

(1) Merseyside Waste Disposal Authority

(2) Halton Borough Council

## **Inter-Authority Agreement**

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Relating to the Waste Management and Recycling Contract

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**DRAFT – WEIGHTMANS 24/05/19**

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Waste Acceptance Protocol,

(and the terms "**Accepted**" and "**Acceptance**" shall be construed accordingly);

<b>"Administrative Area"</b>	the administrative area of Halton as at the date of this Agreement;
<b>"Administrative Costs"</b>	the costs of administering the WMRC (and as agreed by the parties any replacement arrangement)
<b>"Administrative Payment"</b>	Halton's share of the Administrative Costs calculated in accordance with clause 11.1;
<b>"Affiliate"</b>	has the meaning given to it in the WMRC;
<b>"Bring Bank Sites"</b>	a collection point (other than a HWRC) provided by or on behalf of Halton for the deposit of specified Recyclable Materials;
<b>"Business Day"</b>	means any day that the main offices of MWDA are open for business to the public;
<b>"Compensation Event"</b>	an event falling within either limb (c) or limb (f) of the definition of "Compensation Event" as defined in the WMRC;
<b>"Composting"</b>	has the meaning set out in the WMRC;
<b>"Confidential Information"</b>	(a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade secrets, intellectual property rights, know-how and all personal data and special categories of personal data within the meaning of the Data Protection Act 2018; and  (b) information defined as Confidential Information under the WMRC;
<b>"Contract Year"</b>	has the meaning given to it in the WMRC;
<b>"Defaulting Authority"</b>	has the meaning set out in clause 12.1;
<b>"Delegated Functions"</b>	that part of Halton's waste disposal function as relates to administration of the WMRC Services;
<b>"Duty of Best Value"</b>	the duty imposed on the Authority by Section 3 of the Local Government Act 1999 in relation to, inter alia, any one or more of the services;
<b>"EIR"</b>	means the Environmental Information Regulations 2004 together with the Code of Practice issued by

DEFRA as amended and/or reissued from time to time;

<b>“Emergency”</b>	an event causing or, in the reasonable opinion of MWDA or Halton, threatening to cause death or serious injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the WMRC Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;
<b>“Excusing Cause”</b>	an event as listed in limbs (a) to (f) of the definition of “Excusing Cause” as defined in the WMRC;
<b>“Fees Regulations”</b>	the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
<b>“FOIA”</b>	means 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;
<b>“Garden Waste”</b>	has the meaning as set out in the WMRC;
<b>“Good Industry Practice”</b>	the exercise of that degree of skill, diligence, prudence and foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person acting as a Waste Disposal Authority under the same or similar circumstances at the relevant time for such exercise;
<b>“Halton Contract Waste”</b>	means: <ul style="list-style-type: none"> <li>(a) Municipal Waste collected by or on behalf of Halton; and</li> <li>(b) Household Waste deposited at a HWRC or Bring Bank Site within Halton’s administrative area;</li> </ul>
<b>“Halton Exclusive Contract Waste”</b>	means all Halton Contract Waste specified as such in Schedule 1;
<b>“Halton Related Party”</b>	means any of the following: <ul style="list-style-type: none"> <li>(c) an officer, servant, employee, authorised representative or agent of Halton acting in</li> </ul>

that capacity; and/or

- (d) any contractor or sub-contractor of Halton of any tier and their directors, officers, servants, employees or agents acting in that capacity,

but excluding MWDA, any MWDA Related Party, the WMRC Contractor or any WMRC Related Party;

**“Household Waste Recycling Centres (HWRCs)”**

means the household waste recycling centres from time to time operated by Halton or any Halton Related Party or on behalf of Halton;

**“Losses”**

all costs (including the costs of enforcement and procurement costs), expenses, liabilities Losses (whether direct or indirect and including loss of profit, loss of reputation and loss of bargain), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) and judgments, for the avoidance of doubt including those arising under or in connection with the WMRC;

**“Month”**

a calendar month and **“Monthly”** shall be construed accordingly;

**“MWDA Related Party”**

means any of the following:

- (a) an officer, servant, employee or agent of MWDA acting in that capacity; and
- (b) any contractor or sub-contractor of MWDA of any tier (including, for the avoidance of doubt the WCAs) and their directors, officers, servants, employees or agents acting in that capacity,

but excluding Halton, any Halton Related Party, the WMRC Contractor and any WMRC Contractor Related Party;

**“Non-Defaulting Authority”**

has the meaning given in clause 12.1 (Termination);

**“Original WMRC Expiry Date”**

means 31 May 2029;

**“Recyclable Materials”**

means any materials collected separately or otherwise separated from Halton Contract Waste for the purposes of Recycling or Composting, including but not limited to the materials listed below:

- (a) paper and cardboard;
- (b) plastics;

- (c) ferrous and non ferrous metals;
- (d) textiles;
- (e) glass;
- (f) wood;
- (g) tyres; and
- (h) waste electrical equipment;

<b>“Recycling”</b>	has the meaning given to it in the WMRC;
<b>“Request for Information”</b>	shall have the meaning set out in the FOIA or the EIR as relevant;
<b>“Restricted Change”</b>	means the entry into or variation of any contract which entitles or obliges a contractor to treat, dispose of or otherwise manage Halton Exclusive Contract Waste;
<b>“Separately Collected”</b>	<p>means, in respect of a particular type of waste, that such type of waste:</p> <ul style="list-style-type: none"> <li>(a) is collected by or on behalf of Halton; and</li> <li>(b) is segregated from other types of waste at or prior to the time of such collection whether by the householder or by or on behalf of Halton at the time of collection;</li> </ul> <p>For the avoidance of doubt, different types of Recyclable Materials are different types of waste and therefore Recyclable Materials which are collected mixed with other types of Recyclable Materials are not Separately Collected;</p>
<b>“Street Sweepings”</b>	means road sweepings, including mechanical road sweepings, from the cleansing of public highways, public areas, footpaths, footways and other relevant land as collected by or on behalf of Halton under sections 89(1)(a), 89(1)(c) or 89(2) of the Environmental Protection Act 1990;
<b>“Supervising Officer”</b>	means [    ];
<b>“Term”</b>	means the period from the date upon which this Agreement takes effect pursuant to clause 2.1 until the date upon which this Agreement terminates pursuant to clause 2.2;
<b>“Termination Sum”</b>	(a) any sum which becomes payable either from the WMRC Contractor to WMDA or from WMDA to the WMRC Contractor pursuant to the terms of the WMRC as a

result of termination of the WMRC; and

- (b) a sum that represents the financial equivalent of any non-financial benefits received by MWDA pursuant to the terms of the WMRC (including but not limited to the value of any assets or contractual arrangements) as a result of termination of the WMRC (as agreed between the Authorities or determined by the independent expert appointed pursuant to clause 13.5);

<b>“Waste”</b>	has the meaning given to it in Section 75 of the Environmental Protection Act 1990;
<b>“Waste Data”</b>	means the information which each Authority is required to produce for the Waste Data Flow;
<b>“Waste Data Flow”</b>	means the statutory reporting requirements for a waste disposal authority in respect of waste;
<b>“WCA”</b>	means each of Knowsley Metropolitan Borough Council of Municipal Building, Archway Road, Huyton, Merseyside L36 9YU; Liverpool City Council of Municipal Buildings, Dale Street, Liverpool LS1 2DH; the Borough of St Helens of Town Hall, Victoria Square, St Helens, Merseyside, WA10 1HP; Sefton Metropolitan Borough Council of Town Hall, Southport, PR8 1DA; and Wirral Metropolitan Borough Council of Town Hall, Brighton Street, Wallasey, Wirral CH44 8ED;
<b>“WMRC”</b>	the waste management and recycling contract dated 15 May 2009 between (1) MWDA and (2) the WMRC Contractor;
<b>“WMRC Claims”</b>	means any claims brought by the WMRC Contractor under or in connection with the WMRC whether for breach of contract, through an indemnity, in tort or otherwise (other than where such claim arises as a result of MWDA exercising its right of step-in under clause 40 (MWDA Step-In) of the WMRC);
<b>“WMRC Contractor”</b>	Veolia ES Merseyside & Halton Limited (registered number 6889679) whose registered office is at Veolia House, 154A Pentonville Road, London N1 9PE or any other person who has replaced or is a successor to the WMRC Contractor in each case for the purpose of performing all or part of the obligations of the WMRC Contractor;
<b>“WMRC Contractor Default”</b>	has the same meaning as is given to the term “Contractor Default” in the WMRC;
<b>“WMRC Contractor</b>	(a) directors, officers, employees and

<b>Related Party"</b>	workmen or agents of the WMRC Contractor, or of any Affiliate of the WMRC Contractor;
	(b) any WMRC Sub-Contractor and any sub-contractors of the WMRC Contractor or any WMRC Sub-Contractor of any tier and its or their directors, officers, employees and workmen or agents in relation to the WMRC; and
	(c) any person on or at any of the WMRC Facilities or WMRC Sites at the express or implied invitation of the WMRC Contractor,
	but excluding MWDA and any MWDA Related Party, Halton and any Halton Related Party
<b>"WMRC Facilities"</b>	has the same meaning as is given to the term "Facilities" in the WMRC;
<b>"WMRC Services"</b>	has the same meaning as is given to the term "Service" in the WMRC;
<b>"WMRC Sites"</b>	has the same meaning as is given to the term "Sites" in the WMRC;
<b>"WMRC Sub-Contractor"</b>	has the same meaning as is given to the term "Sub-Contractor" in the WMRC; and
<b>"WMRC Waste Acceptance Protocol"</b>	means the waste acceptance protocol as defined in the WMRC (as amended from time to time) or such other waste acceptance protocol and delivery requirements as notified by MWDA to Halton from time to time.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- 1.2.1 each gender includes all genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference to any clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
- 1.2.4 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 legislation (including subsidiary legislation), determinations and directions shall be construed as a reference to any legislation, determinations, directions and statutory guidance as amended, replaced, consolidated or re-enacted;

- 1.2.6 a reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
  - 1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
  - 1.2.8 any reference to a requirement for "consent" or "approval" shall be taken to be the prior written consent or approval of the relevant body or person;
  - 1.2.9 the schedule, clause, sub-clause and (where provided) paragraph headings and captions in the body of this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation;
  - 1.2.10 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; and
  - 1.2.11 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.
- 1.3 In the event of any inconsistency or conflict between clause 1 to 30 in this Agreement and the contents of any of the Schedules clauses 1 to 29, this Agreement shall prevail.
- 1.4 All calculations shall be carried out without rounding and exclusive of VAT. The results of any calculations shall be rounded as follows:
- 1.4.1 where a monetary value, to the nearest penny;
  - 1.4.2 where a weight, to the nearest 20 kilograms; and
  - 1.4.3 all other results shall be rounded to two decimal places.

## 2. **TERM**

- 2.1 This Agreement and the rights and obligations of the Authorities arising under it shall commence on the date of its execution by the Authorities.
- 2.2 This Agreement shall terminate automatically upon the expiry or earlier termination of the WMRC, unless terminated on an earlier date pursuant to clause 2.5 or clause 12.
- 2.3 The Authorities acknowledge that, under the WMRC, MWDA is entitled to extend the term of the WMRC for a period of up to 5 (five) years. In this regard:
- 2.3.1 at least 3 (three) years prior to the Original WMRC Expiry Date, the Authorities shall engage in dialogue to discuss whether either wishes the WMRC (and as a consequence this Agreement) to be extended;
  - 2.3.2 at least 30 (thirty) months prior to the Original WMRC Expiry Date (or by such later date as the Authorities may agree), each Authority shall serve on the other Authority written notice confirming whether it wishes the WMRC (and as a consequence this Agreement) to be

extended and if so the period of such extension (which may not be greater than 5 (five) years); and

- 2.3.3 if either Authority fails to serve such notice, it shall be deemed to have confirmed that it does not wish the WMRC to be extended unless otherwise agreed by the Authorities.
- 2.4 If both Authorities agree that the WMRC (and as a consequence, this Agreement) should be extended, and agree the period of such extension, MWDA shall exercise its right to extend the WMRC.
- 2.5 If either Authority confirms to the other (or is deemed to have confirmed) that it does not wish the WMRC to be extended, or the Authorities are unable to agree upon the period of any extension, this Agreement shall terminate upon the Original WMRC Expiry Date (but without prejudice to MWDA's right to extend the WMRC should it wish to do so, subject to agreeing with the WMRC Contractor any amendments necessary to the WMRC to reflect Halton's withdrawal from the WMRC arrangements).

### 3. **PRINCIPLES AND KEY OBJECTIVES**

- 3.1 The Authorities agree to work together and Halton agrees to support MWDA to carry out and meet MWDA's obligations under the WMRC. Subject to clause 14, upon the reasonable request of an Authority the other Authority shall provide the requesting Authority with any information which may reasonably be required for the operation of this Agreement, satisfaction of fiduciary duties or other duties (as the case may be).
- 3.2 Neither MWDA nor Halton shall interfere with the statutory functions of the other Authority (save as provided in this Agreement) but intend a relationship designed to share best practice to their mutual benefit.
- 3.3 Each Authority agrees to:
- 3.3.1 support and co-operate with the other to ensure the successful performance of this Agreement and the WMRC;
  - 3.3.2 co-operate with the other in managing the performance of the WMRC Contractor;
  - 3.3.3 demonstrate openness and trust in its dealings with the other; and
  - 3.3.4 support and co-operate with the other to ensure as regards the subject matter of this Agreement as far as possible that both Authorities satisfy the Duty of Best Value imposed upon each of them.
- 3.4 Subject to clause 2, although MWDA is subject to the information sharing obligations detailed in this Agreement it is not required to consult Halton or obtain the consent of Halton under or in connection with any element of MWDA's administration and/or management of the WMRC.

#### **4. VIRES**

- 4.1 The Authorities agree that the relevant statutory powers upon which they are relying to enter into this Agreement are:
- 4.1.1 section 101 of the Local Government Act 1972;
  - 4.1.2 section 9EA and 19 of the Local Government Act 2000;
  - 4.1.3 the Local Authorities (Arrangements for Discharge of Functions) (England) Regulations 2012; and
  - 4.1.4 all other enabling powers allowed by law.
- 4.2 For the purposes of the proper administration, implementation and operation of this Agreement the standing orders and/or other rules of procedure of MWDA shall apply.
- 4.3 Each Authority shall each use its best endeavours to procure any approval which may be necessary from it in order to facilitate the implementation of this Agreement save that this clause shall not prejudice any determinations under the Town and County Planning Act 1990 by the local planning authority in relation to any matters envisaged under this Agreement and or the WMRC.

#### **5. DELEGATION OF FUNCTIONS**

- 5.1 By a resolution of its Executive Board dated 19 July 2007, acting under sections 9EA and 19 of the Local Government Act 2000 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2000, Halton empowered MWDA to discharge on its behalf the Delegated Functions.
- 5.2 Halton hereby undertakes to give MWDA at least 180 days notice prior to revoking or exercising the Delegated Functions.
- 5.3 If at any time during the Term, Halton revokes or exercises the Delegated Functions it shall indemnify MWDA for all MWDA's Losses arising as a result of such revocation or exercise. Halton shall not be required to indemnify MWDA under this clause 5 where the revocation or exercise of the Delegated Functions is as a direct result of a repudiatory breach by MWDA of its obligations under this Agreement.
- 5.4 Upon the expiry or earlier termination of this Agreement, the Delegated Function shall be revoked.
- 5.5 For the avoidance of doubt the revocation or exercise of the Delegated Functions by Halton shall be deemed to be a repudiatory breach by Halton of its obligations under this Agreement unless such action by Halton is as a direct result of a complete failure by MWDA to exercise the Delegated Functions in accordance with this Agreement.

#### **6. DUTIES OF THE AUTHORITIES**

- 6.1 Subject to clause 14 and to the extent it is legally able to do so, each Authority shall at the reasonable request of the other Authority and at reasonable times during normal business hours permit the duly authorised representatives of the requesting Authority and its auditors to examine any documents in its control and/or possession relating to the WMRC or this Agreement.

- 6.2 Upon reasonable notice each Authority shall allow attendance of representatives of the other Authority as observers only at any meeting relevant to this Agreement or the operation of the WMRC.
- 6.3 Halton shall at all times act diligently and in good faith in its dealings with MWDA and shall use its reasonable endeavours to assist MWDA to discharge MWDA's obligations under the WMRC in accordance with any applicable legislation and shall be timely in responding to requests for information, and in its decision making processes.
- 6.4 Without prejudice to the express rights and remedies of MWDA and Halton under this Agreement, Halton shall use its best endeavours not to do anything which would put MWDA in breach of any of its obligations under the WMRC. Halton hereby confirms that it has received a copy of the WMRC and is aware of MWDA's obligations under it.
- 6.5 During the Term Halton shall:
- 6.5.1 make any payments due to MWDA under this Agreement in accordance with clause 11 (Payment) (including any additional charges that arise as a result of MWDA instructing the WMRC Contractor to use its best endeavours to procure additional or alternative services to ensure that an Emergency is dealt with);
  - 6.5.2 upon request by MWDA provide Waste Data to MWDA;
  - 6.5.3 not either operate or appoint a third party to operate household waste recycling centres in its administrative area; and
  - 6.5.4 not undertake a Restricted Change.
- 6.6 During the Term MWDA shall:
- 6.6.1 use reasonable endeavours to administer and manage the WMRC in accordance with Good Industry Practice;
  - 6.6.2 notify Halton of any proposed variation or amendment to the WMRC which would (in the reasonable opinion of MWDA) materially affect Halton, in sufficient time for Halton to be able to make comments on it before it is implemented;
  - 6.6.3 on reasonable notice from Halton instruct the WMRC Contractor to use its best endeavours to procure additional or alternative services to ensure that an Emergency is dealt with;
  - 6.6.4 make any payments due to Halton under this Agreement in accordance with clause 11 (Payment); and
  - 6.6.5 upon request by Halton provide Waste Data to Halton.
- 6.7 Where Halton identifies any material default in the performance of the WMRC on the part of the Contractor it shall inform MWDA of the same promptly in writing. Upon receipt of such notice MWDA shall consider in good faith with Halton what action if any MWDA should take under the WMRC in relation to the alleged material default.

- 6.8 MWDA may, with the agreement of Halton, appoint officers of Halton as Authorised Officers (as defined in the WMRC) under the WMRC.
- 6.9 Schedule 3 (Halton Properties and Indemnities) shall apply as between the Authorities and each Authority shall comply with its obligations thereunder.
- 6.10 In the event that the WMRC is varied without the prior written consent of Halton (such consent not to be unreasonably withheld or delayed), and as a result of such variation the financial charges due from Halton to MWDA under clause 11.1 increase by more than 5% of the average monthly financial charges (average being calculated as the mean of the total payment of the last 6 months made by Halton to MWDA prior to the variation and the consequential increase thereof), Halton shall not be liable to pay such increase in excess of that 5%. This clause 6.10 shall not apply in relation to any variation of the WMRC where such variation arises as a result of a change in law or where MWDA is otherwise obliged pursuant to the terms of the WMRC to accept such variation.

## **7. OBLIGATIONS OF HALTON TO DELIVER WASTE**

- 7.1 Halton shall deliver (or arrange to have delivered) all Halton Exclusive Contract Waste to the WMRC Contractor at the locations specified in [paragraph 2 of Schedule 1] or as otherwise instructed by MWDA acting reasonably.
- 7.2 Halton agrees not to retain any Halton Exclusive Contract Waste.
- 7.3 Halton acknowledges the exclusivity commitments made by MWDA in clause 5.12 of the WMRC, and accepts that, pursuant to the WMRC, the WMRC Contractor has the right and the obligation to manage and treat all Halton Exclusive Contract Waste for the duration of the WMRC. Halton acknowledges that breach of clause 7.1 or clause 7.2 may give rise to variations in the cost of the WMRC and/or a claim for compensation by the WMRC Contractor against MWDA. Halton hereby indemnifies and shall keep indemnified MWDA against any such variations of costs and/or compensation.

## **8. OBLIGATION OF MWDA TO ACCEPT HALTON CONTRACT WASTE**

Throughout the Term, MWDA shall use its reasonable endeavours to ensure that the WMRC Contractor fulfils its obligations under the WMRC, including in relation to acceptance of Halton Contract Waste.

## **9. SHARING OF LIABILITIES**

- 9.1 Subject to clause 9.3, where the actions, inactions, neglect or defaults of Halton or a Halton Related Party, result directly or indirectly in a Compensation Event, Halton shall indemnify MWDA in respect of all MWDA's Losses arising as a result of such Compensation Event and pay MWDA such sum in accordance with clause 11 (Payment).
- 9.2 Subject to clause 9.3, where the actions, inactions, neglects or defaults of Halton or a Halton Related Party, result directly or indirectly in Excusing Causes and/or WMRC Claims, Halton shall indemnify MWDA for all MWDA Losses arising as a result of such events and pay MWDA such sum in accordance with clause 11 (Payment).
- 9.3 Halton shall not be required to pay any sums to MWDA to the extent that such sums arise as a result of:

- 9.3.1 Compensation Events triggered by actions, inactions, neglect or defaults of MWDA, a MWDA Related Party and/or any of the WCAs; and/or
  - 9.3.2 WMRC Claims or Excusing Causes triggered by the actions, inactions, neglects or defaults of MWDA, a MWDA Related Party and/or any of the WCAs.
- 9.4 For the avoidance of doubt, where any liability arises under the WMRC which is a result of:
- 9.4.1 Compensation Events triggered by both of (i) MWDA, a MWDA Related Party and/or any of the WCAs and (ii) Halton or a Halton Related Party; and/or
  - 9.4.2 WMRC Claims, Excusing Causes triggered by both of (i) MWDA, a MWDA Related Party and/or any of the WCAs and (ii) Halton or a Halton Related Party,

liability shall be divided between the Authorities to reflect the extent to which their actions, inactions, neglects or defaults contributed to the liability arising.

## 10. **DUTY OF CARE AND OWNERSHIP OF WASTE**

- 10.1 For the purposes of this Agreement, until the WMRC Contractor (or any of its sub contractors) Accepts any Halton Contract Waste, then, as between MWDA and Halton, Halton Contract Waste shall be held at the entire responsibility and liability of Halton and MWDA shall have no responsibility for such Halton Contract Waste.
- 10.2 Halton Contract Waste received by or in the possession of the WMRC Contractor (or any of its sub contractors) shall, upon such receipt, become and be deemed to be acquired by and in the ownership of the WMRC Contractor and at the risk of the WMRC Contractor and MWDA shall procure that the WMRC Contractor takes full responsibility for it.
- 10.3 Halton shall keep consignment and transfer notes in respect of Halton Contract Waste delivered pursuant to clause 7.1 for a period of at least six years following the date of delivery and it shall be for Halton to ensure that it is given waste transfer notes by the relevant site operators.

## 11. **PAYMENT**

### 11.1 **Delegated Function and Administrative Payments**

Halton shall pay MWDA:

- 11.1.1 the Administrative Payment in respect of Halton's share of the Administrative Costs agreed between the Authorities as being reasonably incurred by MWDA during the preceding Contract Year; and
- 11.1.2 an amount in respect of Halton's share of the Delegated Function in accordance with the charging mechanism as set out in Schedule 2,

until the expiry or earlier termination of this Agreement.

11.2 The Authorities agree that:

11.2.1 MWDA will invoice Halton monthly in arrears in accordance with the charging mechanism set out in Schedule 2 (Charging Mechanism); and

11.2.2 Halton shall make payment to MWDA by BACS transfer (to a bank as nominated by MWDA from time to time) within 30 days of the date of the invoice or upon such other terms as the Parties may agree (in writing).

### 11.3 **VAT**

All amounts expressed in this Agreement to be payable by one Authority to the other which (wholly or partly) constitute consideration for a supply for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply, and if VAT becomes chargeable on such supply the recipient Authority shall pay to the other Authority (in addition to and at the same time as the payment which represents consideration for the supply) an amount equal to the amount of such VAT provided that an appropriate VAT invoice has been issued.

### 11.4 **Quarterly Reporting**

MWDA shall within 14 days of receipt of the final Contractor Report in a Quarter provide to Halton a Quarterly Report (in both hard copy and electronic format) setting out the calculation of the Quarterly Payment and any capital payments claimed by MWDA in respect of the applicable Quarter.

### 11.5 **Halton to Pay Undisputed Amounts**

Halton shall pay any undisputed amount within 30 days of the date of the invoice and if not so paid MWDA shall be entitled to recover interest on any monies due at a rate of 2% above the base rate of the Bank of England from time to time calculated on a daily basis from the due date for payment until the date that payment is received by MWDA whether before or after judgment.

### 11.6 **Payments to Halton**

Whenever MWDA is liable under or in connection with this Agreement to pay any sum of money to Halton MWDA shall make payment to Halton:

11.6.1 where sums are due from the WMRC Contractor or a third party, within 30 days from the receipt by MWDA of such sums from the WMRC Contractor or third party; or

11.6.2 in any other case within 30 days of receipt of an invoice from Halton.

If not so paid Halton shall be entitled to recover interest on any monies due at the rate of 2% above the base rate of the Bank of England from time to time calculated on a daily basis from the due date for payment until the date that payment is received by Halton whether before or after judgment.

## 12. **TERMINATION**

12.1 If a repudiatory breach of this Agreement has occurred and the Authority not in breach ("**Non-Defaulting Authority**") wishes to terminate this Agreement, it

must serve a termination notice on the other Authority ("**Defaulting Authority**").

- 12.2 The termination notice must specify the type of breach which has occurred entitling the Non-Defaulting Authority to terminate this Agreement and must be accompanied by detailed supporting information enabling the Defaulting Authority to identify the substance of the breach and establish how it might remedy the breach.
- 12.3 This Agreement will terminate on the day falling 90 days after the date the Defaulting Authority received the termination notice, or on such other date as the Authorities may agree, unless the Defaulting Authority rectifies the breach within 60 days of receipt of the termination notice.
- 12.4 Where this Agreement terminates in accordance with clause 12.3, the Defaulting Authority shall indemnify the Non-Defaulting Authority from and against all Losses which the Non-Defaulting Authority incurs or suffers in relation to or arising out of the termination of this Agreement including, in respect of MWDA, any liabilities MWDA incurs under the WMRC.
- 12.5 If MWDA terminates this Agreement in accordance with this clause 12 as a result of a repudiatory breach by Halton, Halton shall remain liable for all sums payable under the terms of this Agreement.
- 12.6 Following the termination or expiry of this Agreement:
- 12.6.1 **Clauses 1, 13, 14,** Error! Reference source not found., Error! Reference source not found., **15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 28** and **29** will continue in force, together with any other provisions which expressly or impliedly continue to have effect for a period of 6 years following the earlier of the date of termination or expiry of this Agreement; and
- 12.6.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including without limitation claims for damages for breach) and liabilities which have accrued prior to the date of termination or expiry of this Agreement.

### 13. **CONSEQUENCES OF TERMINATION [[AND EXPIRY]] OF THE WMRC**

- 13.1 Upon termination of the WMRC, the following provisions of this clause 13 shall apply.
- 13.2 Following receipt of a Termination Sum from the WMRC Contractor, MWDA shall within 30 days of such receipt pay to Halton its share of the Termination Sum as calculated in accordance with Schedule 2.
- 13.3 Subject to clause 13.4, where MWDA incurs or suffers any Losses under or in connection with the termination of the WMRC Halton shall pay to MWDA its share of such Losses as calculated in accordance with Schedule 2. Halton shall make such payment in full to MWDA within 30 days of receipt of a VAT invoice from MWDA evidencing such Losses and the calculation of the amount due from Halton.
- 13.4 Clause 13.3 will not apply where termination of the WMRC is triggered by the WMRC Contractor solely due to the deliberate or negligent actions or omissions

of MWDA. Halton's sole remedy where WMRC termination is triggered solely due to the deliberate or negligent actions or omissions of MWDA is as detailed in clause 13.3.

- 13.5 In circumstances where some or all of the Termination Sum comprises non-financial benefits received by MWDA, the Authorities shall seek to agree the value of such non-financial benefits in order to facilitate the calculation of Halton's share of the same in accordance with clause 13.2. If, after a reasonable period of time, the Authorities are not able to reach agreement, MWDA may (or after receipt of a notice from Halton requesting the same, shall) appoint an independent expert for the purposes of determining the value of the relevant non-financial benefit. MWDA shall ensure that the terms of appointment of such expert require the expert to owe a duty of care to both Authorities.
- 13.6 Where relevant, the Authorities may agree an alternative form of compensation for Halton in lieu of payment of the relevant share of the Termination Sum. In particular, this may involve MWDA putting in place arrangements so that Halton can continue to access some or all of the WMRC Facilities.
- 13.7 The Authorities acknowledge that the purpose and intent of any compensation paid or arrangement put in place pursuant to this clause 13 will be to ensure that Halton is not unfairly prejudiced by reason of any early termination of the WMRC and duly receives an appropriate amount of compensation or an equivalent benefit through, for example, continuing access to the WMRC Facilities, to reflect the proportion of any investment made in those WMRC Facilities.

#### 14. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

- 14.1 The Authorities agree that provisions of this Agreement shall not be treated as Confidential Information and may be disclosed without restriction.
- 14.2 Each Authority shall keep confidential all Confidential Information received from the other relating to this Agreement and/or the WMRC, and shall use all reasonable endeavours to prevent its employees, agents and sub-contractors from making any disclosure in breach of this clause 14 to any person of any such Confidential Information.
- 14.3 Clause 14.2 shall not apply to:
- 14.3.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;
  - 14.3.2 any disclosure of information by MWDA that is reasonably required to enable MWDA to perform any of its obligations under the WMRC;
  - 14.3.3 any matter which an Authority can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 14 (Confidentiality and Freedom of Information);
  - 14.3.4 any disclosure to enable a determination to be made under clause 16 (Dispute Resolution);
  - 14.3.5 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction), or any Parliamentary obligation placed upon the party making the disclosure

or the rules of any stock exchange or governmental or regulatory authority;

- 14.3.6 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 14.3.7 any provision of information to the parties' own professional advisers or insurance advisers;
- 14.3.8 any disclosure for the purpose of:
  - 14.3.8.1 any examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Authority has used their resources; or
  - 14.3.8.2 complying with a proper request from either Authority's insurance adviser, or insurer on placing or renewing any insurance policies; or
  - 14.3.8.3 without prejudice to the generality of clause 14.3, compliance with the FOIA and/or Environmental Information Regulations,

provided that, for the avoidance of doubt, neither clause 14.3.5 nor clause 14.3.8.3 shall permit disclosure of Confidential Information otherwise prohibited by clause 14.3 where that information is exempt from disclosure under section 41 of the FOIA and under Regulation 12 of the Environmental Information Regulations.

- 14.4 The provisions of this clause 14 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.
- 14.5 The Authorities acknowledge that they are each subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate each other's compliance with its information disclosure requirements regarding this Agreement and information obtained by each from the other under this Agreement pursuant to the same in the manner provided for in clauses 14.6 to 14.10.
- 14.6 Where an Authority (the "**Requesting Authority**") receives a Request for Information that the Authority (the "**Disclosing Authority**") is holding on its behalf and which the Requesting Authority does not hold itself the Requesting Authority shall refer to the Disclosing Authority such Request for Information that it receives as soon as practicable and in any event within ten (10) Business Days of receiving a Request for Information and the Disclosing Authority shall:
  - 14.6.1 provide the Requesting Authority with a copy of all such information in the form that the Requesting Authority requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Requesting Authority acting reasonably may specify) of the Requesting Authority's request; and
  - 14.6.2 provide all necessary assistance as reasonably requested by the Requesting Authority in connection with any such information, to enable the Requesting Authority to respond to a Request for

Information within time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

- 14.7 The Requesting Authority shall be responsible for determining at its absolute discretion:
- 14.7.1 whether information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
  - 14.7.2 where appropriate, whether or not in all circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information referred to in the Request for Information; and
  - 14.7.3 whether information is to be disclosed in response to a Request for Information.
- 14.8 The Disclosing Authority shall transfer to the Requesting Authority any Request for information received by the Disclosing Authority as soon as practicable and in any event within two (2) Business Days of receiving it.
- 14.9 In the event of a request from the Requesting Authority pursuant to clause 14.6, the Disclosing Authority shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Requesting Authority of the Disclosing Authority's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Requesting Authority under Section 12(1) of the FOIA and the Fees Regulations or where the request is made pursuant to the EIR, the reasonable costs of compliance with the request. Where such costs (either on their own or in conjunction with the Requesting Authority's own such costs in respect of such Request for Information under the FOIA) 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 Requesting Authority shall inform the Disclosing Authority in writing whether or not it still requires the Disclosing Authority to comply with the request and where it does not require the Disclosing Authority to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Requesting Authority is entitled to under Section 10 of the FOIA. In such case, the Requesting Authority shall notify the Disclosing Authority of such additional days as soon as practicable after becoming aware of them and shall reimburse the Disclosing Authority for such costs as the Disclosing Authority 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.
- 14.10 The Disclosing Authority acknowledges that (notwithstanding the provisions of clause 14) the Requesting Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Disclosing Authority or this Agreement:
- 14.10.1 in certain circumstances without consulting with the Disclosing Authority; or
  - 14.10.2 following consultation with the Disclosing Authority and having taken their views into account,
- provided always that where clause 14.10.1 applies the Requesting Authority shall draw this to the attention of the Disclosing Authority prior to any disclosure.

- 14.11 Prior to the disclosure of any information in relation to this Agreement and/or the WMRC by either Authority, it, where practicable, shall notify the other Authority and the Authorities shall discuss whether either believes the information is Confidential Information.

## 15. **OMBUDSMAN AND COMPLAINTS**

- 15.1 Where an Authority receives a request for information (the "**Receiving Authority**") as a result of a complaint relating to this Agreement or the WRMC, including a complaint to the Local Government Ombudsman, it shall (and shall procure that its consultants and contractors shall):

15.1.1 notify the other Authority (the "**Respondent Authority**") as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information; and

15.1.2 provide the Respondent Authority with a copy of its draft response to the complaint within five (5) Business Days.

- 15.2 The Respondent Authority shall provide comment and information requested to the Receiving Authority making the request within five (5) Business Days.

- 15.3 The Receiving Authority shall provide a final copy of the response to the Respondent Authority (incorporating as appropriate the comments and information from the Respondent Authority) at the same time as the response is sent to the complainant or Ombudsman.

- 15.4 Where the Receiving Authority receives a complaint including a complaint from the Local Government Ombudsman, the Respondent Authority shall provide all necessary assistance as reasonably requested by the Receiving Authority to enable it to respond to the complaint within the time for compliance set by the appropriate complaints procedure or the Ombudsman.

- 15.5 The Authorities shall cooperate fully with each other in respect of the implementation of a report of the Local Government Ombudsman or action agreed as a result of a complaint.

## 16. **DISPUTE RESOLUTION**

- 16.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 16. If any dispute arises in relation to any aspect of this Agreement, the MWDA Supervising Officer and the Halton Supervising Officer shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

- 16.2 If the MWDA Supervising Officer and the Halton Supervising Officer fail to resolve the dispute within ten (10) Business Days of the date on which the dispute was referred to them then the matter shall be referred to a director of Halton and the Operations Director of MWDA who shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

- 16.3 If the director of Halton and the Operations Director of MWDA fail to resolve the dispute within ten (10) Business Days of the date on which the dispute was referred to them then the matter shall be referred to the Chief Executive of Halton and the Chief Executive of MWDA who shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

- 16.4 If either Authority is of the opinion that the dispute is not likely to be resolved by consultation under clause 16.3 that Authority 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. The other Authority shall act reasonably in deciding whether or not to accept such invitation.
- 16.5 If:
- 16.5.1 the consultation required by clause 16.3 has taken place and the dispute remains unresolved;
  - 16.5.2 (without prejudice to clause 16.4) either Authority is of the opinion that the dispute is not likely to be resolved by consultation (or further consultation) under clause 16.3;
  - 16.5.3 one Authority has declined to accept an invitation to mediation issued by the other pursuant to clause 16.4; or
  - 16.5.4 following such mediation the dispute remains unresolved,
- either Authority may refer the matter to an adjudicator selected by agreement of the Authorities ("**Adjudicator**").
- 16.6 If the Authorities are unable to agree on the identity of the adjudicator within 14 days of notification by one Authority to the other of its intention refer the matter to adjudication, the President for the time being of the Chartered Institute of Arbitrators shall appoint such adjudicator within 30 days of any application for such appointment by either Authority.
- 16.7 Within 7 days of appointment in relation to a particular dispute, the Adjudicator shall require the Authorities 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.
- 16.8 In any event, the Adjudicator shall provide to both Authorities his written decision on the dispute, within 28 days of appointment (or such other period as the Authorities may agree after the reference, or 42 days from the date of reference if the Authority which referred the dispute agrees). Unless the Authorities agree otherwise, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Courts of England and Wales, the Adjudicator's decision shall be binding on both Authorities who shall forthwith give effect to the decision.
- 16.9 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by Halton and MWDA. Each Authority shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- 16.10 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.
- 16.11 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.

- 16.12 All information, data or documentation disclosed or delivered by an Authority 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 clause 14, 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 Authority disclosing or delivering the same and all copies shall be returned to such Authority on completion of the Adjudicator's work.
- 16.13 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.
- 16.14 If:
- 16.14.1 either Authority is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clauses 16.8 or 16.15; or
- 16.14.2 both Authorities agree,
- then either Authority may (within 28 days of receipt of the Adjudicator's decision) notify the other Authority of its intention to refer the dispute to the courts of England and Wales.
- 16.15 Notwithstanding the provisions of clause 16.8, where any dispute relates to clause 10 (Payment), the Adjudicator shall consider any representations made by the Authorities which either put forward their own case or deal with that of the other Authority within 7 days after referral of the dispute to the Adjudicator and the Adjudicator shall deliver his decision on such dispute as soon as practicable in the particular circumstances of the dispute to which his decision relates and in any event within 14 days of referral of the dispute to him and give written notice of his decision to the Authorities as soon as practicable thereafter. The Adjudicator shall provide reasons for his decision following delivery of such notice.
- 16.16 The courts 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, to vary or cancel the decision of the Adjudicator and, where appropriate, to order financial compensation to be paid by one Authority to the other.
- 16.17 The Authorities 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 16 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause 16.
- 16.18 Nothing in this clause 16 shall prevent either Halton or MWDA 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.

17. **WAIVER**

17.1 Any relaxation, forbearance, indulgence or delay (together an "indulgence") of either Authority in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that Authority 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 Authority or any other person).

17.2 No term or provision of this Agreement shall be considered as waived by either Authority unless the waiver is given in writing by that Authority.

17.3 No waiver shall be a waiver of a past 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.

18. **SEVERABILITY**

If any provision of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability shall not affect any other provision of the Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Authorities hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

19. **COUNTERPARTS**

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

20. **RELATIONSHIP OF THE PARTIES**

Each Authority is an independent contractor and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Authorities of partnership or (except as expressly provided in this Agreement) of principal/agent or of employer/employee or that the Authorities are engaging in a joint venture through participation in the WMRC. Neither Authority shall have any right to act on behalf of nor to bind by contract the other Authority or otherwise, except to the extent expressly permitted by the terms of this Agreement.

21. **NOTICES**

21.1 **Form of Notice**

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 or electronic mail 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), in the case of:

21.1.1 MWDA, to 7<sup>th</sup> Floor, No 1 Mann Island, Liverpool, Merseyside, L3 1 BP;  
and

21.1.2 Halton, to Municipal Building, Kingsway, Widnes, Cheshire, WA8 7QF,

and unless otherwise expressly stated in this Agreement marked for the attention of the Chief Executive in the case of MWDA, and the Strategic Director – Communities in the case of Halton.

## 21.2 **Service**

Any such demand, notice or communication shall be deemed to have been duly served:

- 21.2.1 if delivered by hand, when left at the proper address for service;
- 21.2.2 if given or made by pre-paid first class post, two Business Days after being posted; and
- 21.2.3 [other than in relation to notices served under clause 12,] if sent by electronic mail on the day of transmission provided that a read receipt is duly requested and/or other evidence is received and a confirmatory copy is on the same day that the e mail is transmitted, sent by pre paid first class post in the manner provided for in this clause,

provided in each case that if the time of such deemed service is either after 4.00 pm on a Business Day or on a day other than a Business Day service shall be deemed to occur instead at 10.00 am on the following Business Day.

## 21.3 In the event that an automatic electronic notification is received by the sender within 48 hours after sending the e mail informing the sender that:

- 21.3.1 the e mail has not been delivered to the recipient; or
- 21.3.2 the recipient is out of the office; or
- 21.3.3 no read receipt or other evidence of receipt has been duly received,

that e mail shall be deemed not to have been served by e mail and shall instead only be deemed served two (2) Business Days after being posted in accordance with clause 20.2.2.

## 22. **AMENDMENTS**

This Agreement may not be varied except by an agreement in writing signed by a duly authorised representative of each Authority.

## 23. **STATUTORY RESPONSIBILITIES**

In carrying out its statutory duties the powers, duties, rights and obligations of the Authorities shall not be fettered or otherwise affected save as provided by the terms of this Agreement.

## 24. **THIRD PARTY DETAILS**

A person who is not a party to this Agreement has no rights under the Agreement (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

25. **COSTS**

The Authorities shall be responsible for paying their own respective costs and expenses in relation to the preparation, execution and implementation of this Agreement, except as expressly provided in this Agreement.

26. **SET OFF**

26.1 MWDA may retain or set-off any amount owed to it by Halton under this Agreement which has fallen due and payable against any amount due to Halton under this Agreement.

26.2 If the payment or deduction of any amount referred to in clause 26.1 is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with clause 16 **Error! Reference source not found.** (Dispute Resolution).

27. **ASSIGNMENT AND SUBCONTRACTING**

27.1 The rights and obligations of the Authorities under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity power and authority to become a party to and to perform the obligations of the applicable Authority under this Agreement being:

27.1.1 a Minister of the Crown pursuant to an Order under the Ministers of Crown Act 1975;

27.1.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the applicable Authority under this Agreement; or

27.1.3 any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed by the applicable Authority (in a form reasonably acceptable to the other Authority) or a Minister of the Crown having the legal capacity power and authority to perform the obligations under the guarantee and the obligations of the applicable Authority under this Agreement.

28. **ENTIRE AGREEMENT**

This Agreement (including any documents referred to in it) sets forth the entire agreement between the Authorities with respect to the subject matter covered by them and supersedes and replaces all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the Authorities. The Authorities acknowledge they do not enter into this Agreement in reliance on any warranty, representation or undertaking by any other Authority other than those contained in this Agreement and that all its remedies for any breach of this Agreement are set out in this Agreement provided that this shall not exclude any liability:

28.1.1 which MWDA would otherwise have to Halton in respect of any statements made fraudulently or negligently by or on behalf of MWDA prior to the date of this Agreement; or

28.1.2 which Halton would otherwise have to MWDA in respect of any statements made fraudulently or negligently by or on behalf of Halton prior to the date of this Agreement.

29. **GENERAL**

29.1 Each Authority shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Authority is entitled to bring a claim against another Authority pursuant to this Agreement.

29.2 Save where otherwise provided, the Authorities will pay interest on any amount payable under this Agreement not paid on the due date from that date to the date of payment at a rate equal to 2% above the base rate from time to time of Bank of England (the "**Prescribed Rate**").

30. **LAW AND JURISDICTION**

Subject to clause 16 (Dispute Resolution), this Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales and the Authorities irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS WHEREOF** this Deed has been delivered and executed as a deed on the day and year first above written.

The Common Seal of the

**MERSEYSIDE WASTE DISPOSAL AUTHORITY**

is hereunto affixed in the presence of

.....

The Common Seal of

**HALTON BOROUGH COUNCIL**

is hereunto affixed in the presence of

.....

## SCHEDULE 1

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### Halton Exclusive Contract Waste

1. The following materials constitute Halton Exclusive Contract Waste:

**Material 1**                      Recyclable Materials other than Recyclable Materials which are:

- (a)        Separately Collected; or
- (b)        deposited at a Bring Bank Site

**Material 2**                      Garden Waste which is Separately Collected

**Material 3**                      All materials delivered to HWRCs in Halton's administrative area

2. Halton shall deliver, or procure the delivery of, Halton Contract Waste to the following locations:

<b>Material</b>	<b>Location</b>	<b>Facility</b>	<b>Address</b>	<b>Postcode</b>
1	Gillmoss	MRF	Bridgehouse Lane, Liverpool	L10 5HA
2	Huyton	Waste Transfer Station	Ellis Ashton Street, Huyton	L36 6BN
3	Johnson's Lane	HWRC	Johnsons Lane Widnes	WA8 OSJ
3	Picow Farm	HWRC	Picow Farm Road Runcorn	WA7 4UB

## SCHEDULE 2

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### Charging Mechanism

*[Draft being prepared by MRWA. To be issued separately]*

DRAFT

## SCHEDULE 3

### Halton Properties and Indemnities

#### 1 Definitions

The following words and expressions shall bear the following meanings when used in this Schedule:

<b>"Encumbrance"</b>	any estate interest easement right mortgage charge (or other Security Interest) lease tenancy licence restrictive covenant right of pre-emption option trust arrangement or other matter whatsoever whether legal or equitable affecting the relevant Site or title
<b>"Freehold Restrictions"</b>	any restrictions, covenants and/or other encumbrances contained in the freehold title of any of the Halton Properties
<b>"Halton Properties"</b>	Picow Farm and Johnsons Lane
<b>"Johnsons Lane"</b>	all that freehold property known as Primrose Valley Farm, Johnsons Lane, Widnes, Cheshire forming part of the property comprised in a Conveyance dated 25 March 1964 and made between (1) Mayor Aldermen and Burgesses of the Borough of Widnes and (2) Bowmans Chemicals Limited
<b>"Leasehold Restrictions"</b>	any restrictions, covenants and/or other encumbrances contained in any lease and/or leasehold title of the Halton Properties relating to the grant of a licence in respect thereof
<b>"Permitted Person"</b>	any agent, servant or licensee of MWDA
<b>"Picow Farm"</b>	all that leasehold property known as land on the northerly side of Picow Farm Road, Runcorn, Chester as is contained in an Underlease made between (1) TDG plc and (2) Halton pursuant to a court order dated 7 August 2003 and part of the freehold property at Picow Farm Road vested in Halton
<b>"Security Interest"</b>	any mortgage charge pledge lien or assignment or any other encumbrance, priority or security interest or arrangement of whatsoever nature over or in the relevant property

## **2 Creation of Encumbrances**

Halton will not create nor knowingly permit the creation of any Encumbrance nor vary or terminate any Encumbrance benefiting any of the Halton Properties other than with the agreement of MWDA (such consent not to be unreasonably withheld or delayed).

## **3 General Indemnity**

Halton will fully and effectively indemnify MWDA for all costs, claims, Losses, demands and liabilities (including without limitation sums due from MWDA to the WMRC Contractor as a result of the occurrence of a "Compensation Event", as defined under the WMRC) MWDA and/or any Permitted Person may incur or suffer whether directly or indirectly and howsoever occurring (including whether under the WMRC) as a result of:

- 3.1 the grant, existence and/or termination by whatsoever means of any of the licences of the Halton Properties; and/or
- 3.2 any act, omission or default of Halton to comply with all lawful and/or statutory requirements and/or consents imposed on it or required (including but not limited to compliance with any Leasehold Restrictions or Freehold Restrictions) for the grant of the licences of the Halton Properties (whether or not such licences are deemed valid or otherwise) and any statutory consents required for the operation of the Halton Properties for their use prior to the commencement date of the WMRC; and/or
- 3.3 any inaccuracy or error or misleading statement in any written reply to any enquiry raised of Halton by MWDA in respect of the Halton Properties; and/or
- 3.4 any defect and/or invalidity in and/or term of the title (whether freehold or leasehold) of any of the Halton Properties; and/or
- 3.5 any breach of the covenant in paragraph 2 above.