emissions and Trading Act 2003 (WET Act) (together the BVPIs and landfill diversion requirements shall be known as the “Statutory Targets”).
- (B) The Authority is a Waste Disposal Authority (WDA) and the WCAs are Waste Collection Authorities for the purposes of section 30 of the EPA.
- (C) Further and future recycling opportunities present sound and sustainable environmental solutions to waste management.
- (D) The Authority and the WDAs entered into a Memorandum of Understanding (“MOU”) in order to develop partnership working between them in furtherance of the Strategy.
- (E) The Authority has entered into [Waste Contract?] at the date hereof, and intends to enter into [the other Waste Contracts] during the Term. The Parties have agreed to work together to facilitate the operation of the [initial waste contract], agreement between the Authority and the relevant Waste Contractors of the [other Waste Contracts] and the operation of such additional Waste Contracts following their commencement **[depends which Waste Contracts, if any, have been entered into on the date of this Agreement]**
- (F) The MOU is not legally binding. This Agreement is legally binding and is a development of the principles set out in the MOU.

AND

In consideration of £1.00 given by the Authority to each of the WCAs (receipt of which is hereby acknowledged) it is agreed as follows:

1. **DEFINITIONS**

1.1 In this Agreement, unless the context otherwise requires terms with an initial capital shall have the meanings set out below.

“Administrative Area”	the administrative area(s) at the date of this Agreement of the Parties
“Agreement”	this partnering agreement and the Schedules hereto
“Business Day”	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London
“Change in Law”	<i>[See clause 10.5]</i>
“Clause”	a clause forming part of this Agreement and any reference to sub-clause shall be construed accordingly
“Commencement Date”	<i>[DATE]</i> 2006
“Commercial Waste”	[]
“Composting”	a process of controlled biological decomposition and stabilisation of organic substrates, that results in the production of Compost and which satisfies the Government’s prevailing definition as set out in the Best Value Performance Indicator BV 82b for Composting (and “Composted” shall be interpreted accordingly)
“Contingency Delivery Point”	a Delivery Point to which a WCA may be required to deliver Waste during Planned Maintenance and/or in the event any Delivery Point is Unavailable
“Contract Management Arrangements”	<i>[To be discussed]</i>
“Contract Management Board”	<i>[To be discussed]</i>
“Delivery Points”	the delivery points to which the WCAs will deliver Contract Waste as set out in Schedule 1 (Delivery Points) or such other delivery points as the Parties shall agree
“Direction”	a direction issued by the Authority to the WCAs or any one of them pursuant to the EPA and/or the WET Act or any other Legislation from time to time in force and

	“Directing” shall be construed accordingly
“Dispute Resolution Procedure”	the procedure set out at schedule 7
“DPA”	the Data Protection Act 1998
“Environmental Regulations or EIR”	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations
“EPA”	the Environmental Protection Act 1990
“Expiry Date”	subject to any earlier termination of this Agreement, the date which is [six months] after the expiry or termination of the last of the Waste Contracts to expire or terminate, and “Expires” and “Expiry” shall be construed accordingly
“Facility”	each and any facility and landfill site including the Delivery Points provided and/or operated or to be provided and/or operated by the [<i>PFI Contractor together pursuant to the PFI Contract with all supporting infrastructure and equipment</i>] [<i>will all “Facilities” be operated by the PFI Contractor, with the other two Contracts based on service provision?</i>]
“Facility Input Specification”	the criteria for each Delivery Point set out in Schedule 2 (Facility Input Specification) for determining whether Contract Waste is acceptable at a Delivery Point or whether it may be rejected by the relevant Waste Contractor
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act
“ <i>Joint Member Board</i> ”	the Board comprising elected members of the Parties mentioned in Schedule 5 (Joint Officer/Member Boards) [<i>MWDA to consider appropriate boards etc</i>]

“Joint Officer Board”	<i>[the board comprising officers of the Parties mentioned in Schedule 5 (Joint Officer/Member Boards)] [MWDA to consider appropriate boards etc]</i>
“Landfill Contract”	a contract between the Authority and a waste contractor in relation to landfilling waste
“Legislation”	any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom
“Mutual Aim”	[MWDA to comment on appropriate aims - should include the strategy referred to in the MOU [has a revised strategy based on the three contract approach been developed?], agreement and proper performance of the Waste Contracts, and alteration of this Agreement to reflect those of the three contracts to be entered into after the date of the IAA?]
“Partnering Ethos”	[the principles and obligations set out at clause 4.2]
“Parties”	the Authority and the WCAs, and “Party” shall mean any of them
“PFI Contract”	the Private Finance Initiative Contract for the recovery of waste and the disposal of residual waste services in the administrative area between the Authority and the PFI Contractor
“PFI Contractor”	the contractor with whom the Authority enters into the PFI Contract
“Planned Maintenance”	planned maintenance by any Waste Contractor of any of the Delivery Points [note: arrangements for notification of agreed maintenance plan and programme and any changes agreed by the Authority to follow any Waste Contract in place at the date of this Agreement, and to be changed to reflect any Waste Contract entered into thereafter.]
“Recycle”	[DETAILS], and “recycling” shall be construed accordingly
“Recycling Contract”	a contract between the Authority and a waste

	contractor in relation to recycling waste
“Relevant Information”	has the meaning set out in clause 4.2.2 (Partnering Ethos)
“Residual Waste Stream”	pre-treatment Contract Waste which has been collected by or on behalf of any WCA or the Authority and delivered to the relevant Waste Contractor for acceptance, transfer, treatment, recycling, recovery and disposal
“Review”	a review under clause Error! Reference source not found. (Change)
“Schedules”	the documents numbered 1 to [6] which are incorporated into this Agreement
“Statutory Targets”	<i>[the Recycling and Composting targets for the purposes of BVPI 82 (a) and (b) and landfill division targets for the purposes of the WET Act]</i>
“Term”	the term of this Agreement as defined in clause 3 (Commencement and Duration)
“Termination Date”	the date on which this Agreement is terminated in accordance with its terms, and “Termination” and “Terminates” shall be construed accordingly
“Tipping Away Payments”	any liability of the Authority to the WCAs arising due to additional costs properly incurred by any WCA in respect of the cost of transportation of Contract Waste to a Delivery Point or to any Contingency Delivery Point not located at any of the sites set out in Schedule 1 (Delivery Points). Such costs shall be calculated in accordance with the formula set out in Schedule 4 (Payment and Compensation Mechanism)
“Unavailable/Unavailability”	that a Delivery Point is for a period of time or permanently unavailable for the reception of Contract Waste, as further defined in the Waste Contracts
“Unitary Charge”	the charge payable by the Authority to the Waste Contractor(s) pursuant to the Waste Contract
“Waste”	the meaning ascribed to it in section 75 of the EPA
“Waste Contracts”	collectively, the Landfill Contract, the Recycling

	Contract and the PFI Contract
“Waste Contractor(s)”	the Contractor(s) with whom the Authority contracts under the Waste Contracts
“WCA Baseline”	the agreed WCA Waste and specification of the waste to be delivered by the WCAs
“WCA Collection Contractor”	any collection contractor engaged by a WCA to collect Waste
“WCA Waste”	[<i>Municipal</i>] Waste collected by a WCA which the WCA with the written consent of the Authority does not deliver to a Delivery Point and which is instead held back by the WCA for recycling or composting through arrangements between the WCA and third party. As at the date of this Agreement WCA Waste is as specified for each WCA in Schedule 3 (WCA Baseline)
“WET Act”	the Waste and Emissions and Trading Act 2003

2. INTERPRETATION

2.1 In this Agreement, except where the context otherwise requires:

- 2.1.1 the masculine includes the feminine and the neuter and vice versa;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 a reference in this Agreement to any clause, sub-clause, paragraph, Schedule, appendix or annex is except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, Schedule, appendix or annex of this Agreement;
- 2.1.4 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 2.1.5 any reference to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation, or other similar instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 2.1.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 2.1.7 headings are for convenience of reference only;
- 2.1.8 words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words unless

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

2.1.9 the Schedules hereto all form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement;

2.1.10 the provisions of this Agreement shall apply to all Parties save in relation to Schedules [NUMBER] to [NUMBER] which apply only to the Parties named in them.

2.2 All of the WCA's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Authority and (save as expressly provided hereunder) to be performed at the Authority's own cost and expense.

2.3 For the avoidance of doubt nothing in this Agreement shall impose or imply any joint liability on the WCAs and a WCA shall not be liable in any way for any acts or omissions of this Agreement caused solely by the act or omission of another WCA.

3. **COMMENCEMENT AND DURATION**

3.1 This Agreement will commence on the Commencement Date and, unless Terminated sooner, continue in full force and effect until the earlier of:

3.1.1 the Expiry Date;

3.1.2 the Termination Date (unless the Authority has procured on Termination that either it (if so authorised by Legislation then in force) or a third party contractor will provide and operate the Facilities or facilities of a similar nature to those envisaged by any of the Waste Contracts, in which case this Agreement will Terminate on the date which is six months after the date on which such contract terminates or expires); or

3.1.3 the relevant provisions of the EPA and WET Act being amended or repealed or other enactment made such that this arrangement is rendered ineffective, inappropriate or unlawful.

4. **PARTNERING ETHOS**

4.1 The Parties will work in good faith and in accordance with the Partnering Ethos, to achieve the Mutual Aims. Each Party acknowledges that achieving the Mutual Aims requires the co-operation and efforts of all the Parties. Each Party undertakes with the others to use all reasonable endeavours to achieve the Mutual Aims.

4.2 Partnering Ethos shall mean that:

4.2.1 each Party shall act reasonably and co-operatively with the other Parties (the same to be interpreted in the context of the requirement for all parties to achieve, as a minimum, the Mutual Aims);

- 4.2.2 each Party shall provide Relevant Information to each other in a full and timely manner. Relevant Information shall include, without restriction or limitation:
- 4.2.2.1 details of contractual arrangements (or amendments to existing arrangements) entered by the Parties associated with their responsibilities under Waste Legislation;
 - 4.2.2.2 early warning of potential failure by a Party in meeting its obligations under this Agreement;
 - 4.2.2.3 details of actual failure by a Party in meeting its obligations under this Agreement;
 - 4.2.2.4 new initiatives, policies or emerging policies relating to the minimisation, collection, recycling and disposal of waste; and
 - 4.2.2.5 details of any external funding opportunities which are available (and, where appropriate, the Parties shall work together to submit joint bids for such Funding).
- 4.2.3 each Party shall take all reasonable steps to mitigate any losses arising from a Party's failure under this Agreement;
- 4.2.4 the Parties shall work together and as far as is reasonable or practicable to reduce the detrimental impact on the other Parties (or the council tax payers of any one of them) of any failure to carry out its obligations under this Agreement;
- 4.2.5 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;
- 4.2.6 the WCAs shall use all reasonable endeavours working together and in co-operation (where appropriate) with any or all of the Waste Contractors, to minimise waste, to educate the public and the commercial sector about recycling schemes and why their participation in these schemes is crucial, and to ensure that as much Waste as possible is (in order of priority) reduced, re-used, recycled or recovered;
- 4.2.7 the Parties shall co-operate in identifying, as early as reasonably possible, any issues or problems which will or may tend to prevent the achievement of the Mutual Aims and to reach and implement solutions to overcome such issues of problems in accordance with the protocol set out in **Schedule 6** (Protocols);
- 4.2.8 the Parties shall take all reasonable steps to ensure that the planning, development and implementation of the Mutual Aims is transparent to all interested parties (including the public);
- 4.2.9 the Parties shall consult with all stakeholders having an interest in the Mutual Aims or wider waste services;

- 4.2.10 the Parties will work together, in a spirit of openness and mutual good faith, to resolve any difficulties openly, quickly and honestly, before any such issues has a negative impact on any or all of the Waste Contracts; and
- 4.2.11 that the Parties acknowledge that the provisions of the [PFI Contract / Landfill Contract / Recycling Contract - ***amend depending on which, if any, of these Contracts have been agreed at the time of the IAA***] have not been agreed at the date hereof and that the Parties will cooperate to ensure that terms of this Agreement are amended to reflect the provisions of, and appropriate obligations set out in, such agreements when their terms are agreed between the Authority and the relevant Waste Contractor.

5. **DISCHARGING OF OBLIGATIONS**

Where a Party to this Agreement is required to ensure that any act or thing is done or not done, or has any other obligation, such provision shall mean:

- 5.1 where the Party intends to or does carry out the obligation itself, that it shall do so;
- 5.2 where the Party discharges the obligation through a contractual relationship with a third party, that the Party shall:
 - 5.2.1 incorporate such rights and remedies in the third party contract; and
 - 5.2.2 ensure that it enforces those contractual rights and remedies.

6. **THE WASTE CONTRACTS**

- 6.1 As soon as reasonably practicable after any Waste Contract is entered into after the date of this Agreement, the Authority shall provide each WCA with a copy of it (subject to Commercially Sensitive Information being omitted to the extent required by the terms of the relevant Waste Contract, unless and to the extent that the WCA provides a confidentiality undertaking in a form reasonably required by the relevant Waste Contractor).
- 6.2 The Authority shall notify the [Joint Officers Board] of any variations or amendments to any of the Waste Contracts agreed between the Authority and the relevant Waste Contractor from time to time.
- 6.3 Without prejudice to the express rights and remedies of the WCAs under this Agreement, the WCAs shall not do anything which would put the Authority in breach of any Waste Contract.
- 6.4 As the same shall fall due from time to time the WCAs shall, without prejudice to any express obligations set out in this Agreement, each perform in a timely manner any obligation which is required to enable or facilitate the Authority in carrying out its obligations under any Waste Contract.

7. **PRINCIPAL OBLIGATIONS OF THE WCAS**

- 7.1 The WCAs shall:

- 7.1.1 throughout the Term, deal with Waste in accordance with the WCA Baseline;
- 7.1.2 deliver all Contract Waste to the Delivery Point(s) for that WCA (as set out in **Schedule 1** (Delivery Points) (this clause being a substitution for a Direction pursuant to section 48 of the EPA (as amended by the WET Act) and section 31 of the WET Act);
- 7.1.3 comply (or procure the compliance of their WCA Collection Contractors) with relevant Waste Contractors' reasonable and proper site rules and regulations (including access routes);
- 7.1.4 deliver (or procure the delivery through their WCA Collection Contractors) of Contract Waste during the hours applicable to the relevant Delivery Points set out in **Schedule 1** (Delivery Points);
- 7.1.5 ensure that the Contract Waste delivered pursuant to this **clause 7.1** is collected, separated and/or presented so as so comply with the Facility Input Specification;
- 7.1.6 co-operate in the provision of staff and resources to [the Contract Management Board] and in the implementation and operation of the [Contract Management Arrangements], to be guided at all times by the Partnering Ethos; and
- 7.1.7 *[note: do we need a provision regarding co operation to stagger arrival times of vehicles to minimise waiting and turn around times at Delivery Points? MWDA to consider practical issues]*

[although the terms of all of the Waste Contracts will not be known at the time of agreeing the IAA, it might be that a WCA Baseline is known and can be included. However, terms of this document which relate to the WCAs' obligations in relation to the Waste Contracts must be subject to change depending on their agreed terms - see below. Alternatively, WCA Baseline could be left blank until a Waste Contract is agreed. Similar issues to be considered in relation to the other obligations set out in this clause 7.1]

- 7.2 Each WCA shall make payments to the Authority in accordance with the provisions of **Schedule 4** (Payment and Compensation Mechanism).
- 7.3 All costs incurred in the implementation or operation of the Contract Management Arrangements shall be borne by the Part which incurs them.
- 8. **OWNERSHIP OF WASTE AND DUTY OF CARE**
- 8.1 All Contract Waste received by or in the possession of any Waste Contractor (or any of its sub-contractors) shall upon such receipt be acquired by, in the ownership and at the risk of that Waste Contractor, which shall take full responsibility for it.
- 8.2 For the purposes of this Agreement, until any Waste Contractor takes ownership of any Waste in accordance with the relevant clause of the Waste Contract, all Waste collected by

the WCAs shall be deemed to be held at the entire responsibility and liability of the WCAs and the Authority shall have no responsibility for such Waste.

- 8.3 The WCAs shall keep consignment and transfer notes in respect of all Waste delivered to a Disposal Point for a period of at least two years, and it shall be for the WCA to ensure that it is given correct and accurate transfer notes by the relevant Waste Contractor.

9. **EXCLUSIVITY AND WCA WASTE**

- 9.1 The WCAs acknowledge and accept that, in accordance with the provisions of the Waste Contracts, the Authority has agreed to give the Waste Contractors exclusivity in relation to the Contract Waste for the duration of the relevant Waste Contracts and (save for the exceptions set out in those Waste Contracts) the Waste Contractors shall have a right to have delivered to them, in accordance with the terms of the relevant Waste Contracts, all Contract Waste arising in the Administrative Area.

- 9.2 The amount of Waste that the WCAs will withhold at the date of this Agreement for their own Recycling is set out in **Schedule 3** (WCA Baseline) and this is or will be agreed and accepted by the Waste Contractors [*Authority to consider whether this information re: Baseline can be given now, in relation to all three contracts, which must then be procured with these parameters. Alternatively, should the baseline be flexible within certain limits, to allow more scope for negotiating with, for example, a future recycling contractor*]

- 9.3 The WCAs hereby agree not to retain any Waste pursuant to section 48(2) of the EPA other than:

9.3.1 as provided for in **Schedule 3** (WCA Baseline); or

9.3.2 as otherwise agreed by the Parties and effected in accordance with **clause 10** (Change).

- 9.4 The WCAs acknowledge that, in accordance with the provisions of the Waste Contracts, breach by the WCAs of the provisions of this **clause 9** (Exclusivity and WCA Waste) may give rise to either an adjustment to the Unitary Charge and/or a claim for compensation by the relevant Waste Contractor against the Authority.

10. **CHANGE**

- 10.1 [*Note: mechanism to follow relevant clauses from the Waste Contracts. WCAs to be liable for any adjustments to Unitary Charge and/or compensation payable by the Authority as a result of changes in WCA Waste not agreed by Authority and/or implemented unilaterally by a WCA without complying with the procedure for a Review*]

- 10.2 The Parties acknowledge that, following the date hereof, the Authority intends to enter into the [*PFI Contract / Recycling Contract / Landfill Contract*]. As soon as is reasonably practicable following agreement between the Authority and the relevant Waste Contractor of the terms of a Waste Contract after the date hereof, the Parties will meet to agree any

amendments which it is necessary to make to this Agreement to ensure that, based on the terms of the relevant Waste Contract:

10.2.1 this Agreement sets out those contractual obligations of the WCAs which are required in order to ensure that the Authority can comply with its obligations under the relevant Waste Contract; and

10.2.2 the amended Agreement is consistent with the Mutual Aims and the Partnering Ethos and, without limitation to the foregoing, is consonant with the principles and format of this Agreement prior to such amendment.

10.3 If the Parties cannot agree those amendments which are necessary pursuant to **clause 10.2** after [*specific time period, or a "reasonable time"? MWDA to comment*], the matter may be referred by any Party to the Dispute Resolution Procedure in order to decide which amendments must be made to this Agreement.

10.4 Following agreement **under clause 10.2**, or determination under **clause 10.3**, the Parties shall amend this Agreement in writing accordingly.

10.5 [**Mechanism to flow down changes in law to reflect any Waste Contract in place at the date of this Agreement, and be amended to reflect any other Waste Contract agreed thereafter**]

11. **COMMUNITY BENEFITS**

11.1 Subject to **clause 9** (Exclusivity and WCA Waste), the Parties shall co-operate in the support of community based schemes which aim (in order of priority) to reduce, re-use or re-cycle Waste.

11.2 Subject to **clause 9** (Existing and WCA Waste), the Parties shall co-operate in the development of initiatives relating to Commercial Waste streams including collection, recycling and disposal thereof.

11.3 The Parties shall co-operate in public awareness and education campaigns which aim to reduce the incidence of fly tipping and littering.

12. **NOT USED**

13. **PLANNING AND POSITIONING OF SITES**

[TO BE DISCUSSED]

14. **DAMAGE TO DELIVERY POINTS**

The WCAs shall not and shall procure that their WCA Collection Contractors do not damage any Facilities or part thereof.

15. **PAYMENT AND COST SHARING**

15.1 Each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and of each document referred to in it.

15.2 Without prejudice to the generality of **clause 15.1**, and save for the matters expressly referred to in **Schedule 4** (Payment and Compensation Mechanism), each WCA shall be responsible for its own costs and expenses in relation to:

15.2.1 maintaining the WCA Baseline; and

15.2.2 achieving the Statutory Targets applicable to it from time to time during the Term.

15.3 The payments in accordance with the provisions set out in **Schedule 4** (Payment and Compensation Mechanism) shall be exhaustive of all monies due from the Authority to the WCAs relating to the subject matter of this Agreement whether pursuant to an obligation arising under Legislation or otherwise.

16. **SET-OFF**

16.1 The Authority may retain or set off any amount owed to it by the WCAs under this Agreement which has fallen due and payable against any amount due to the WCAs under this Agreement.

16.2 If the payment or deduction of any amount referred to in **clause 16.1** is disputed, then any undisputed element shall be paid and the disputed element shall be dealt with in accordance with **clause 20** (Dispute Resolution).

17. **LATE PAYMENTS**

Save where otherwise provided, the Parties will pay interest on any amount payable under this Agreement not paid on the due date from the period from that date to the date of payment at a rate equal to [x%] above the base rate from time to time of [Bank] (the "Prescribed Rate"). ***[interest provisions to mirror the Waste Contract provisions (if any) at the date of this Agreement, and be changed to reflect any new Waste Contracts agreed at a later date]***

18. **MITIGATION**

Each Party 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 another Party pursuant to this Agreement.

19. **INDEMNITIES**

19.1 The WCAs shall, subject to **clause 19.2** be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against all liability for:

19.1.1 death or personal injury;

- 19.1.2 environmental impairment, damage or contamination of water, air or ground;
- 19.1.3 loss of or damage to property (including property belonging to the Authority or for which it is responsible);
- 19.1.4 breach of statutory duty;
- 19.1.5 actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis)

which may arise out of or in consequence of performance or non-performance by any WCA of its obligations under this Agreement or the presence on the Facilities of the WCA and/or its WCA Collection Contractor.

19.2 The WCAs shall not be responsible or be obliged to indemnify the Authority for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or by the breach by the Authority of its obligations under this Agreement.

19.3 **Claims**

19.3.1 As soon as reasonably practicable after it became aware of the same, each Party will advise the other Parties of any claim or potential for a claim under this Agreement.

19.3.2 All Parties will maintain all necessary details of claims and provide such details to other relevant Parties upon request.

19.3.3 If any third party makes a claim against, or notifies an intention to make a claim against a Party which may reasonably be considered as likely to give rise to a liability under this indemnity (“a relevant claim”) and/or this Agreement, that Party shall:

19.3.3.1 as soon as reasonably practicable give written notice of that matter to the relevant Party specifying in reasonable detail the nature of the claim;

19.3.3.2 not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of the relevant Party;

19.3.3.3 give the relevant Party and the relevant Party’s professional advisers reasonable access to the premises and personnel of the Party and to any Relevant Information, relevant assets, accounts, documents and records so as to enable the relevant Party and its professional advisers to examine such Relevant Information, premises, assets, accounts, documents and records, and to take copies at their own expense for the purpose of assessing the merits of the relevant claim.

20. **DISPUTE RESOLUTION**

[Note: DRP provision is to mirror the provisions of any Waste Contract in force at the date of this Agreement, and be altered if necessary to reflect any later Waste Contracts]

21. **EXIT ARRANGEMENTS**

Not more than 24 months or less than 12 months before Expiry, or as soon as is reasonably practicable after any notice of Termination is served, the Parties will meet to discuss and (applying the Partnering Ethos) to determine the arrangements for achieving the Statutory Targets after the termination of the Agreement or any of the Waste Contracts.

22. **DATA PROTECTION**

22.1 The WCAs shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

22.2 The WCAs shall not disclose Personal Data to any third parties other than:

22.2.1 to employees to whom such disclosure is reasonably necessary in order for the WCAs to carry out the Service; or

22.2.2 to the extent required under a court order, provided that disclosure under **clause 22.2.1** is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this **clause 22** and that the WCAs shall give notice in writing to the Authority of any disclosure of Personal Data it is required to make under **clause 22.2.2** immediately, it is aware of such a requirement.

22.3 The WCAs shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability of staff having access to the Personal Data.

22.4 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the WCAs referred to in **clause 22.3**. Within [30] days of such a request, the WCAs shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

22.5 The WCAs shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (Including reasonable legal costs) incurred by it in respect of any breach of this **clause 22** by the WCAs.

23. **CONFIDENTIALITY**

23.1 Each Party acknowledges the other Party is a public authority within the meaning of section 84 of the Freedom of Information Act 2000.

23.2 Each Party:

23.2.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;

23.2.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

23.2.3 Each WCA shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with any of the Waste Contracts:

23.2.3.1 is given only to such of the employees and professional advisers or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of the Agreement;

23.2.3.2 is, if it is sensitive personal data or personal data as defined in the DPA, kept secure in accordance with the requirements of the seventh data protection principle;

23.2.3.3 is treated as confidential and not disclosed (without prior written consent) or used by any employees or professional advisers or consultants otherwise than for the purposes of performing its obligations under the Agreement.

23.3 Each Party shall ensure that professional advisers or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

23.4 Each Party shall not use any Confidential Information received otherwise than for the purposes of this Agreement.

23.5 The provisions of **clauses 23.2 to 23.5** shall not apply to any Confidential Information received by one Party from the other:

23.5.1 which is or becomes public knowledge (otherwise than by breach of this clause or through act or default on the party of the receiving Party or the receiving Party's agents or employees);

23.5.1.1 which the receiving Party lawfully obtained from a third party who:

- (a) lawfully acquired it;
- (b) did not derive it directly or indirectly from the disclosing Party; and
- (c) is under no obligation restricting its disclosure;

23.5.1.2 which the receiving Party can prove by documentary evidence was developed independently by an agent or employee of the receiving Party without access to the disclosing Party's Confidential Information; or

23.5.1.3 which must be disclosed pursuant to a statutory, legal or parliamentary obligation place upon the Party making the disclosure, including any requirements for disclosure pursuant to **clause 23**, or otherwise in accordance with a court order, or the recommendation, notice or decision of a competent authority.

23.5.2 Without prejudice to the generality of **clause 23.6.1**, Confidential Information shall not be deemed to be generally available to the public by reason that it is known only to a few of those people to whom it might be of commercial interest, and a combination of two or more portions of the Confidential Information shall not be deemed to be generally available to the public by reason only of each separate portion being so available.

23.6 Nothing in this clause shall prevent a Party from:

23.6.1 disclosing any Confidential Information for the purpose of:

23.6.1.1 the examination and certification of the Party's accounts; or

23.6.1.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Party has used its resources; or

23.6.1.3 disclosing any Confidential Information obtained from another Party

23.6.1.4 to any other department, office or agency of the Crown; or

23.6.1.5 to any person engaged in providing any services to the Party for any purpose relating to or ancillary to this Agreement;

23.6.1.6 provided that in disclosing Confidential Information under **clause 25.8.2.1** or **25.8.2.2** the Party discloses only the Confidential Information which is necessary for the purpose concerned and requires that the Confidential Information is treated in confidence and that a confidentiality undertaking is given.

- 23.6.2 Nothing in this clause shall prevent any Party from using any techniques ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of intellectual property rights.
- 23.6.3 The provisions of this **clause 23** are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- 23.6.4 The provisions of this **clause 23** shall continue following expiry or termination for any reason of this Agreement without limit in time.

24. **FREEDOM OF INFORMATION**

- 24.1 Each Party acknowledges that each of the other Parties are subject to the requirements of the FOIA, and the EIRs and the DPA and shall assist and cooperate with the other Parties to comply with these Information disclosure requirements.
- 24.2 Where a Party receives a Request for Information in relation to Information which it is holding on behalf of another Party, it shall (and shall procure that its contractors shall):
 - 24.2.1 transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;
 - 24.2.2 provide the other Party with a copy of all Information in its possession or power in the form that the other Party requires soon as practicable and in any event within five Business Days (or such other period as the other Party may specify) of the Party's requesting that Information; and
 - 24.2.3 provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to a Request for Information within the time for compliance set out in the FOIA and the EIRs and the DPA as applicable.
- 24.3 Each Party shall maintain an adequate records management system to enable it to retrieve the Information within the time limits prescribed in the FOIA and EIRs and DPA as applicable.
- 24.4 Where a Party receives a Request for Information which relates to this Agreement, it shall inform the other Parties of the Request for Information as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information.
- 24.5 If a Party determines that Information (including Confidential Information) must be disclosed pursuant to **clause 23.6**, it shall notify the other Parties or Party concerned of that decision at least two Business Days before disclosure.
- 24.6 Each Party shall be responsible for determining at its absolute discretion whether:
 - 24.6.1 the Information is exempt from disclosure under the FOIA or the EIRs or the DPA as applicable; and

- 24.6.2 the Information to be disclosed in response to a Request for Information.
- 24.7 Each Party acknowledges that another Party may, acting in accordance with the relevant Codes of Practice, be obliged under the FOIA or the EIRs or the DPA to disclose Information:
- 24.7.1 without consulting with the other Parties, or
- 24.7.2 following consultation with the other Parties and having taken their views into account.
- 24.8 The Parties shall co-operate to ensure consistency between their respective retention and destruction policies in respect of Information produced in the course of this Agreement or relating to this Agreement. If either Party notifies the other Party of a Request for Information held by other Parties, the other Party shall immediately suspend destruction of that Information.
- 24.9 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.

25. **PUBLIC RELATIONS AND PUBLICITY**

- 25.1 The WCAs shall not by themselves, their employees or agents and procure that any contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement or any of the Waste Contracts without the prior written approval of the Authority.
- 25.2 No facilities to photograph or film in or upon any Facility or other property used in relation to any of the Waste Contracts shall be given or permitted by the WCAs unless the Authority has given its prior written approval.

26. **NOTICES**

- 26.1 Any demand, notice or other communication given in connection with or required by this Agreement shall be made in writing (entirely in the English language) and shall be delivered to, or sent by pre-paid first class post to, the recipient at its registered office or its address stated in this Agreement (or such other address as may be notified in writing from time to time) or sent by facsimile transmission to the recipient, in the case of:
- 26.1.1 the Authority to [DETAILS];
- 26.1.2 in the case of a WCA, to [DETAILS];
- 26.1.3 or such other number as may be notified in writing from time to time.

- 26.2 Where any information or documentation is to be provided or submitted to the Authority's Representative or the WCAs Representatives it shall be provided or submitted by sending the same by first class post, facsimile, email or by hand, leaving the same at:
- 26.2.1 if to the WCA Representatives:
- [Addresses, fax numbers and email addresses]*; and
- 26.2.2 if to the Authority's Representative:
- [Address, fax number and email address]* (copied in each case to the Authority).
- 26.3 Either party to this Agreement (and either the Authority Representative or the WCAs Representative) may change its nominated address, facsimile number or email address by prior notice to the other Party.
- 26.4 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five Business Days after mailing.
- 26.5 Notices delivered by hand shall be effective upon delivery.
- 26.6 Notices by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- 26.6.1 Within two hours after sending, if sent on a Business Day between the hours of 9.00 am and 4.00 pm; or
- 26.6.2 By 11.00 am on the next following Business Day, if sent after 4.00 pm, on a Business Day but before 9.00 am on that next following Business Day.
- 26.7 Notices sent by email shall be deemed to have been received, at noon on the Business Day after such communication was sent and, in proving service, it shall be sufficient to produce a computer print out indicating that the message was sent to the recipient's electronic mail address.

27. REPRESENTATIVES

27.1 Authority Representative

- 27.1.1 The Authority's Representative shall be *[DETAILS]* or such other person appointed pursuant to this **clause** Error! Reference source not found..
- 27.1.2 The Authority's Representative shall exercise the functions and powers of the Authority in relation to the project operations which are identified in this Agreement as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Agreement as the Authority may notify to the WCA from time to time.

- 27.1.3 The Authority's Representative shall be entitled at any time, by notice to the WCA, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this **clause** Error! Reference source not found. whether generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the Authority's Representative and all references to the "Authority's Representative" in this Agreement (apart from this **clause 27**) shall be taken as references to such person so far as they concern matters within the scope of such person's Authority.
- 27.1.4 The Authority may by notice to the WCAs change the Authority's Representative. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the WCA in the execution of its obligations under this Agreement).
- 27.1.5 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through exercise his functions under this Agreement) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.
- 27.1.6 No act or omission of the Authority, the Authority's Representative (or any of its delegates) or any officer, employee or other person engaged by the Authority shall, except as otherwise expressly provided in this Agreement:
- 27.1.6.1 in any way relieve or absolve the WCA from, modify, or act as a waiver or estoppel of, any liability, responsibility, obligation or duty under this Agreement; or
- 27.1.6.2 in the absence of an express order or authorisation, constitute or authorise a Variation.
- 27.1.7 Except as previously notified in writing before such act by the Authority to the WCAs, the WCAs and WCAs' Representatives shall be entitled to treat any act of the Authority's Representative which is authorised by this Partnering Agreement as being expressly authorised by the Authority and the WCAs and the WCAs' Representative shall not be required to determine whether an express authority has in fact been given.

27.2 **Representatives of the WCAs**

The WCAs' Representatives shall be:

- 27.2.1.1 Knowsley:[*DETAILS*]
- 27.2.1.2 Liverpool: [*DETAILS*]
- 27.2.1.3 Wirral: [*DETAILS*]
- 27.2.1.4 Sefton: [*DETAILS*]

27.2.1.5 St Helens: [DETAILS]

27.2.1.6 or such other person duly authorised and notified to the Authority in accordance with the provisions of **clause 27.2.2** .

27.2.2 The WCAs may by notice to the Authority change the WCAs' Representatives. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the Authority in the execution of its obligations under this Agreement).

27.2.3 Each WCAs Representative shall have full authority to act on behalf of the applicable WCA for all purposes of this Agreement. Except as previously notified in writing before such act by the WCA to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the WCAs' Representatives in connection with this Agreement as being expressly authorised by the applicable WCA(s) and the Authority and the Authority's Representative shall not be required to determine whether any express authorisation has in fact been given.

28. **PRIVITY**

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

29. **NO AGENCY**

29.1 Neither the WCAs nor any their WCA Collection Contractors shall in any circumstances hold themselves out as being the servant or agent of the Authority, otherwise than in circumstances expressly permitted by this Agreement.

29.2 Neither the WCAs nor any their WCA Collection Contractors shall in any circumstances hold themselves out as being authorised to enter into any contract on behalf of the Authority or in any other way to bind the Authority to the performance, variation, release or discharge of any obligation.

29.3 Neither the WCAs nor any their WCA Collection Contractors shall in any circumstances hold themselves out as having the power to make, vary, discharge or waive any bye-law or any regulation of any kind.

30. **NO PARTNERSHIP**

30.1 Nothing in this Agreement is intended to or shall operate to create a partnership as defined by the [*Partnership Act 1890*] or joint venture of any kind between the Parties or any of them, or to authorise any Party to act as agent for any other, and no Party shall have the Authority to act in the name or on behalf of or otherwise to bind any other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

31. **CONTINUING OBLIGATIONS**

- 31.1 Save as otherwise expressly provided in this Agreement, termination of this Agreement shall not affect the continuing rights of the Authority and the WCAs under clauses [NUMBERS] or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination. **[Note: to consider and agree which provisions are to survive]**

32. **AMENDMENTS**

- 32.1 This Agreement may not be varied except by an agreement in writing signed by the duly Authorised Representatives of the Parties.

33. **WAIVER**

- 33.1 Any relaxation, forbearance, indulgence or delay (together an "indulgence") of any Party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether or not against that Party or any other person).
- 33.2 No term or provision of this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by that party.
- 33.3 No waiver under **clause 33.2** shall be a waiver of a post or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

34. **ENTIRE AGREEMENT**

- 34.1 Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.
- 34.2 Each of the Parties acknowledges that:
- 34.2.1 it does not enter into this Agreement on the basis of and does not rely, and has never relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made and agreed to by any person (whether a party to this Partnering Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Partnering Agreement; and
 - 34.2.2 this **clause 34** shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud,

for which the remedies available shall be all those available under the law governing this Agreement.

35. **SEVERABILITY**

35.1 If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

35.2 The Parties agree that nothing in **clause 7.1.2** (Substitution for Direction) shall be deemed nor is intending to fetter the Authority's power to direct in accordance with the EPA or WET Act powers. The provision is rather the procedure agreed to be adopted by the Parties in putting such power into effect in a way consistent with the Authority acting reasonably having regard to the operational and practical need to have a joined up and consistent waste strategy. Nevertheless if a Court of competent jurisdiction determines that the Authority's power is unlawfully fettered, as much as is required by the court of **clause 7.1.2** (Substitution for Direction) shall be deemed severed and replaced with a requirement for the Authority to act reasonably, rationally and properly in accordance with administrative law.

36. **COUNTERPARTS**

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

37. **LAW OF THE CONTRACT AND JURISDICTION**

37.1 This Agreement shall be governed by the laws of England and Wales and subject to clause [NUMBER] (Dispute Resolution) the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

38. **DISPUTE RESOLUTION PROCEDURE**

38.1 Any dispute arising in relation to any aspect of the Contract ("a **Dispute**") shall be resolved in accordance with Schedule 21 (**Dispute Resolution Procedure**).

IN WITNESS whereof the parties have executed this Partnering Agreement as a deed the day and year first above written

THE COMMON SEAL OF
MERSEYSIDE WASTE DISPOSAL AUTHORITY)
was affixed to this deed)
in the presence of:)

Director

Director/Secretary

THE COMMON SEAL OF
KNOWSLEY METROPOLITAN BOROUGH)
COUNCIL)
was affixed to this deed)
in the presence of:)

Director

Director/Secretary

THE COMMON SEAL OF
LIVERPOOL CITY COUNCIL)
was affixed to this deed)
in the presence of:)

Director

Director/Secretary

THE COMMON SEAL OF
THE METROPOLITAN BOROUGH OF WIRRAL)
was affixed to this deed)
in the presence of:)

Director

Director/Secretary

THE COMMON SEAL OF
SEFTON METROPOLITAN BOROUGH)
COUNCIL)
was affixed to this deed)
in the presence of:)

Director

Director/Secretary

THE COMMON SEAL OF
ST HELENS METROPOLITAN BOROUGH
COUNCIL
was affixed to this deed
in the presence of:

)
)
)
)

Director

Director/Secretary

SCHEDULE 1

Delivery Points

To include for each WCA [and for each category of Waste]

- *the Delivery Points and the Contingency Delivery Points*
- *opening hours*

SCHEDULE 2

[Facility Input Specification]

SCHEDULE 3

WCA Baseline

[To include both:

- ***WCA Waste (ie waste to be withheld by each WCA); and***
- ***Collection Methodology (ie how waste is being collected, separated and presented)]***

SCHEDULE 4

Payment and Compensation Mechanism

To be developed to reflect (in each case as a step down from any Waste Contract agreed at the date of this Agreement, and amended to reflect any other Waste Contract agreed thereafter):

- *Trigger for Tipping Away Payments;*
- *Calculation and pass through of Tipping Away Payments;*
- *WCAs' liability for landfill tax and costs arising directly from their breach;*
- *WCAs' liability for compensation payments and/or adjustments to Unitary Charge arising directly from breach by any WCA;*
- *Recyclate Revenue Share mechanism*

SCHEDULE 5

Joint Officer/Member Boards

SCHEDULE 6

Protocols

SCHEDULE 7

Dispute Resolution Procedure

[Does MWDA have a preferred DRP which can be included? Alternatively, Eversheds can provide a suggested schedule. For example, involving an “escalation procedure”, under which increasingly senior representatives of the Parties attempt to resolve the dispute, the matter is then referred to Mediation and, ultimately, to binding Arbitration.]