

DATED

2009

ESSEX COUNTY COUNCIL
and
BASILDON DISTRICT COUNCIL
BRAintree DISTRICT COUNCIL
BRENTWOOD BOROUGH COUNCIL
CASTLE POINT BOROUGH COUNCIL
CHELMSFORD BOROUGH COUNCIL
COLCHESTER BOROUGH COUNCIL
EPPING FOREST DISTRICT COUNCIL
HARLOW DISTRICT COUNCIL
MALDON DISTRICT COUNCIL
ROCHFORD DISTRICT COUNCIL
TENDRING DISTRICT COUNCIL
UTTLESFORD DISTRICT COUNCIL

INTER AUTHORITY AGREEMENT

relating to the Essex Waste Partnership Strategy Programme



N A B A R R O

Lacon House
84 Theobald's Road
London WC1X 8RW
Tel: +44 (0)20 7524 6000

CONTENTS

Clause	Subject matter	Page
1.	DEFINITIONS AND INTERPRETATION	2
2.	COMMENCEMENT AND DURATION	15
PART 1	ESSEX WASTE PARTNERSHIP	16
3.	ACTING IN GOOD FAITH AND REASONABLY	16
4.	REPORTS AND RECORDS	17
5.	IAA OFFICER WORKING GROUP	18
6.	DECISION MAKING	18
PART 2	REVIEW PROCEDURE AND AMENDMENTS TO THIS IAA	18
7.	INITIAL REVIEW	18
8.	ANNUAL REVIEW	21
9.	REVIEW PROCEDURE FOR AD HOC REVIEWS	22
10.	PROVISIONS RELEVANT TO ALL REVIEWS	24
11.	AMENDMENTS.....	25
PART 3	PFI CONTRACT.....	25
12.	THE WDA'S RESPONSIBILITIES AND COMMITMENTS	25
13.	THE WCAS' RESPONSIBILITIES AND COMMITMENTS	25
14.	LIABILITY OF THE WCAS.....	25
15.	STATUTORY DIRECTIONS AND NOTICES	28
16.	THE PROJECT AGREEMENT	28
PART 4	SERVICE DELIVERY PLANS.....	28
17.	SERVICE DELIVERY PLANS.....	28
18.	ORGANIC WASTE SERVICE.....	29
19.	WCA BASELINES.....	31
PART 5	JOINT MUNICIPAL WASTE MANAGEMENT STRATEGY	31
20.	WASTE STRATEGY	31
PART 6	INDEMNITIES & REMEDIES.....	32
21.	INDEMNITY AND LIMITATION ON LIABILITY	32
22.	CONDUCT OF CLAIMS.....	33
23.	SEVERAL LIABILITY	34
PART 7	DISPUTE RESOLUTION	34
24.	DISPUTE RESOLUTION	34
PART 8	TERMINATION	36
25.	TERMINATION FOR WDA DEFAULT	36
26.	TERMINATION FOR WCA DEFAULT	37
27.	VOLUNTARY TERMINATION	38
28.	CONSEQUENCES OF TERMINATION	38
PART 9	GENERAL	39
29.	INVOICING AND PAYMENT	39
30.	INTELLECTUAL PROPERTY/OWNERSHIP OF DOCUMENTS	39
31.	OWNERSHIP OF WASTE AND DUTY OF CARE	40
32.	FORCE MAJEURE	40
33.	DATA PROTECTION.....	41
34.	CONFIDENTIALITY	41
35.	FOIA AND EIR	42
36.	PUBLIC RELATIONS AND PUBLICITY	44

- 37. NOTICES 44
- 38. ENTIRE AGREEMENT 44
- 39. AGENCY 44
- 40. ASSIGNMENT 45
- 41. WAIVER 45
- 42. SEVERABILITY 45
- 43. RIGHTS OF THIRD PARTIES 45
- 44. LAW AND JURISDICTION 45
- 45. COUNTERPARTS 45
- SCHEDULE 1 Joint Municipal Waste Management Strategy 47
- SCHEDULE 2 Waste Disposal Authority Responsibilities and Commitments..... 49
- SCHEDULE 3 Waste Collection Authority Responsibilities and Commitments..... 51
- SCHEDULE 4 Key Waste Delivery Parameters..... 54
- SCHEDULE 5 IAA Officer Working Group Constitution 55
- SCHEDULE 6 Payment and Costs Schedule 58
 - Part 1 General 58
 - Part 2 PPP..... 62
 - Part 3 Organic Waste Service 65
 - Part 4 WCA Specific Arrangements 68
 - Part 5 Indexation 70
- SCHEDULE 7 Contamination 71
- SCHEDULE 8 Service Delivery Plans..... 74
 - Part 1 WCA Baselines..... 74
 - Part 2 Service Delivery Plans..... 75
- SCHEDULE 9 Delivery Points..... 76
- SCHEDULE 10 Delivery Addresses for Notices 79
- SCHEDULE 11 IAA Commencement Dates 80

INTER AUTHORITY AGREEMENT

A DEED DATE

2009

PARTIES

- (1) ESSEX COUNTY COUNCIL of PO Box 11, County Hall, Chelmsford, Essex CM1 1LX (the "WDA"); and
- (2) BASILDON DISTRICT COUNCIL of The Basildon Centre, St Martin's Square, Basildon, Essex, SS14 1DL (subsequently referred to as "Basildon");
- (3) BRAINTREE DISTRICT COUNCIL of Causeway House, Bocking End, Braintree, Essex CM7 9HB (subsequently referred to as "Braintree");
- (4) BRENTWOOD BOROUGH COUNCIL of Town Hall, Ingrave Road, Brentwood, Essex CM15 8AY (subsequently referred to as "Brentwood");
- (5) CASTLE POINT BOROUGH COUNCIL of Kiln Road, Thundersley, Benfleet, Essex, SS7 1TF (subsequently referred to as "Castle Point");
- (6) CHELMSFORD BOROUGH COUNCIL of Civic Centre, Duke Street, Chelmsford, CM1 1JE (subsequently referred to as "Chelmsford");
- (7) EPPING FOREST DISTRICT COUNCIL of Civic Offices, High Street, Epping, Essex CM16 4BZ (subsequently referred to as "Epping Forest");
- (8) HARLOW DISTRICT COUNCIL of Civic Centre, The Water Gardens, Harlow, Essex CM20 1WG (subsequently referred to as "Harlow");
- (9) MALDON DISTRICT COUNCIL of Princes Road, Maldon, Essex CM9 5DL (subsequently referred to as "Maldon");
- (10) ROCHFORD DISTRICT COUNCIL of Council Offices, South Street, Rochford, Essex, SS4 1BW (subsequently referred to as "Rochford");
- (11) TENDRING DISTRICT COUNCIL of Town Hall, Station Road, Clacton on Sea, Essex CO15 1SE (subsequently referred to as "Tendring"); and
- (12) UTTLESFORD DISTRICT COUNCIL of Council Offices, London Road, Saffron Walden, Essex CB11 4ER (subsequently referred to as "Uttlesford") (together, the "WCAs")

(together the "Parties").

RECITALS

- (A) Essex County Council is the Waste Disposal Authority under section 30(2) of the Environmental Protection Act 1990 (the "EPA").

- (B) Basildon District Council, Braintree District Council, Brentwood Borough Council, Castle Point Borough Council, Chelmsford Borough Council, Epping Forest District Council, Harlow District Council, Maldon District Council, Rochford District Council, Tendring District Council, and Uttlesford District Council are the Waste Collection Authorities for their respective areas under section 30(3) of the Environmental Protection Act 1990.
- (C) The Waste Strategy for England 2007 issued by the Secretary of State pursuant to the Environmental Protection Act 1990 sets out certain Local Authority targets for recycling. The 1999 Landfill Directive (99/31/EC) requires the diversion of prescribed amounts of biodegradable municipal waste from landfill and this is enforced by the Waste Emissions and Trading Act (2003) (WET Act).
- (D) The Parties wish to establish a clear and accountable framework in this inter authority agreement under which they can work together in delivering their respective waste disposal and waste collection responsibilities and strategies and to promote the economic, environmental and social well-being of their respective areas.
- (E) The WDA intends to publish a contract notice in the Official Journal of the European Union in order to seek expressions of interest for a private sector provider to design build finance and operate waste treatment facilities for residual Municipal Waste (being waste not specifically collected for recycling or composting or otherwise re-used) and to procure the same through the competitive dialogue procedure pursuant to The Public Contracts Regulations 2006. The Parties acknowledge that as the solutions emerge as part of the competitive dialogue process, there will be a need to further develop and enhance certain details as currently provided for under this IAA. The parties are flexible and willing to do so, and open to working together towards finalising and refining the details which are in the mutual interest of the Parties.
- (F) Southend-on-Sea Borough Council will work in partnership with Essex County Council as another waste disposal authority and with the WCAs but is not a party to this inter authority agreement.
- (G) The WDA has applied for credits pursuant to the Government's Private Finance Initiative and the Parties acknowledge that this IAA is further necessary to demonstrate to the sponsoring Central Government Departments, the waste industry and to the funding community that the WCAs and the WDA will work together sufficiently and as necessary to ensure the project is deliverable.
- (H) The WDA also intends to procure capacity in existing waste management facilities together with procuring new facilities to treat Organic Waste which may be collected by the WCAs.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Ad Hoc Reviews"

means the reviews conducted in accordance with clause 9;

"Adjudicator"

means a suitably qualified and independent adjudicator appointed under clause 24.4 and clause 24.5 of this IAA;

"Affected Party"

means the party described in clause 32.1;

"Annual Review"

means the review as described under clause 8;

"Appropriate Limit"

means the limit described in clause 35;

"Authorised Representative"

means a person who is duly authorised to bind the relevant Party or act on that Party's behalf in respect of a particular agreement or action;

"Best Value"

means the duty placed on local authorities as best value authorities by virtue section 3 of the Local Government Act 1999 "to make arrangements to secure continuous improvements in the way they exercise their functions having regard to a combination of economy, efficiency and effectiveness";

"BMW Landfill Diversion"

means the diversion of biodegradable Waste from Landfill;

"Break Clause"

means the mechanism under which a WCA is entitled to terminate parts of this IAA, as described under clause 7.7 or 7.9;

"Business Day"

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

"Change in Law"

means the coming into affect after the date of this IAA of:

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

"Code"

means the Code described in clause 35.6;

"Commercial Waste"

means as defined under section 75(7) Environmental Protection Act 1990 together with Regulation 6 and 7 and Schedule 4 of the Controlled Waste Regulations 1992;

"Compensation Payment"

means a payment made by the WCA to the WDA in accordance with clauses 8 and 11 Schedule 6 (Payment and Costs Schedule);

"Compost"

means, the product derived from composting or anaerobic digestion as both are defined in National Indicator 192 (as amended or replaced from time to time). If NI 192 (or its replacement) is repealed with no further substitute, then the definition shall remain the definition extant at the date on which the NI (or its replacement) was repealed;

"Compost Credit"

means a payment which the WDA shall make to the WCA in accordance with Schedule 6 (Payment and Costs Schedule);

"Confidential Information"

means information that ought to be considered as confidential to the parties (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, trade secrets, intellectual property rights and know-how of any Party (or their staff, employees and contractors) and all personal data and sensitive personal data within the meaning of the DPA;

"Contaminant"

means the presence of material in a Contract Waste or Organic Waste load which:

- (a) cannot lawfully be processed in the facility to which it is delivered; or
- (b) cannot be processed in the facility to which it is delivered without detriment to that facility or its efficiency,

and in both cases which a reasonable contractor operating similar facilities, acting diligently and in accordance with Good Industry Practice could not remove from that load;

as such definition is augmented in the Contract Waste or Organic Waste Contamination Protocols as developed in accordance with Schedule 7 (Contamination);

"Contingency Delivery Point"

means the alternative Delivery Points set out in Schedule 9 (Delivery Points) or where no contingency Delivery Points are set out (or the relevant Contingency Delivery Point is unavailable) an alternative Delivery Point meeting the Delivery Point Standards as agreed between the relevant WCA and the WDA;

"Contract Waste"

means all Municipal Waste delivered to the PPP Contractor by or on behalf of the WDA, Southend-on-Sea Borough Council, or the WCAs or their contractors but not including:

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

"Delivery Point"

means a transfer station or a Facility, which is licensed to receive Waste, which meets the Delivery Point Standards and which is located as further described in Schedule 9 (Delivery Points);

"Delivery Point Standards"

means the standards as agreed between the Parties as further described in Schedule 9 (Delivery Point);

"Disposal Credits"

means the amount calculated in accordance with paragraph 5A of Schedule 6 (Payment and Costs Schedule);

"Dispute Resolution Procedure"

means the procedure for the resolution of disputes set out at clause 24;

"DPA"

means the Data Protection Act 1998;

"Dry Recyclable Waste"

means for each WCA the commodities described as dry recyclables in the relevant WCA Baseline together with any other dry recyclable materials agreed from time to time between the WDA and a WCA in accordance with this IAA;

"EIR"

means the Environmental Information Regulations 2004;

"EPA"

means the Environmental Protection Act 1990;

"Essex Waste Partnership"

means the group of local authorities in Essex and Southend-on-Sea who are working together to deliver the Mutual Aims and consisting of Essex County Council, Southend-on-Sea Borough Council, Basildon, Braintree, Brentwood, Castle Point, Chelmsford, , Epping Forest, Harlow, Maldon, Rochford, Tendring and Uttlesford;

"European Economic Area"

means from time to time the European Economic Area as created by the Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both that function and responsibilities of the European Economic Area;

"Expiry Date"

means the date which is defined in the Project Agreement as the "Expiry Date", or if no PPP Contract is let, 25 years from the date of this IAA;

"Facility(ies)"

means the new facility or facilities for the treatment and disposal of Contract Waste, which the WDA will procure as part of the Project Agreement;

"Fees Regulations"

means The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

"Financial Close"

means the date the PPP Contractor enters into the Project Agreement with the WDA or, as the context dictates, the date on which it is proposed that the PPP Contractor enters into the Project Agreement with the WDA (and in both cases, if relevant, the date on which senior debt funding agreements are entered into);

"FOIA"

means the Freedom of Information Act 2000;

"Food Waste"

means biodegradable waste derived from cooked and/or uncooked food materials typically consisting of vegetable peelings, meat scraps, bones, excess or spoiled prepared food, and other discards from household kitchens (or with the prior approval of the WDA from commercial premises) together with any other materials agreed from time to time between the WDA and a WCA in accordance with this IAA;

"Force Majeure Event"

means the occurrence after the date of this IAA of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any actions or breach of the WCA; or
- (c) pressure waves caused by devices travelling at supersonic speeds,
- (d) snowfall sufficiently heavy that waste collection services are prevented or disrupted^[j1]

which directly causes either Party or (in the case of a WCA) all or any of them (the "Affected Party") to be unable to comply with all or a material part of its obligations

under this IAA or a local government re-organisation which results in a WCA's administrative borders changing materially or the WCA assuming disposal functions[j2] **[SP DN: Both raised by WCAs as genuine concerns. Although this does not reflect SOPC language, both are relevant in this relationship and I think reasonable requests]**

"Green Waste"

means biodegradable waste such as vegetation and plant matter (includes garden trimmings, leaves, shrubs, plants, grass, street trees or tree trunks etc.) from household gardens and from communal gardens where such gardens are tended by individual households, together with any other materials agreed from time to time between the WDA and a WCA in accordance with this IAA;

"Good Industry Practice"

means practice by a Party or contractor (as applicable) which is in a manner that is consistent with that of a reasonable and diligent body or contractor (as applicable) acting in the same or similar circumstances;

"Guidance"

means any applicable guidance or directions with which the Relevant Contractor is bound to comply as a matter of law;

"Hazardous Waste"

means waste set out as hazardous in the Hazardous Waste (England) Regulations 2005 or in Regulations made by the Secretary of State pursuant to section 62 of the EPA;

"Household Waste"

has the meaning attributed to it in section 75(5) of the EPA and Schedules 1 and 2 of the Controlled Waste Regulations 1992;

"IAA"

means this inter authority agreement (including its schedules);

"IAA Commencement Date"

means for each Party the date set out in Schedule 11 (IAA Commencement Dates) as being the IAA Commencement Date;

"IAA Officer Working Group"

means the body established under clause 5;

"Indexed"

shall have the meaning set out in part 5 of Schedule 6 (Payment and Costs);

"Industrial Waste"

means as defined under section 75(6) of the EPA together with Regulations 5 and 7 and Schedule 3 of the Controlled Waste Regulations 1992;

"Initial Review"

means the review procedure as described under clause 7;

"Initial Review Meeting"

Means the meeting conducted under clause 7.7 [SP DN: Drafting]

"Information"

has the meaning given to it in section 84 of the FOIA and section 2 of the EIR;

"Joint Municipal Waste Management Strategy"

means the Joint Municipal Waste Management Strategy for Essex 2007 to 2032, being the strategic framework for the management of Municipal Waste, jointly developed, approved and adopted by the WCAs and the WDA as reviewed and updated by the WCAs and the WDA at each Annual Review;

"Key Waste Delivery Parameters"

means the key parameters that may affect the delivery and composition of Contract Waste over the duration of this IAA as set out in Schedule 4 (Key Waste Delivery Parameters) and which shall be reviewed by the Parties at each Annual Review;

"Landfill"

means:

- (a) for the purposes of BMW Landfill Diversion, the meaning given to it in Waste Emissions Trading Act 2003; and
- (b) for the purposes of Landfill Tax, the meaning attributed to it by section 65(1) of the Finance Act 1996;

and "Landfilled" and "Landfilling" shall be interpreted accordingly;

"Landfill Tax"

has the meaning set out in section 39(1) of the Finance Act 1996;

"Landfill Allowances Trading Scheme or "LATS"

means the scheme for the assignment, allocation and/or trading of landfill allowances created under the Waste and Emissions Trading Act 2003 and The Landfill Allowances and Trading Scheme (England) Regulations 2004 (as amended, updated or replaced from time to time) and the term "Landfill Allowances" shall be construed accordingly;

"Legislation"

means:

- (a) any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (b) any exercise of the Royal Prerogative; and
- (c) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"Local Area Agreement"

means an agreement that contains (among other matters) required outcomes in respect of municipal waste recycling and landfill diversion, which is developed by a local authority (all single and upper tier authorities) in agreement with local partners through the Essex Waste Partnership and in agreement with central Government.

"Market Practice"

means practice which is:

- (a) in accordance with SOPC4 published by HM Treasury (or its replacement) and PPP/PFI guidance issued by WIDP (including any standard drafting) and in accordance with market practice in respect of similar contracts being entered into between waste disposal authorities and contractors in the UK waste PPP/PFI market; or
- (b) not in accordance with limb (a) of this definition but which the WDA has agreed with the WCA (by express amendments to this IAA as appropriate) (the WDA absorbing any greater liability which would otherwise accrue to the WCA as a result of the Project Agreement being off Market Practice);

"Mileage Payments"

means the amount calculated in accordance with Schedule 6 (Payment and Costs Schedule);

"Minimum Tonnages"

means the Project Agreement Minimum Tonnage and the Organic Waste Minimum Tonnage;

"Municipal Waste"

means all waste which by virtue of Legislation a local authority has a statutory duty to collect or has a power to collect, including (without limitation) Household Waste, Commercial Waste, fly tipping and street cleansing arisings;

"Mutual Aims"

means the shared objectives of the Parties to secure the most effective collection and disposal of waste for the council tax-payers of Essex in accordance with this IAA and the Relevant Contracts;

"No Better No Worse Position"

means the position of the PPP Contractor as further described in the Project Agreement;

"Organic Waste"

means Food Waste and/or Green Waste collected by the WCAs pursuant to section 45 of the EPA;

"Organic Waste Delivery Point"

means a transfer station or an Organic Waste Facility, which is licensed to receive Organic Waste, which meets the Delivery Point Standards and which is located as further described in Schedule 9 (Delivery Points);

"Organic Waste Contingency Delivery Point"

means the alternative Organic Delivery Points set out in Schedule 9 (Delivery Points) or where no contingency Organic Delivery Points are set out (or the relevant Contingency Delivery Point is unavailable) an alternative Organic Delivery Point meeting the Delivery Point Standards as agreed between the relevant WCA and the WDA;

"Organic Waste Facility"

means a facility for the treatment and disposal of Organic Waste and which may include existing facilities or new facilities procured by the WDA;

"Organic Waste Minimum Tonnage"

means in respect of the Organic Waste Service 70% of the cumulative tonnage of Organic Waste predicted by the WCAs and documented in WCA Baselines at the date of this IAA and in respect of which the WDA has an obligation to pay or deliver under a Relevant Contract; **[SP DN: Housekeeping. Not all of the WCA have predicted tonnages in their actual baselines, though I believe have in fact provided it to Essex]**

"Organic Waste Service"

means the service to be implemented by the relevant WCAs in accordance with their Service Delivery Plans, as further described in clause 18;

"Other Party"

means the other party as described in clause 35.2;

"Payment Mechanism"

means the payment mechanism set out under the Project Agreement;

"Personal Data"

means personal data as defined in the DPA which is supplied to the Parties or obtained by the Parties;

"PPP Contractor"

means the contractor that has been appointed by the WDA to deliver the Essex Waste Partnership Public Private Partnership project (or, as the context dictates, during the procurement, the hypothetical contractor that the WDA intends to appoint subject to the outcome of the procurement);

"PPP Service Commencement Date"

means the full service commencement date for the new Facilities described as such in the Project Agreement;

"Project Agreement"

means the Project Agreement (together with its schedules) and if relevant, financing agreements to be entered into between the WDA and the PPP Contractor relating to the design, construction, finance and operation of residual waste treatment and disposal facilities;

"Project Agreement Minimum Tonnage"

means the tonnages of Waste described as such in the Project Agreement and in respect of which the WDA has an obligation to pay or deliver;

"RCHW"

means a recycling centre for household waste;

"Recyclable Materials"

means any materials collected separately or otherwise separated from Contract Waste for the purposes of Recycling, including (but not limited to):

- (a) paper and cardboard;
- (b) plastics;
- (c) ferrous and non-ferrous materials;
- (d) textiles;
- (e) glass;
- (f) wood;
- (g) Food Waste;
- (h) Green Waste
- (i) tyres;
- (j) waste electrical equipment,

or such other materials as shall be agreed in writing between the Parties from time to time;

"Recycling"

shall have the meaning set out in National Indicator 192 (as amended or replaced from time to time). If NI 192 (or its replacement) is repealed with no further substitute, then the definition shall remain the definition extant at the date on which the NI (or its replacement) was repealed;

"Recycling Credit"

means section 52 of the EPA as amended by section 49 of the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) and with the Environmental Protection (Waste Recycling Payments) (England) Regulations 2006 (the 2006 Regulations);

"Request for Information"

shall have the meaning set out in section 8 of the FOIA or section 5 of the EIR as relevant (where the meaning of "Request" shall apply);

"Relevant Contract"

means the Project Agreement and/or a contract entered into by the WDA for the purposes of procuring or providing waste management facilities as part of the Organic Waste Service;

"Relevant Contractor"

means the PPP Contractor or a contractor appointed by the WDA in respect of the delivery of the provision or procurement of Organic Waste Facilities;

"Relevant Issues"

shall have the meaning set out in clause 7.5;

"Responding Party"

means the party as described in clause 35;

"Review"

means the activity described in clauses 7, 8, 9 and 10;

"Review Notice"

means the notice as described in clause 8;

"Review Procedure"

means the procedure for review set out at clauses 10, 11 and 12;

"Revised and Confirmed IAA"

means this IAA as revised and confirmed following the Initial Review in accordance with clause 8;

"Service Delivery Plans or "SDP"

means the service delivery plans agreed between each WCA and the WDA as reviewed in accordance with the Review Procedure. Service Delivery Plans to apply from the IAA Commencement Date are set out in part 1 of Schedule 8 (Service Delivery Plans) as shall be amended from time to time in accordance with the review procedures set out in clauses 7 to 10;

"Statutory Targets"

means national performance indicators NI 191, NI 192 and NI 193 or any other performance indicators published in Guidance or Legislation as may be issued by CLG, the Audit Commission, Defra or any other competent authority from time to time relating to recovery and recycling (so enshrined following the Waste Strategy for England 2007) together with the diversion requirements set out in the 1999 Landfill Directive (99/31 /EC) requiring local authorities to divert prescribed amounts of biodegradable municipal waste from Landfill, as enforced by the Waste Emissions and Trading Act 2003;

"Substitute Waste"

has the meaning given to it in clause 14.12;

"Tipping Away Payment"

means a payment made by the WDA to a WCA as described in part A of part 1 of Schedule 6 (Payment and Costs Schedule);

"Unitary Charge Adjustment Protocol"

means the mechanism to change the unitary charge as provided for under the Project Agreement;

"Waste"

has the meaning ascribed to it in section 75 of the EPA and in the Waste Framework Directive 2006 together with the attendant subordinate legislation;

"Waste Composition"

means the composition of Waste that is delivered to the Delivery Points or Facility by the WCAs, including how the Waste delivered is constituted, its bio-fraction, the commodities which it comprises, the amount of Recyclable Material contained within it and whether it is Household Waste or Commercial Waste, Dry Recyclables or other materials;

"Waste Strategy for England 2007"

means the government's Waste Strategy for England 2007 issued by the Secretary of State pursuant to the Environment Protection Act 1990;

"WCA"

means a waste collection authority pursuant to section 30(3) of the EPA, and for the purposes of this IAA means Basildon District Council, Braintree District Council, Brentwood Borough Council, Castle Point Borough Council, Chelmsford Borough Council, , Epping Forest District Council, Harlow District Council, Maldon District Council, Rochford District Council, Tendring District Council, and Uttlesford District Council;

"WCA Baseline"

means the baseline Waste and Recycling service to be delivered by each WCA as set out in part 1 of Schedule 8 (Service Delivery Plans) as shall be amended from time to time in accordance with the review procedures set out in clauses 7 to 10;

"WCA Default"

means a material breach by a WCA of the terms of this IAA which it fails to redress within a reasonable time of receiving a written notice from the WDA to do so;

"WCA Retained Waste"

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

"WCA Default Termination Notice"

means a notice served pursuant to clause 26.1 (Termination for WCA Default) which complies with the requirements of clause 26 (Termination for WCA Default),

"WDA"

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

"WDA Default"

means a material breach by the WDA of the terms of this IAA which it fails to redress within a reasonable time of receiving a written notice from an affected WCA to do so;

"WET Act"

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

"WIDP"

means the Waste Infrastructure Delivery Programme or body established by DEFRA or HMT (or in either case their successor bodies) to deliver a Waste Management PFI or PPP programme in England and Wales;

1.2 Interpretation

In this IAA, except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice-versa;
- 1.2.2 the singular includes the plural and vice-versa;
- 1.2.3 a reference in this IAA to any clause, sub-clause, part, 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 IAA;
- 1.2.4 save where stated to the contrary, any reference to this IAA or to any other document shall include any permitted variation, amendment, or supplement to such document;
- 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.6 references to documents being in the "agreed form" means such documents as are either initialled by an Authorised Representative of the WDA and relevant WCA or in respect of which there is written communication from each Authorised Representative that the document is agreed;
- 1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.8 headings are for convenience of reference only;
- 1.2.9 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;

- 1.2.10 any obligation on a Party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.2.11 subject to any express provisions to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense.

2. COMMENCEMENT AND DURATION

- 2.1 This IAA will commence in respect of each Party on the relevant IAA Commencement Date and continue in full force and effect until:
 - 2.1.1 the Expiry Date;
 - 2.1.2 the early termination of the Project Agreement howsoever pursuant to the provisions for termination therein (in which circumstance Part 3 and Schedule 6 Part 2 of this IAA shall be terminated only and the remaining provisions of this IAA shall continue to have effect).
 - 2.1.3 the early termination or expiry of the services being delivered by a WCA as set out in its Service Delivery Plan and funded in whole or in part by the WDA (in which circumstance Part 4 of this IAA shall be terminated only in respect of the relevant WCA and the remaining provisions of this IAA shall continue to have effect);
 - 2.1.4 the relevant provisions of the EPA and WET Act being amended or repealed or other enactment made that this arrangement is rendered ineffective, inappropriate or unlawful;
 - 2.1.5 termination for WDA Default in accordance with clause 25;
 - 2.1.6 termination in respect of one of more WCAs for WCA Default in accordance with clause 26 (in which circumstance it shall be terminated in part in respect of the removed WCA(s) and shall continue to have effect in respect of the remaining WCAs (if any));
 - 2.1.7 the Break Clause is operated in respect of one or more WCAs in accordance with clause 7.7 or 7.9 (in which circumstance Part 3 and Schedule 6 Part 2 of this IAA shall be terminated only in respect of the relevant WCA and the remaining provisions of this IAA shall continue to have effect); or the Organic Waste Break Clause is operated in accordance with clause 18.14 or 18.15 **[SP DN: Both drafting]**
 - 2.1.8 voluntary termination in respect of one or more WCAs in accordance with clause 27.5 (in which circumstance it shall be terminated in part in respect of the removed WCA and shall continue to have effect in respect of the remaining WCAs (if any)).
- 2.2 The WDA and any WCA may agree to extend the term of this IAA for such further period or periods as they may at their discretion mutually agree.

PART 1 ESSEX WASTE PARTNERSHIP

3. ACTING IN GOOD FAITH AND REASONABLY

- 3.1 All the Parties agree to act in good faith and reasonably to:
- 3.1.1 resolve any difficulties openly, quickly and honestly, before any such issues have a negative impact on the operation of this IAA or a Relevant Contract;
 - 3.1.2 provide information to each other that will (or could) impact in the obligations, right and liabilities of the another Party to this IAA or to a Relevant Contractor; and
 - 3.1.3 mitigate any losses, costs or expenses incurred as a result of the application or breach of this IAA.
- 3.2 The Parties shall act at all times in a way that promotes effective partnership working. In particular, each Party will:
- 3.2.1 work in good faith with the other Parties towards the mutual advantage of the Parties;
 - 3.2.2 act reasonably and use reasonable endeavours to achieve, as minimum, their Statutory Targets including those contained in the Waste Strategy for England 2007;
 - 3.2.3 provide such reasonable information (as determined by the Party from whom the information is sought) to each of the other Parties in a form that is readily usable and in a full and timely manner. Relevant information shall include, without restriction or limitation:
 - (a) details of contractual arrangements (or amendments to existing arrangements) entered into by the Parties in their roles as WCAs or WDA;
 - (b) early warning of potential failure by a Party or its contractor in meeting their obligations under this IAA;
 - (c) details of actual failure by a Party or its contractor in meeting their obligations under this IAA;
 - (d) new initiatives, policies or emerging policies relating to the minimisation, collection, Recycling and disposal of Waste;
 - (e) any other information that could reasonably be expected to impact upon this IAA or the Parties to this IAA; and
 - (f) details of any external funding opportunities which are available (and where appropriate, the Parties shall work together to submit joint bids for such funding);
 - 3.2.4 work together with the other Parties to achieve the Statutory Targets and as far as is reasonable or practicable, to reduce the detrimental impact on the Parties and council tax payers of any one of them failing to carry out its obligations under this IAA;
 - 3.2.5 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 or problems;
 - 3.2.6 where practicable and/or feasible work with the other Parties to:
 - (a) influence behavioural change and to give people the knowledge and resources to take action at school, at work and in the community through Waste related education or awareness issues under appropriate campaigns where possible;

- (b) make the strategic planning and development of Waste services as transparent as possible to each other and to the public as a whole;
 - (c) research, develop and implement detailed proposals to achieve the purposes referred to in clauses 3.2.6 (a) and (b) above;
 - (d) enhance economic development and employment opportunities as part of these proposals wherever possible whilst embracing the principles of sustainability; and
 - (e) explore other appropriate partnership opportunities with both the private and public sectors in the pursuit of these aims and objectives;
- 3.2.7 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); and
- 3.2.8 consult with stakeholders having an interest in the Mutual Aims or wider Waste services.
- 3.3 Any requirement on a Party under this IAA to act reasonably shall be interpreted in the context of the Parties endeavouring to achieve the Mutual Aims whilst minimising any detrimental impact on the public purse.

4. REPORTS AND RECORDS

- 4.1 The Parties agree to provide and share information necessary to monitor and measure any data collection relating to this IAA and the Service Delivery Plans.
- 4.2 Each WCA shall be responsible for providing accurate data and supporting evidence to demonstrate its performance hereunder and for keeping records of such matters as the WDA may from time to time reasonably require for the purposes of monitoring Waste arisings and Waste management.
- 4.3 Subject to the WDA complying with clause 4.4, each WCA shall submit monthly written monitoring reports to the WDA which shall include the weight of Household Waste collected, the weight of Household Waste removed from the Waste stream through the activities of the WCA and the weight of Household Waste delivered to the WDA, together with such additional information as may be agreed between the Parties from time to time. **[SP note: Clarification]**
- 4.4 The WDA shall supply the WCA with the figures for the weight of Household Waste delivered to the WDA in a timely manner to enable the WCA to provide the monitoring of its reports. The WDA shall provide or shall procure that its contractors provide the information to the WCAs in the format and frequencies set out in Appendix A to Schedule 6. The WDA shall also provide on a quarterly basis to an affected WCA details of any deductions made by the WDA from a Relevant Contractor in respect of the Relevant Contractor failing to meet the Delivery Point Standards.
- 4.5 The Parties shall ensure that there is a regular reconciliation between any records kept by the WDA and WCAs.
- 4.6 The Parties shall operate this IAA on an "open book" basis in respect of the management of the Relevant Contracts by the WDA and in respect of the delivery by each WCA of its Service Delivery Plan.

5. IAA OFFICER WORKING GROUP

Each Party agrees to participate in the IAA Officer Working Group as set out in Schedule 5 (IAA Officer Working Group) to this IAA.

6. DECISION MAKING

The Parties will work together to ensure there is clear accountability for all decisions made and actions taken and a true and accurate written record kept and maintained by the WDA for audit purposes.

PART 2 REVIEW PROCEDURE AND AMENDMENTS TO THIS IAA

7. INITIAL REVIEW

7.1 The Parties shall meet at least every six months during the procurement process for the PPP Contractor and in any event:

- 7.1.1 prior to the despatch of the descriptive document;
- 7.1.2 prior to the despatch and finalisation of the invitation to submit detailed solutions;
- 7.1.3 on receipt of an initial evaluation of the detailed solutions;
- 7.1.4 prior to final bids being sought; and
- 7.1.5 on final bids being received;

to discuss the development of the Project Agreement and the technology solutions proposed by potential bidders together with any changes in the WCAs Baselines, Key Waste Delivery Parameters and the current position in relation to the matters which will form part of the Initial Review.

7.2 The WCAs shall be entitled to make representations to the WDA on any matter which affects this IAA or its operation, the WCAs' liability hereunder and any matter relevant to the Initial Review and the WDA shall where reasonable and practical to do so take the WCAs representation and comments into account.

7.3 Once the preferred bidder has been selected, and the preferred waste technology solution determined, but prior to Financial Close, the Parties shall carry out the Initial Review.

7.4 As part of the Initial Review, the Parties shall review inter alia:

- 7.4.1 the Minimum Tonnages together with the proposed maximum capacity of the Facilities and any demand risk retained by the WDA or passed to the PPP Contractor;
- 7.4.2 Waste Composition and any composition risk retained by the WDA;
- 7.4.3 the location of the Delivery Points;
- 7.4.4 the Contamination Protocol;
- 7.4.5 any charges or costs, including any compensation for lost third party income, to be passed onto the WCAs under this IAA by the WDA including how they will be quantified

and calculated by the PPP Contractor with reference to its financial model (for example the Unitary Charge Adjustment Protocol (to the extent that this will determine any liability of a WCA for breach of this IAA in accordance with Schedule 6));

- 7.4.6 the proposed Expiry Date where greater than 25 years from the full services commencement date (as defined in the Project Agreement);
 - 7.4.7 the Mileage Payments; and
 - 7.4.8 the payment deductions and performance regime for failures that are relevant to the WCAs where they may result in payments by the WDA to the WCA in accordance with this IAA.
- 7.5 As part of the Initial Review the WDA shall be required to submit to the WCAs at least 10 Business Days prior to the Initial Review meeting a report in writing setting out the position in respect of each of the issues set out in clause 7.4 (together the "Relevant Issues"). The report shall indicate the position reached with the proposed PPP Contractor in respect of the Relevant Issues and how they will be included in the Project Agreement.
- 7.6 As part of the report issued to the WCAs by the WDA in accordance with clause 7.5 the WDA shall indicate whether the position proposed in respect of each of the Relevant Issues is in accordance with Market Practice. The WCAs shall be entitled to make representations in respect of the report and to appoint their own advisors to advise upon whether the position proposed by the WDA in respect of the Relevant Issues is in accordance with Market Practice.

WCA Break Clause where PPP Contract is not in accordance with Market Practice

- 7.7 Where either the report issued by the WDA accepts, or any independent advice obtained by the WCAs alleges, that the WDA is proposing a position in respect of the Relevant Issues (or any of them) that is not in accordance with Market Practice then the Parties shall meet (the Initial Review Meeting) as soon as possible and no later than 20 Business Days following receipt of the report from the WDA to discuss any implications for this IAA and agree any changes required to accommodate the fact that the WDA is adopting a position which is not in accordance with Market Practice. Such changes may be to this IAA or, insofar as it is still possible and lawful for the WDA to do so, to the Project Agreement. Where acting in its unfettered discretion a WCA is not able: **[SP DN: Drafting]**
- 7.7.1 to accept its exposure under Part 3 and Schedule 6 (part 2) of this IAA; or
 - 7.7.2 to agree the outcome of the discussions or any changes agreed to this IAA pursuant to clause 7.7,

such WCA shall for a period of 40 Business Days (or such shorter period as the Parties (acting reasonably) shall agree) from the Initial Review Meeting have the right at its discretion to serve a notice to terminate part 3 and Schedule 6 (part 2) of this IAA on the WDA and the other WCAs indicating that it no longer wishes to be part of part 3 and Schedule 6 (part 2) of this IAA in which circumstances Part 3 and Schedule 6 (part 2) shall terminate as between the relevant WCA and the WDA but shall continue to have effect in respect of the remaining WCAs and the WDA (and in respect of the remaining parts between the relevant WCA and the WDA).

SP DN: The 40 days was raised by Epping. 20 days is insufficient in their SOs to obtain relevant authority (I think this applies to others too). This is a point that is very important to the WCAs

- 7.8 Where a WCA exercises its rights within 40 Business Days (or such shorter period as the Parties (acting reasonably) shall agree) of the Initial Review Meeting to give notice pursuant to clause 7.7 (the Break Clause) to terminate Part 3 and Schedule 6 (part 2), the remaining provisions and clauses of this IAA shall continue to apply.

WCA Break Clause where PPP Contract is in accordance with Market Practice

- 7.9 Notwithstanding the provisions of clauses 7.5 to 7.8 where a WCA is not able to accept any final details in this IAA required to reflect the outcome of the Project Agreement and PPP Contractor procurement process, such WCA shall nevertheless have the right for a period of 40 Business Days from the Initial Review Meeting, to serve a notice to terminate this IAA on the WDA and the other WCAs indicating that it no longer wishes to be part of part 3 and Schedule 6 (part 2) of this IAA in which circumstances part 3 and Schedule 6 (part 2) of this IAA shall terminate as between the relevant WCA and the WDA but shall continue to have effect in respect of the remaining WCAs and the WDA (and in respect of the remaining parts between the relevant WCA and the WDA, as applicable).
- 7.10 Where a WCA exercises its rights within 40 Business Days (or such shorter period as the Parties (acting reasonably) shall agree) of the Initial Review Meeting to give notice pursuant to clause 7.9 then the WDA may at its absolute discretion review or terminate any funding provided to the relevant WCA in respect of the WCA's Service Delivery Plan and as set out in Schedule 6 (Payment and Costs Schedule). For the avoidance of doubt the review or termination of funding shall not entitle the WDA to claw back any part of the capital or revenue funding already paid by the WDA to the date of termination of part 3 and Schedule 6 (part 2) of this IAA. Where a WCA has already commenced or committed to commence the Organic Waste Services, the WDA's review of funding pursuant to this clause shall not withdraw the funding for the Organic Waste Service until the end of the WCA 's current Organic Waste Collection contract (if external) or where such service is delivered by an in-house operation, for a period of two complete financial years from the date of the Initial Review Meeting **[SP DN: Raised by WCAs who plan to commence their food waste services now, or who have already done so. If the funding could be ceased immediately, the break clause is in practice inoperable for them. I think this is a fair compromise to allow a run off period in reality (bearing in mind that the PPP will not have started so Essex is not exposed)[j4]**

Exercise of the Break Clause (in any circumstances)

- 7.11 Where a WCA exercises its rights to give notice pursuant to clauses 7.7 and/ or 7.9 the provisions of clause 28 (consequences of termination) shall apply.
- 7.12 For the avoidance of doubt, if a WCA exercises its rights to give notice pursuant to clauses 7.7 and/or 7.9, that WCA shall not be liable for any costs, expenses or losses (additional or otherwise) incurred or wasted by the WDA, the PPP Contractor or any other WCA.
- 7.13 In addition to the issues described above, as part of the Initial Review, the Parties may agree to vary this IAA to reflect any changes necessitated by the provisions of the Project Agreement.

- 7.14 Subject to clause 11 (Amendments), following the Initial Review, the Parties shall implement the actions (or an action plan as the case may be) in accordance with a timetable to be agreed by the Parties as part of the Initial Review. The IAA shall be amended to reflect the Project Agreement and this IAA as amended and revised in accordance with clause 11 shall be the Revised and Confirmed IAA and effective between the Parties thereafter.

8. ANNUAL REVIEW

- 8.1 The Parties shall meet annually to review the operation of this IAA, the WCA Baseline and the Service Delivery Plans together with the impact on this IAA of any changes to the Key Waste Delivery Parameters. The Annual Review date shall be on or about the 1st October each year. **[SP DN: Housekeeping. The Annual Reviews may well commence before Financial Close. October seems a period nicely away from elections and will facilitate input into the next budget]**
- 8.2 Where possible the Annual Review shall be programmed to suit each Party's political cycle and shall be brought forward or postponed by a reasonable time to allow for elections and for any new members to be in situ. Elected Members shall be invited to attend the Annual Review and in any event soundings shall be taken from relevant Members prior to the meeting.
- 8.3 The Annual Review shall be initiated by the WDA sending a notice in writing to the delivery addresses for notices (contained in Schedule 10 (Delivery Addresses for Notices)) setting out any issues it would like to discuss at a meeting of the IAA Officer Working Group and inviting each WCA to include items for the agenda of the Annual Review meeting. Standing agenda items will include:
- 8.3.1 a review of the Key Waste Delivery Parameters;
 - 8.3.2 a review of performance of scheme(s) set out in the SDPs and associated costs;
 - 8.3.3 the WCA Baselines;
 - 8.3.4 the impact of any Changes in Law;
 - 8.3.5 a review of annual capital and revenue funding (as Indexed in accordance with this IAA) including any efficiency savings that will be realised and shared;
 - 8.3.6 opportunities for further joint working; to explore efficiencies, including but not limited to opportunities to align across Essex the type and quality of materials collected to maximise market value, improve customer understanding and participation in recycling schemes, enable consistent countywide promotions and deliver service efficiencies where possible; and
 - 8.3.7 changes to the SDPs or WCA Baselines requested by the WCAs; and
 - 8.3.8 In the two years prior to the Expiry Date, any possible extension of this IAA.
- 8.4 The written agenda and supporting papers will then be re-circulated to all Parties by the WDA and should be in sufficient detail and where relevant include supporting papers to enable the Parties to take internal soundings and discuss the contents prior to the Annual Review meeting.

- 8.5 Where, as a result of the Annual Review process, changes are proposed to a Relevant Contract or a Relevant Contract is likely to be affected, the WDA shall in advance of the meeting to discuss the Annual Review, review and confirm if any changes or the effects of such changes can be accommodated at no additional cost to the WDA or in the event that they cannot be so accommodated, ascertain from the Relevant Contractor the Compensation Payment (if any) that would be payable pursuant to Schedule 6 paragraphs 8 and 11 if the change were implemented. Sufficient time shall be allowed for this process so that the Relevant Contractor can respond to the WDA requested change, calculate its no better/no worse position and liaise (as necessary) with its funders (if any) and subcontractors.
- 8.6 Where a change is proposed that has no immediate material impact on a Relevant Contract, the relevant WCA(s) and the WDA shall consider whether future changes by the same or other WCAs would cumulatively lead to such impact and the payment of any Compensation Payment pursuant to Schedule 6 paragraphs 8 and 11 in the future. This shall enable the WCAs to understand and plan for any future contingent liabilities.
- 8.7 Following the meeting of the IAA Officer Working Group to carry out the Annual Review (and following any further work or subsequent correspondence required as a result of the meeting) the Parties shall expediently seek political/senior officer approval to any recommendations as necessary in accordance with their standing orders. The Parties shall reconvene to discuss the impact if any WCA or the WDA is unable to secure such approval (or any further changes or impacts that emerge as a result of the approval process).
- 8.8 For the avoidance of doubt nothing in this IAA shall restrict or fetter the decision making powers of the WCAs in respect of their own Service Delivery Plans and WCA Baselines (always acknowledging their liability to the WDA for the impact of any changes to the WCA Baselines as provided in this IAA).
- 8.9 Following the approval process the Parties shall make any changes, implement any actions, or create an action plan in accordance with a timetable for delivery that shall be agreed between the Parties.
- 8.10 It is anticipated that through increased partnership working, the provision of new facilities and the changes to the collection systems (if any) in accordance with this IAA, that efficiency savings may be realised in collection costs (ie over and beyond what might be generated through the macro-economy and market forces. As part of the Annual Review the Parties shall review the funding required to continue to support each SDP and (only by agreement) may adjust the funding by agreement between the relevant WCA and the WDA to reflect any efficiency savings realised with the benefits being shared equally between the relevant WCA and the WDA. For the avoidance of doubt, nothing in this clause shall mean that a WCA is required or bound to take any particular action or adopt any policy to realise such savings.

9. REVIEW PROCEDURE FOR AD HOC REVIEWS

- 9.1 Notwithstanding the Annual Review process set out in clause 8 (Annual Review) above, any Party to this IAA shall be entitled to call for a review of this IAA under this clause 9 (an 'Ad Hoc Review') to consider:
- 9.1.1 changes to the Service Delivery Plan and its implementation and or a WCA Baseline;

- 9.1.2 variations in the cost of service provision, including the circumstances set out in clause 19.12;
 - 9.1.3 changes in the Key Waste Delivery Parameters;
 - 9.1.4 a Change in Law;
 - 9.1.5 variations to the IAA; or
 - 9.1.6 improvements in the services delivered by the Essex Waste Partnership and the Relevant Contractors.
- 9.2 A Review shall be called by a Party on notice in writing (a Review Notice) sent to the delivery addresses for notices (contained in Schedule 10 (Delivery Addresses for Notices)) to the other Parties setting out in detail and (if necessary supporting information) of:
- 9.2.1 the nature of the Review;
 - 9.2.2 the reasons for it;
 - 9.2.3 the proposed action and/or solution;
 - 9.2.4 the Party or Parties potentially affected; and
 - 9.2.5 how the proposed solution could or should be implemented.
- 9.3 The Parties shall meet at an IAA Officer Working Group to discuss and carry out the Review and within two months of the Review Notice having been served. Following such a meeting the Parties shall implement the actions (or action plan as the case may be) in accordance with the agreed timetable. The two-month notice period provided in this clause 9.3 may be reduced by an appropriate time if the Party issuing the Review Notice reasonably considers the Review is urgent and states its reasons on the face of the Review Notice.**[SP DN: Housekeeping. The Working Group can't make decisions, only recommendations. Taken care of by 8.4 to 8.9 which is referred to below so these words were simply a left over from before we referred back to the Annual Reviews.**
- 9.4 All Parties shall be issued with all Review Notices and shall be entitled to participate in any Review unless the relevant WCA and the WDA acting reasonably determine that the Review applies only to them and:
- 9.4.1 will not affect any other Party; and
 - 9.4.2 is not relevant to any other Party; and
 - 9.4.3 the issues in question do not similarly apply to any other Party; or
 - 9.4.4 a Party affected by the Review, acting reasonably, considers the subject matter confidential or sensitive (which shall include funding arrangements between the WDA and WCA).
- 9.5 The provisions of clauses 8.4 to 8.9 shall apply to Ad Hoc Reviews (with the applicable appropriate amendments being deemed to be made).

Changes in Law

- 9.6 Subject always to the provisions of clause 14.4 being preserved^[6], where a Change in Law affects the ability of any Party to perform its obligations under this IAA that Party shall be

entitled to call an Ad Hoc Review in accordance with clause 9.2. **[SP Note: clarification raised by Harlow]**

- 9.7 Subject to clause 9.8 where a Change in Law requires any amendment or variation to this IAA or to the SDPs and/or the WCA Baselines, the impact and costs of the relevant Change in Law shall be apportioned between the Parties as follows:
- 9.7.1 where the Change in Law relates only to the functions of the WDA, the WDA shall be responsible for the costs of implementing any changes required to the IAA, the SDPs and/or the WCA Baselines;
- 9.7.2 where the Change in Law relates only to the functions of a WCA, the WCA shall be responsible for the costs of implementing any changes required to the IAA, the SDPs and/or the WCA Baselines ;
- 9.7.3 where the Change in Law relates to the functions of the WDA and the WCAs, the Parties shall share fairly the costs of implementing any changes required to the IAA, the SDPs and/or the WCA Baselines. **[SP Note: I think this was what in fact was always meant but raised by WCAS]**
- 9.7.4 where a Change in Law relates to the relevant provisions of the EPA and/or WET Act clause 2.1.4 may apply; or
- 9.8 The WDA shall not be entitled to refuse to agree to a change in a WCA Baseline and/or a SDP which is proposed by a WCA as a direct result of a Change in Law.
- 9.9 Nothing in clause 9.7 is intended to diminish or reduce the principle agreed in this IAA that the WDA bears the risk of changes in tonnages and composition provided that the WCA is complying with and carrying out the activities in its WCA Baseline. In the event that a Change in Law alters the statutory responsibilities of any Party the Parties shall as part of the Ad Hoc Review agree any adjustments required to this IAA as a result of the Change in Law.

10. PROVISIONS RELEVANT TO ALL REVIEWS

- 10.1 The Parties shall attend and participate in the Initial Review, Annual Reviews or Ad Hoc Reviews in good faith, fairly, reasonably, in the spirit of partnering set out in clause 3 above and having regard to each others' budgets and resources.
- 10.2 The test of reasonableness shall be applied having regard to any Party's obligation to consult its contractors on any matter which might affect such contracts and always subject to clause 8.7.
- 10.3 Any proposed changes to the SDPs and/or the WCA Baseline shall be at the relevant WCA's absolute discretion provided always that if a WCA changes its SDP and/or WCA Baseline without the prior consent of the WDA, the WDA may, acting reasonably and at its discretion review or terminate any funding provided to the relevant WCA in respect of the relevant WCA's SDP as set out in Schedule 6 (Payment and Costs Schedule) if the change or variation to the SDP and/or WCA Baseline:
- 10.3.1 has a detrimental impact on the ability of the WDA to achieve its Statutory Targets;

- 10.3.2 prejudices the aspirational^[j7] outcome of the Joint Municipal Waste Strategy or jeopardises the statutory/government targets in the Local Area Agreement **[SP DN: not all JMWS provisions are absolute, some are aspirational.]**; or
- 10.3.3 would create a liability for the WDA to a Relevant Contractor in excess of:
- (a) one thousand pounds (£1000) per WCA; or
 - (b) five thousand pounds (£5000) in aggregate if the change applies to more than three WCAs;
- which is not otherwise compensated for by the provisions of Schedule 6 (Payment and Costs Schedule).
- 10.4 For the avoidance of doubt the review or termination of funding pursuant to clause 10.3 shall not entitle the WDA to claw back any part of the capital or revenue funding already paid by the WDA to the date of the change.
- 10.5 Except as provided for otherwise in this IAA, no Party shall be required to agree to any amendment, termination, variation to this IAA as a result of a Review but shall always act reasonably and promptly in issuing a response where requested to do so
- 10.6 As a result of a Review the Parties may agree to vary this IAA by way of a Deed of Variation or to terminate it in whole or in part.

11. AMENDMENTS

Following the execution of this IAA, no amendment or variation to this IAA shall be effective unless it is in writing and signed by an Authorised Representative for that purpose and appended by way of endorsement to the original IAA.

[SP DN: HOUSEKEEPING I THINK. THE OBLIGATIONS SURVIVE NOTWITHSTANDIGN THE TERMINATION OF PART 3 IN CERTAIN CASES. SO IS THE HEADING IN THE WRONG PLACE^{[j8]?}]THE WDA'S RESPONSIBILITIES AND COMMITMENTS

The WDA shall comply with the provisions of Schedule 2.

13. THE WCAS' RESPONSIBILITIES AND COMMITMENTS

Each WCA shall comply with the provisions of Schedule 3.

PART 3 PPP PROCUREMENT

14. LIABILITY OF THE WCAS

- 14.1 Each WCA acknowledges and accepts that the WDA will be required to deliver under the Project Agreement at least the guaranteed Minimum Tonnages of Contract Waste for the duration of the Project Agreement and such Contract Waste shall be delivered to the PPP

Contractor. Each WCA further acknowledges that the Contract Waste shall fall within certain Waste Composition bands (relating to bio-content, calorific value or similar methods of measurement).

14.2 The Waste that the WCAs shall withhold at the date of this IAA for their own Recycling is set out in part 1 of Schedule 8 (WCA Baseline) and the WDA shall procure that these WCA Baselines as amended in accordance with this IAA will be acknowledged by the PPP Contractor.

14.3 The WCAs hereby agree not to retain any Waste pursuant to section 48(2) of the EPA other than as provided for in part 1 of Schedule 8 (WCA Baseline) unless the SDP and/or Baseline is amended as part of a Review.

14.4 The WDA acknowledges that it accepts the risk of tonnage and composition fluctuation provided a WCA has complied with its WCA Baseline and provided that a WCA has complied with the activities in its WCA Baseline, that WCA shall not be liable to the WDA for any losses, adjusted unitary charge, additional costs, expenses or Compensation Payment whatsoever nor for the Minimum Tonnages or any forecast tonnage not being achieved nor for Contract Waste falling outside the Waste Composition agreed with the PPP Contractor nor shall be obliged to place the PPP Contractor in a No Better No Worse Position or to make a payment in respect of a Minimum Tonnage (even if under the Project Agreement the WDA is liable to the PPP Contractor for the same).

14.5 Where a WCA:

14.5.1 retains Waste other than in accordance with their WCA Baseline; and/or

14.5.2 does not carry out their collection services in accordance with the WCA Baseline,

the direct result may be a liability owed by the WDA to the PPP Contractor under the Project Agreement and the Minimum Tonnage provisions and/or the Unitary Charge Adjustment Protocol may apply to return the PPP Contractor to a No Better No Worse Position. To the extent that there is such a direct result and subject to clause 14.6 and 14.10, the WCA shall be liable to make Compensation Payments to the WDA in accordance with the provisions of Paragraph 8 of Schedule 6 (Payment and Costs Schedule).

14.6 The WCA shall not pursuant to any provision of this clause 14 nor pursuant to Schedule 6 be liable to the WDA (nor the PPP Contractor) if the WCA does any of the matters in clause 14.5 as a direct result of a fall in tonnages or change in Waste Composition (as opposed to the matters in clause 14.5 being the cause of the reduction in tonnages or change in Waste Composition).

14.7 Any reference in this IAA to a "No Better No Worse Position" or to leaving the PPP Contractor in a "No Better, No Worse Position" shall be construed by reference to the equivalent phrase in the Project Agreement.

14.8 It is acknowledged that the impact of the actions of the WCAs pursuant to clause 14.5 may have a cumulative effect and the liability of the WCAs in clause 14.5 and Schedule 6 (Payments and Costs) shall be divided fairly between those WCAs whose actions have directly contributed to the cumulative effect. The WDA shall demonstrate openly how it has shared any contribution between the relevant WCAs.

14.9 Where any WCA's actions pursuant to clause 14.5 may have a future impact on the cumulative liability of all of the WCAs the WDA shall notify the WCAs and shall where possible state the likelihood of the change causing an impact on this IAA in the future. For the avoidance of doubt the WCA or WCAs whose actions pursuant to clause 14.5 may have a future impact on the cumulative liability of all of the WCAs shall remain liable for their share of any payment to the WDA in accordance with Schedule 6 (Payments and Costs).

14.10 The WCA shall not, pursuant to any provision of Schedule 6 or this clause 14, be liable to the WDA (nor the PPP Contractor):

14.10.1 if the WCA does any of the matters in clause 14.5 as a direct result of a fall in tonnages or change in Waste Composition (as opposed to the matters clause 14.5 being the cause of the reduction in tonnages or change in Waste Composition); or

14.10.2 for reduction in the tonnages of Contract Waste except to the extent that the result of the matters in clause 14.5 causes the Contract Waste to fall below the Minimum Tonnages.

[SP DN: Clarification and housekeeping. The wording here and in para 8 of schedule 6 had become out of synch. Also, I think the sections had become a little confusing with all the cutting and pasting. This is bad for the WCA and bad for the WDA too as the references to the WCAs being liable for Minimum Tonnages where the baseline is breached had gone. This may have been conceded though –, for example. 14.10 and para 8.4 (of sch 6) now the same

14.10.3 the disposal costs of any tonne of Contract Waste (or the increase in the costs of disposal resulting from tonnage reductions or increases) even if that tonne would not have arisen for disposal but for an action of the WCA pursuant to clause 14.5 (it being acknowledged that disposal is a WDA function);

14.10.4 the impact or costs associated only with changes in the actual tonnage volumes (from those predicated, forecasted or otherwise) and the concept of No Better/No Worse and the Unitary Charge Adjustment Protocol shall be applied for this purpose to disregard only the impact of any tonnage volume changes resulting from the matters in paragraph 8.1 of Schedule 6 (Payment and Costs).

14.10.5 any of WDA's own losses, costs, expenditure, damages, fines or taxes other than the WDA's liability to the PPP Contractor in accordance with clause 14.5.

14.11 The WCA shall be relieved of any obligations under this clause 14 to the extent that the WDA is relieved from its obligations to deliver Contract Waste under the Project Agreement.

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

14.13 In no circumstance shall this IAA create any liability between a WCA and any other WCA and nothing shall be construed or deemed otherwise.

14.14 Where the relevant Delivery Point, Contingency Delivery Point or Facility is not in accordance with the Delivery Point Standards and the WDA is able to make deductions under the PPP Contract from the PPP Contractor then the WDA shall make a payment to the relevant WCA equivalent to the amount of the deductions in accordance with the provisions of Schedule 6 (Payment and Costs Schedule).

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

15. STATUTORY DIRECTIONS AND NOTICES

- 15.1 The Parties acknowledge that they have entered into this IAA on a voluntary basis rather than issuing either:
- 15.1.1 a direction of the WDA under section 51(4) of the EPA, directing the WCAs to deliver the Waste collected by it to the Delivery Points or to the Facilities and to separate such Waste before delivery;
 - 15.1.2 a notice under section 48(3) of the EPA; and/or
 - 15.1.3 a notice under section 48(4) of the EPA that the WDA objects to any recycling arrangements made by the WCAs other than those identified in this IAA.
- 15.2 The Parties acknowledge that nothing in this IAA will prevent them from carrying out their respective statutory duties and responsibilities or unduly restrict the decisions to be made with regard to their respective functions.

16. THE PROJECT AGREEMENT

- 16.1 As soon as reasonably practicable after it is entered into, the WDA shall provide each WCA with a copy of the Project Agreement (subject to commercially sensitive information being omitted to the extent required by the terms of the Project Agreement, (unless and to the extent that the WCA provides a confidentiality undertaking in the form reasonably required by the PPP Contractor and Southend on Sea Borough Council)).
- 16.2 The WDA shall notify the WCAs of any variations or amendments to the Project Agreement agreed between the WDA and the PPP Contractor from time to time.
- 16.3 Without prejudice to the express rights and remedies of the WCAs under this IAA, the WCAs shall not knowingly and deliberately take any action or omit to take any action which would put the WDA in breach of the Project Agreement.

PART 4 SERVICE DELIVERY PLANS

17. SERVICE DELIVERY PLANS

- 17.1 Each WCA has agreed a Service Delivery Plan with the WDA and copies of the first Service Delivery Plans to apply from the IAA Commencement Date are set out in part 2 of Schedule 8 (Service Delivery Plans).
- 17.2 In return for delivering their Service Delivery Plans each WCA shall receive the specific capital and revenue funding as detailed in part 2 of Schedule 6 (WCA Specific Payments and Costs).
- 17.3 Where a WCA makes changes to or fails to deliver its Service Delivery Plan it shall promptly notify the WDA of the reasons for the change or failure and shall agree a rectification plan

with the WDA to restore the delivery of the Service Delivery Plan. Where a rectification plan is agreed between the WDA and the relevant WCA, the WCA shall implement the rectification plan in accordance with the timescales agreed with the WDA as part of the rectification plan.

17.4 In the event that a WCA fails to agree or implement an agreed rectification plan or if having agreed a rectification plan the same failure reoccurs the WDA shall be entitled at its discretion to review or terminate the funding as provided in clause 17.5. For the avoidance of doubt the review or termination of funding shall not entitle the WDA to claw back any part of the capital or revenue funding already paid by the WDA to the date of termination of part 3 and Schedule 6 (part 2) of this IAA.

17.5 Except insofar as:

17.5.1 clause 14.5 applies (whereby the WCAs may be liable to the WDA for the impact of a change to the WCA Baseline on the PPP Contractor);

17.5.2 clause 18.8 and Schedule 6 (Payment and Costs Schedule) apply (whereby the WCAs may be liable for the impact of a change to the WCA Baseline on the Relevant Contractor in respect of the Organic Waste Service);**[SP DN: Housekeeping. I am sure we had already agreed this amendment]**

17.5.3 the provisions of Schedule 7 (Contamination) applies;

the WDAs remedy for the failure of a WCA to meet and comply with its SDP (or for any changes to the SDP made by a WCA agreed or otherwise) shall be strictly and solely limited to the review or withdrawal of funding (or on WCA Default to the termination of this IAA) and in no circumstances shall a WCA be liable either in contract or tort for any other wasted costs, losses, expenses, liabilities, damages, fines or taxes of the WDA or any Relevant Contractor.

17.6 The Service Delivery Plans shall be reviewed annually or on an ad hoc basis as part of the Annual Review or Ah Hoc Reviews conducted in accordance with clauses 8 to 10.

17.7 The WCAs give no guarantee or warranty as to the accuracy or completeness of the tonnage information in the SDPs and shall not be liable to the WDP or a Relevant Contractor in relation to historic, future or forecast tonnages.

18. ORGANIC WASTE SERVICE

18.1 Where the WDA and a WCA have agreed to implement an Organic Waste Service in accordance with its Service Delivery Plan, the provisions of this clause 18 shall apply.

18.2 The WDA shall procure facilities for the composting of Organic Waste. The WDA will develop these facilities in accordance with Best Value obligations relevant to the costs and liabilities of the WDA and where appropriate and reasonable, to the costs and liabilities of the WCAs. The WDA shall use reasonable endeavours to ensure that the Organic Waste Contracts represent Good Industry Practice and shall dialogue with bidders over any matter which could result in an increase to a WCA liability for breach of the WCA Baseline as diligently as if the WDA was accepting such liability itself.

- 18.3 The WCA shall provide or procure the Organic Waste Service in accordance with Best Value obligations relevant to the costs and liabilities of the WCA. The WCA shall use reasonable endeavours to ensure that the Organic Waste Service represent Good Industry Practice.
- 18.4 With effect from the relevant implementation date for the Organic Waste Service in accordance with the Service Delivery Plan, the WDA shall arrange for the treatment of all Organic Waste collected by the WCA or its contractor unless the relevant Service Delivery Plan states otherwise.
- 18.5 At least three months prior to the implementation date for the Organic Waste Service the WDA shall notify the WCA of the Organic Waste Delivery Points or Organic Waste Facilities where the WCA can deliver Organic Waste and the Organic Waste Delivery Point Standards. The WDA shall give the WCA at least three months notice of any change to the location of the Organic Waste Delivery Points.
- 18.6 Where the relevant Organic Waste Delivery Point or Organic Waste Facility is greater than 5 miles from the WCA's boundary it shall be entitled to receive from the WDA an Onward Haulage of Organic Waste Payment calculated in accordance with Schedule 6 (Payment and Costs Schedule). Provided that where a WCA is required to deliver Organic Waste to an Organic Waste Delivery Point or Organic Waste Facility which is greater than 5 miles from its boundary and the WCA is able to demonstrate to the WDA that Onward Haulage of Organic Waste Payments will not meet a reasonable proportion of its additional costs the WDA and the relevant WCA shall meet to consider any changes required to this IAA or to the WCA's SDP to enable the Organic Waste Service to be implemented by the WCA.
- 18.7 Where the Organic Waste Delivery Point or Organic Waste Facility is unavailable the WDA shall direct the WCA to an Organic Waste Contingency Delivery Point or alternative Organic Waste Facility and the WCA shall deliver the Organic Waste to the Organic Waste Contingency Delivery Point or alternative Organic Waste Facility.
- 18.8 Where the WDA directs the WCA to an Organic Waste Contingency Delivery Point or alternative Organic Waste Facility and such point is more than 5 miles from the relevant WCA's boundary the WCA shall be entitled to receive from the WDA an Onward Haulage of Organic Waste Payment calculated in accordance with Schedule 6 (Payment and Costs Schedule).
- 18.9 Provided that the WCA implements and maintains the Organic Waste Service in accordance with the agreed Service Delivery Plan the WDA shall make a contribution to the capital and revenue costs of implementing and maintaining the Organic Waste Service in accordance with clause 29 and Schedule 6 (Payment and Costs Schedule).
- 18.10 The WCAs acknowledge that if they do not deliver the Organic Waste Service in accordance with their WCA Baselines the result may be that the WDA is not able to achieve the Organic Waste Minimum Tonnages. If that is the case, the provisions of Clause 11 of Schedule 6 (Payment and Costs Schedule) shall apply. The WDA acknowledges and accepts that provided the WCA is complying with its WCA Baseline, the WCA shall have no liability for fluctuations in tonnages nor for tonnages being different from that forecast nor for the Organic Waste being below the Organic Waste Minimum Tonnages.
- 18.11 Where the WCA or its contractor delivers Organic Waste to an Organic Waste Delivery Point or an Organic Waste Facility or an Organic Waste Contingency Delivery Point that contains Contamination then the provisions of Schedule 7 (Contamination) shall apply.

Organic Waste Service Break Clause

- 18.12 The Parties recognise that for some of the WCAs the costs for implementing an Organic Waste Service are estimates and the real costs will not be known until the WCA has tendered the service and received tenders from potential service providers.
- 18.13 Where having conducted a tender exercise in accordance with the Public Contract Regulations 2006, the costs from the successful tender are greater than 105 per cent of the costs estimated by the WCA and included in its SDP, then the provisions of clause 18.12 shall apply.
- 18.14 The WDA and the relevant WCA shall meet to discuss the implications in accordance with the procedure for Ad Hoc Reviews. Where the WDA and WCA (both acting reasonably) are unable to agree any changes to the Organic Waste Service or to the allocation of funding for the Organic Waste Service, then either Party may give notice to the other Party in writing to terminate the IAA .
19. ***[SP DN: New point: Termination in part does not work here. If the WCA in question is not providing the organic waste service, then Essex presumably will not fund it. If Essex are not funding, the WCA will not give an indemnity . I am sure in practice that the parties would reach an alternative agreement, but in default of that]***

BASELINES

- 19.1 Each WCA has agreed a WCA Baseline with the WDA as set out in part 1 of Schedule 8 (WCA Baseline) to this IAA.
- 19.2 The purpose of the WCA Baseline is to set out the baseline Waste and Recycling collection service to be delivered by the WCA, based upon which, the WDA shall procure the PPP Contract and Relevant Contract(s) for Organic Waste.
- 19.3 From the IAA Commencement Date until Financial Close, the Parties may review the WCA Baselines annually as part of the Initial Review and the WDA shall where reasonable; accommodate any changes to the WCA Baselines within the procurement of the PPP Contractor. For the avoidance of doubt, the provisions of Schedule 6 paragraph 8.1 shall not apply until Financial Close has occurred and consequently no Compensation Payments shall apply to the compliance or otherwise of the Baselines until Financial Close.
- 19.4 With effect from Financial Close the Parties may review the WCA Baselines annually as part of the Annual Review conducted in accordance with clause 8.
- 19.5 It is agreed this IAA shall stand as notice that for the time being the WCA Retained Waste shall be that set out in the WCA Baseline and shall only be varied or amended in accordance with this IAA.

PART 5 JOINT MUNICIPAL WASTE MANAGEMENT STRATEGY

20. WASTE STRATEGY

The Parties shall, through the Joint Municipal Waste Management Strategy, work together in good faith to implement the Joint Municipal Waste Management Strategy and attain the targets therein which meet and exceed the targets set out in the Waste Strategy of England. The waste

reduction strategy will be aimed at achieving the targets as further described in Schedule 1 and the Parties shall comply with Schedule 1.

PART 6 INDEMNITIES & CONDUCT OF CLAIMS

21. INDEMNITY AND LIMITATION ON LIABILITY

21.1 Each WCA shall, subject to clause 21.2, be responsible for, and shall release and indemnify the WDA, its employees, agents and contractors on demand from and against all liability for:

21.1.1 death or personal injury;

21.1.2 loss of or damage to property (including property belonging to the WDA for which it is responsible),

which may arise out of or in consequence of performance or non-performance by the indemnifying WCA of its obligations under this IAA or in the presence on the Facilities or Organic Waste Facilities of the WCAs and/or any contractor employed by the WCAs.

21.2 The WCAs shall not be responsible for or be obliged to indemnify the WDA, its employees, agents or contractors, for any injury, loss, damage, cost and expense caused by negligence or wilful misconduct of the WDA, its employees, agents or contractors or by the breach of the WDA its employees, agents or contractors of its obligations under this IAA.

21.3 The WDA shall, subject to clause 21.4 be responsible for, and shall release and indemnify the WCAs, their employees, agents and contractors on demand from and against all liability for:

21.3.1 death or personal injury;

21.3.2 loss of or damage to property (including property belonging to the WCA for which it is responsible),

which may arise out of or in consequence of performance or non-performance by the WDA of its obligations under this IAA or during the presence in the Facilities or Organic Waste Facilities of the WCAs and/or any contractor employed by the WCAs. **[SP Note: Consistency with 21.1.2]**

21.4 The WDA shall not be responsible for or be obliged to indemnify the WCAs, their employees, agents or contractors, for any injury, loss, damage, cost and expense caused by negligence or wilful misconduct of a WCA, its employees, agents or contractors, or a contractor of a WCA (its employees, agents or contractors) or by the breach of a WCA (its employees, agents or contractors) of its obligations under this IAA.

21.5 In no circumstance shall any WCA be liable:

21.5.1 to any other WCA pursuant to the IAA and nothing in this IAA shall be deemed or construed to imply any liability as between the WCAs; or

21.5.2 to the WDA except to the extent that the WDA is expressly liable to the Relevant Contractor as provided in this IAA and the liability of the WCAs and each of them is limited accordingly.

21.6 The liability of the WCAs under this IAA and of each of them shall be subject to the same limitations of liability and defences available to the WDA as against the Relevant Contractor.

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

22. CONDUCT OF CLAIMS

22.1 This clause 22.1 shall apply to the conduct, by a Party from whom an indemnity is sought under this IAA, of claims made by a third person against a Party having (or claiming to have) the benefit of the indemnity. The Party having, or claiming to have, the benefit of the indemnity is referred to as the "Beneficiary" and the Party giving the indemnity is referred to as the "Indemnifier". Accordingly:

22.1.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this IAA, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable having regard to any timescale imposed by a notice, demand, letter or any other form of document received by the Beneficiary;

22.1.2 subject to clauses 22.1.3, 22.1.4 and 22.1.5 below, on the giving of a notice by the Beneficiary pursuant to clause 22.1.1 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of at least half of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with an indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action (over and above those which the Beneficiary would otherwise have borne if the Indemnifier had no entitlement to conduct the relevant claim)) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

22.1.3 with respect to any claim conducted by the Indemnifier pursuant to clause 22.1.2 above:

- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
- (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
- (c) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

22.1.4 the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this IAA if:

- (a) the Indemnifier is not entitled to take conduct of the claim in accordance with clause 22.1.2 above; or
- (b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 20 Business Days of the notice from the Beneficiary under clause 22.1.2 above or notifies the Beneficiary that it does not intend to take conduct of the claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of clause 22.1.3 above;

- 22.1.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which clause 22.1.2 above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this clause 22.1.5 then the Indemnifier shall be released from any liability under its indemnity under clause 22 (as the case may be) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to clause 22.1.2 in respect of such claim;
- 22.1.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity; and
- 22.1.7 any body taking any of the steps contemplated by clauses 22.1.2 to 22.1.5 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this IAA.

23. SEVERAL LIABILITY

Unless expressly provided otherwise in this IAA, the liability of each WCA for their respective obligations and liabilities under this IAA shall be several and shall extend only to any loss or damage arising out of their own breaches and actions.

PART 7 DISPUTE RESOLUTION

24. DISPUTE RESOLUTION

24.1 This clause 24 shall apply only to disputes or differences which are expressly set out in the IAA as being for referral to the Dispute Resolution Procedure.

24.2 Consultation

Any dispute or difference shall be first referred to a meeting of each of the Parties involved in the dispute. The Parties agree to discuss and, in good faith, attempt to resolve any such dispute or difference in accordance with the spirit of partnering described in clause 3. In the event that the relevant Parties are unable to resolve the dispute then the matter shall be referred to the chief executives of each of the Parties involved in the dispute who shall try to resolve the dispute by agreement.

24.3 Mediation

24.3.1 If the chief executives of each of the Parties involved in the dispute are unable to resolve the dispute under clause 24.2 then any Party involved in the dispute may invite the others 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.

24.3.2 If the Parties fail to resolve the dispute through referring the matter to their chief executives under clause 24.2, within 14 days or, where the dispute was referred to mediation pursuant to clause 24.3.1 and the dispute has not been resolved through that process, either Party may refer the matter to an Adjudicator selected in accordance with clause 24.4 below.

24.4 Adjudication

Without prejudice to clauses 24.2 and 24.3 above, either Party may give the other notice of the intention to refer the dispute to adjudication and the adjudicator ("Adjudicator") shall be selected in accordance with clause 24.5 (Identity of Adjudicator).

24.5 Identity of Adjudicator

The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from a panel of experts with skills in relevant disputes. **SP DN: [Do we wish to make this more specific – on account of the fact that there is no panel]^[11]**

24.6 Referral of the dispute

Within 10 Business Days of appointment in relation to a particular dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

24.7 Adjudicator's decisions

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

24.8 Adjudicator's costs

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

24.9 Adjudicator as expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall

not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

24.10 Adjudicator's powers

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

24.11 Confidentiality

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

24.12 Liability of Adjudicator

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

24.13 Parties' obligations

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

24.13.2 Nothing in this clause 24 shall prevent either Party from resisting enforcement of any decision on the grounds that the decision is invalid in law, whether through excess of jurisdiction by the Adjudicator or by breach of the rules of natural justice or in conflict of interest or in bad faith or otherwise.

24.13.3 For the avoidance of doubt, nothing in this clause 24 shall affect the parties' rights to issue proceedings relating to a dispute that has been decided by an adjudicator. The English courts shall have the exclusive jurisdiction to determine such proceedings.

PART 8 TERMINATION

25. TERMINATION FOR WDA DEFAULT

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

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

- 25.3 The IAA shall terminate on the day falling 50 Business Days after the date the WDA receives the termination notice, unless the WDA rectifies the WDA Default within 30 Business Days of receipt of the termination notice.
- 25.4 Termination shall be without prejudice to any right or remedy of a WCA which accrued prior to the date of termination. Save for the foregoing the liability of the WDA upon termination shall be limited to the reasonable and proper costs of each WCA which has implemented its SDP (funded in whole or in part by the WDA):
- 25.4.1 in withdrawing the services funded by the WDA as set out in the relevant SDP (and in doing so breaking the relevant contracts); or (at the WCAs discretion)
- 25.4.2 in continuing the SDP for a further three complete financial years following the termination in which case the WDAs liability shall be equivalent to the funding that would have been paid by the WDA to the WCA but for the termination during that three year period and provided always that the WCA continues to provide the services funded in whole or in part by the WDA.
- 25.5 In the event of dispute in respect of this clause, the Dispute Resolution Procedure shall apply.

26. TERMINATION FOR WCA DEFAULT

- 26.1 If a WCA Default has occurred and the WDA wishes to terminate this IAA in respect of the relevant WCA(s), the WDA must serve a termination notice on the relevant WCA(s), copied to all of the other WCAs (for information purposes only) within 30 Business Days of becoming aware of the WCA Default.
- 26.2 The termination notice must specify the type of WCA Default which has occurred entitling the WDA to terminate.
- 26.3 The IAA shall terminate in respect of the relevant WCA(s) on the day falling 50 Business Days after the date the relevant WCA(s) receives the termination notice, unless the WCA(s) rectify the WCA Default within 30 Business Days of receipt of the termination notice.
- 26.4 Termination shall be without prejudice to any right or remedy of the WDA which accrued prior to the date of termination. Save for the foregoing, the liability of a WCA upon termination shall be limited to:
- 26.4.1 withdrawal of the funding provided by Schedule 6 (Payment and Costs); and
- 26.4.2 the reasonable and proper breakage costs incurred by the WDA (if any) under any Relevant Contracts for the Organic Waste Service in the event that a WCA is no longer providing the Organic Waste as set out in its SDP to the Relevant Contractor under a Relevant Contract, such liability being limited to the lesser of:
- (a) WDA's actual breakage costs; and
- (b) the sum equivalent to five times the relevant WCA's annual revenue funding received from the WDA in accordance with part 4 of Schedule 6 (Payments and Costs).
- 26.5 In the event of a dispute in respect of this clause, the Dispute Resolution Procedure shall apply.

27. VOLUNTARY TERMINATION

- 27.1 Any of the WCAs may, on giving 12 months' written notice to all other Parties or earlier by mutual agreement of the WDA and the other WCAs, terminate this IAA, including the performance of its obligations under this IAA.
- 27.2 Where any of the WCAs gives notice of its termination of this IAA, the Parties shall cooperate and seek to agree the arrangements regarding the relevant WCA's exit from this IAA.
- 27.3 Effective from the date of expiry of the notice referred to in clause 27.1 above, the relevant WCA's rights and obligations under this IAA shall cease. However, the WCA will continue to be liable for any financial liabilities and commitments it has incurred in respect of this IAA prior to the date of termination.
- 27.4 The relevant WCA shall, on voluntary termination be liable to the same extent as termination for WCA Default.
- 27.5 If a WCA chooses to terminate Part 3 of this IAA following the Initial Review (and accordingly wishes not to be a party to the Revised and Confirmed IAA), the provisions of clause 27.4 shall not apply and the WCA shall have no liability to the WDA, to the PPP Contractor or to any other WCA.

28. CONSEQUENCES OF TERMINATION

- 28.1 In the event of the termination of this IAA in whole or in part in accordance with the Break Clause or clauses 18 , 25, 26 and 27 in respect of all of the Parties or in respect of one or more WCAs then the relevant Parties shall (acting reasonably) negotiate and seek to agree and execute a legally binding agreement dealing with the matters covered by this IAA.
- 28.2 Where the relevant Parties fail to agree and execute a legally binding agreement within three months of the relevant termination of this IAA the WDA shall be entitled to issue:
- 28.2.1 a direction of the WDA under section 51(4) of the EPA, directing the relevant WCA(s) to deliver the Waste collected by it to the Delivery Points or to the Facilities and to separate such Waste before delivery; and
- 28.2.2 a notice under section 48(4) of the EPA that the WDA objects to any recycling arrangements made by the WCAs other than those identified in this IAA.
- 28.3 Where a specific part of this IAA only is terminated in accordance with the Break Clause or clause 7.10 the remainder of this IAA shall continue to apply in respect of the Parties respective rights and obligations as set out in this IAA.
- 28.4 Where this IAA or part of this IAA is terminated in respect of a specific WCA this IAA or the relevant parts of this IAA shall be terminated only in respect of the relevant WCA and the remaining provisions of this IAA shall continue to have effect in respect of the remaining WCAs.

PART 9 GENERAL

29. INVOICING AND PAYMENT

- 29.1 The Parties shall make payments, pay compensation and make contributions to costs in accordance with Schedule 6 (Payment and Costs Schedule).
- 29.2 The relevant Party shall submit an invoice to the other Party(ies) at the time or frequencies set out in Schedule 6 (Payment and Costs Schedule) for the relevant items.
- 29.3 Each invoice shall contain:
- 29.3.1 the Party's name and contact address;
 - 29.3.2 an invoice or purchase order reference number; and
 - 29.3.3 the invoicing period to which the invoice relates.
- 29.4 The Party issuing the invoice must ensure that the invoice (in each case in respect of the relevant invoicing period) details:
- 29.4.1 item description;
 - 29.4.2 number of units (e.g. number of tonnes);
 - 29.4.3 unit rate (e.g. Recycling Credit rate);
 - 29.4.4 standard terms and conditions;
 - 29.4.5 if a WCA is invoicing the WDA the relevant purchase order number; and
 - 29.4.6 If the WDA is invoicing a WCA the relevant account number.
- 29.5 Each invoice shall be accompanied by the relevant supporting information required in accordance with this IAA (including but not limited to the information set out in Appendix A to Schedule 6 (Payment and Costs Schedule))
- 29.6 Disputed invoices shall be dealt with in accordance with the Dispute Resolution Procedure. The relevant Party shall be entitled to withhold payment of the disputed part of any invoice. Following resolution of the dispute, any amount agreed to be due shall promptly be paid. For the avoidance of doubt, during the period of any such dispute the other Party shall continue to perform all of its obligations under this IAA notwithstanding any such withholding of payment by the other Party.
- 29.7 If any sum is owed to any Party and remains outstanding for more than 20 Business Days from the date that it was due, there shall be added to the sum interest at a rate of two per cent above the Base Lending rate of the Bank of England per annum calculated from the date that the payment became due. In the event of dispute, the Dispute Resolution Procedure shall apply.

30. INTELLECTUAL PROPERTY/OWNERSHIP OF DOCUMENTS

- 30.1 Subject to the rights of any third parties, the Parties will share equally all data, reports, drawings, specifications, designs, invitations or other material produced or acquired including copyright in the course of their joint work under this IAA. The Parties agree that any proposal

by one party to utilise the documents and materials produced by the Parties shall be subject to the agreement of all other Parties.

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

31. OWNERSHIP OF WASTE AND DUTY OF CARE

- 31.1 The Relevant Contracts will provide that, as between the WDA and the Relevant Contractor all Waste received by or in the possession of the Relevant Contractor (or any of its sub-contractors) shall upon receipt be acquired by, in the ownership of and at the risk of the Relevant Contractor, which shall take full responsibility for it.
- 31.2 For the purposes of this IAA until the Relevant Contractor takes ownership of any Waste in accordance with the provisions of the Relevant Contract, all Waste collected by the WCAs shall be deemed to held at the entire responsibility of the WCAs and the WDA shall have no responsibility for such Waste.
- 31.3 The WCAs shall keep consignment and transfer notes in respect of all Waste delivered to a Delivery Point, Facility, Organic Waste Delivery Point or Organic Waste Facility for a period of at least two years, and the WCA shall ensure (as far as is reasonably practicable) that it is given correct and accurate transfer notes by the Relevant Contractor.

32. FORCE MAJEURE

32.1 Obligations

No Party shall be entitled to bring a claim for a breach of obligations under this IAA by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party (the "Affected Party") to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.

32.2 Notification of Force Majeure Event

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

32.3 Consultations

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

32.4 Failure to agree

If no such terms are agreed on or before the date falling 80 Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this IAA for a period of more than 125 Business Days, then either Party

may terminate this IAA by giving 20 Business Days' written notice to the other Party. In such circumstances no liability shall be owed by either party to the other arising out of the termination.

32.5 Mitigation

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

32.6 Cessation of Force Majeure Event

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

33. DATA PROTECTION

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

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

34. CONFIDENTIALITY

34.1 Subject to clause 34.2, the Parties shall keep confidential all Confidential Information received by them in connection with this IAA.

34.2 Clause 34.1 shall not apply to:

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

34.2.2 the receiving party can show was already in its possession free of any such restriction prior to receipt from the disclosing party;

34.2.3 the receiving party can show it has lawfully received from a bona fide third party without breach of any obligation to the disclosing party;

34.2.4 any disclosure which is required by Legislation or by an order of a court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory board having the force of law;

34.2.5 any disclosure of information by the Parties to any other department, office or agency of the government or their respective advisers for the purpose of the examination and certification of the Parties' accounts or any examination or investigation; or

34.2.6 any disclosure that is required to ensure compliance with the FOIA and/or the EIR.

- 34.3 Subject to clause 35, in respect of all Confidential Information which may be disclosed by one party to the other or acquired by one party from the other under this IAA, the receiving party undertakes:
- 34.3.1 to keep the Confidential Information in strict confidence, and not to use the Confidential Information herewith other than for the purposes of this IAA;
 - 34.3.2 only to disclose the Confidential Information to such of its employees on a genuinely need-to-know basis for the purposes of this IAA, and then only on the understanding that they agree to be similarly bound by the provisions of this IAA. The receiving party shall be responsible for ensuring that all such employees comply with the confidentiality obligations of this IAA;
 - 34.3.3 not to disclose the Confidential Information to any third party whomsoever except with the prior written consent of the disclosing party;
 - 34.3.4 not to copy or reduce the Confidential Information to writing except as may be strictly necessary for the purposes of this IAA; and
 - 34.3.5 to return to the disclosing party on demand or termination all Confidential Information held in any form whatsoever including all copies thereof, and to destroy all notes and any other written reports or documents which may have been made by the receiving party and which contain any part of the Confidential Information, except as authorised in writing by the disclosing party, or as is strictly necessary to complete any outstanding obligations relating hereto between the Parties.
- 34.4 The property in all Confidential Information disclosed by either Party to the other pursuant to this IAA shall, subject to any right of any other owner, remain vested with the disclosing party.
- 34.5 No licence or other rights are granted in the Confidential Information by the disclosing party to the receiving party.

35. FOIA AND EIR

- 35.1 The Parties acknowledge that, as public authorities, each Party is subject to the requirements of the FOIA and the EIR and shall facilitate each other Party's compliance with its information disclosure requirements pursuant to the FOIA or the EIR in the manner provided for below.
- 35.2 Where the Party receiving a Request for Information (the "Responding Party") receives a Request for Information that another Party (the "Other Party") is holding and which the Responding Party does not hold itself the Responding Party shall refer to the Other Party such Request for Information that it receives as soon as practicable and in any event within five business days of receiving a Request for Information and the Other Party shall:
- 35.2.1 provide the Responding Party with a copy of all such Information in the form that the Responding Party requires as soon as practicable and in any event within 10 Business Days (or such other period as the Responding Party acting reasonably may specify) of the Responding Party's request; and
 - 35.2.2 provide all necessary assistance as reasonably requested by the Responding Party in connection with any such Information, to enable the Responding Party to respond to a

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

- 35.3 Following notification under clause 35.2, and up until such time as the Other Party has provided the Responding Party with all the Information specified in clause 35.2.1, the Other Party may make representations to the Responding Party as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, provided always that the Responding Party shall be responsible for determining at its absolute discretion:
- 35.3.1 whether Information is exempt from disclosure under the FOIA and the EIR;
- 35.3.2 whether Information is to be disclosed in response to a Request for Information; and
- 35.3.3 in no event shall the Other Party respond directly, or allow its contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Responding Party.
- 35.4 In the event of a request from the Responding Party pursuant to clause 35.3, the Other Party shall as soon as practicable, and in any event within five Business Days of receipt of such request, inform the Responding Party of the Other Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Responding Party under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Responding Party's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Responding Party shall inform the Other Party in writing whether or not it still requires the Other Party to comply with the request and where it does so require the Other Party to comply with the request, the 10 Business Days period for compliance shall be extended by such number of additional days for compliance as the Responding Party is entitled to under section 10 of the FOIA. In such case, the Responding Party shall notify the Other Party of such additional days as soon as practicable after becoming aware of them and shall reimburse the Other Party for such costs as the Other Party incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 35.5 The Parties acknowledge that (notwithstanding the provisions of this clause 35) the Responding Party may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the discharge of Functions of Public Authorities under Part I of the FOIA (the "Code"), be obliged under the FOIA or the EIR to disclose Information concerning the Other Party or the Essex Waste Partnership PPP Project:
- 35.5.1 in certain circumstances without consulting with the Other Party, or
- 35.5.2 following consultation with the Other Party and having taken their views into account.
- 35.6 Where clause 35.5 above applies the Responding Party shall, in accordance with the recommendations of the Code, draw this to the attention of the Other Party prior to any disclosure.
- 35.7 Where a Party receives a Request for Information in relation to Information which it does not hold but believes may be held by another Party, it shall transfer the Request for Information to the other Party, in accordance with Part III of the Code.

36. PUBLIC RELATIONS AND PUBLICITY

- 36.1 The WCAs shall not by themselves, their employees, or their agents, and shall procure that its sub-contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning the contents of this IAA without the prior written approval of the WDA.
- 36.2 The WDA shall not by themselves, their employees, or their agents, and shall procure that its sub-contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this IAA specific to a WCA without the prior written approval of that WCA.

37. NOTICES

- 37.1 No notice required to be served upon any of the Parties under this IAA shall be valid or effective unless it is in writing and served either:
- 37.1.1 by delivering the notice by hand to that Party at the relevant address set out in Schedule 10 (Delivery Addresses for Notices) or to such other address as that Party may notify the other Party in writing, and the notice shall be deemed to have been duly served at the time it is so delivered provided a receipt is obtained; or
- 37.1.2 by posting the notice in a pre paid envelope sent by recorded delivery and addressed to that Party at the relevant address set out in Schedule 10 (Delivery Addresses for Notices) or such other address as that Party may notify the other Party in writing and the notice shall be deemed to have been duly served two days after the date of posting.
- 37.2 Where any notice is deemed served pursuant to clause 37.1.1 after 4 p.m. on any day, the notice shall be deemed to have been served on the next working day.

38. ENTIRE AGREEMENT

- 38.1 Except where expressly provided in this IAA, this IAA constitutes the entire agreement between the Parties in connection with its subject matter and, in the absence of fraud, supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this IAA.
- 38.2 The Parties acknowledge that they have not entered into this IAA on the basis of any representation that is not expressly incorporated into this IAA.
- 38.3 Without limiting the generality of the foregoing, no Party shall have any remedy in respect of any untrue statement made to him upon which he may have relied in entering into this IAA, and a Party's only remedy is for breach of contract. Nothing in this IAA purports to exclude liability for any fraudulent statement or act.

39. AGENCY

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

40. ASSIGNMENT

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

41. WAIVER

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

42. SEVERABILITY

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

43. RIGHTS OF THIRD PARTIES

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

44. LAW AND JURISDICTION

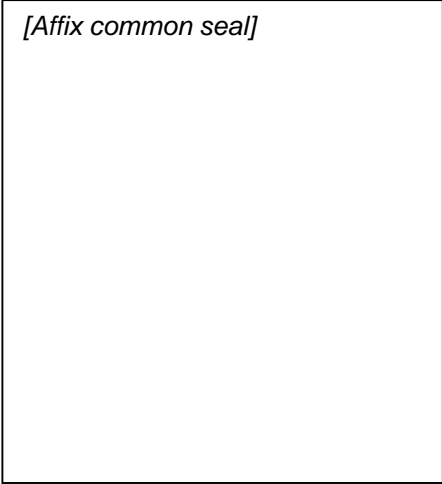
This IAA shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to clause 24, the English courts shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this IAA.

45. COUNTERPARTS

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

Executed as a deed by:

The common seal of ESSEX COUNTY COUNCIL in the presence of:



.....
Authorised Signatory

SCHEDULE 1

Joint Municipal Waste Management Strategy

Joint Municipal Waste Management Strategy Targets

Minimum Target in	2010	2015	2020
Waste minimisation (kg of Waste not re-used, Recycled or composted, per head of population)	310	270	225
Recycling and composting (as a total of Waste collected)	40%	45%	50%
Essex Waste Partnership aspirational target for Recycling and composting	N/A	N/A	60%

1. RECYCLING AND COMPOSTING TARGETS

The WCAs shall develop and maintain Waste and Recyclable Materials collection systems in accordance with the Service Delivery Plans which will facilitate the achievement of the following recycling targets as set out in the Joint Municipal Waste Management Strategy, the Local Area Agreement and the Waste Strategy for England 2007. These targets should be regarded as the minimum targets that the Partnership aims to exceed in accordance with the principles laid out in the Joint Municipal Waste Management Strategy.

Table 1 – Recycling and Composting Targets in the Joint Municipal Waste Management Strategy.

	In 2010	In 2015	In 2020
Joint Municipal Waste Management Strategy Targets			
Recycling and composting (%)	40	45	50

Table 2 – Targets in the Local Area Agreements

NI 192 total diversion target (%)	2008/2009	2009/2010	2010/2011
Basildon	33	36	39
Braintree	43	44	45
Brentwood	40	42	42
Castle Point	28	28	28
Chelmsford	36	38	40
Colchester	34	35	40
Epping Forest	40	42	42
Harlow	24	29	29
Maldon	35	36	36
Rochford	25	32	32
Tendring	26	26	26
Uttlesford	55	56	57

- 1.1 The WCAs acknowledge the importance of commitment to and achievement of the targets in the above tables in order to:
- 1.1.1 assist with the Government's climate change agenda, particularly management of Waste in accordance with the waste hierarchy;
 - 1.1.2 assist with the diversion of Waste away from Landfill and thus the avoidance of LATS penalties;
 - 1.1.3 continue Local Area Agreement funding and support;
 - 1.1.4 deliver the Joint Municipal Waste Management Strategy; and
 - 1.1.5 assist in securing PFI credits for the new Facilities.

SCHEDULE 2

Waste Disposal Authority Responsibilities and Commitments

1. DELIVERY POINTS

- 1.1 At least four months prior to the PPP Service Commencement Date the WDA shall confirm to the WCAs the location of the Delivery Points or Facilities where the WCA should deliver Contract Waste and the date from which these will be operational.
- 1.2 With effect from the PPP Service Commencement Date the WDA shall make available the Delivery Points in accordance with Schedule 9 (Delivery Points) and shall secure to each WCA adequate access to the relevant Delivery Point or direct to a Facility. The WDA shall not change a Delivery Point more frequently than once every three years (except to the extent necessary to coincide with the service commencement date in the PPP Contract). ***[SP DN: Reflects nervousness by WCAs that the Delivery Points could keep changing which creates a cost for the WCAs not really picked up by the Tipping Away or Mileage Payments]***
- 1.3 The WDA shall ensure that the Waste Delivery Points shall meet the Delivery Point Standards.
- 1.4 Where the proposed Delivery Point or Facility is greater than (five) 5 miles from the WCA's boundary it shall be entitled to receive from the WDA Mileage Payments calculated in accordance with Schedule 6 (Payment and Costs).
- 1.5 Where the Delivery Point or Facility is unavailable the WDA shall direct the WCA to a Contingency Delivery Point and the WCA shall deliver the Contract Waste to the Contingency Delivery Point.
- 1.6 Where the WDA directs the WCA to a Contingency Delivery Point and the Contingency Delivery Point is greater than (five) 5 miles from the WCA's boundary the WCA shall be entitled to receive from the WDA Mileage Payments calculated in accordance with Schedule 6 (Payment and Costs).
- 1.7 The WDA will procure adequate reception and weighing facilities and personnel at the Delivery Points or Facilities to receive the WCAs' vehicles. During the commissioning of the Facilities the WDA may direct the WCAs to deliver Waste to a Facility provided that if the Facility is more than five (5) miles from the WCA's boundary the WCA shall be entitled to receive from the WDA Mileage Payments calculated in accordance with Schedule 6 (Payment and Costs).
- 1.8 The WDA has and will retain the responsibility for the disposal of Contract Waste delivered to the Delivery Points, Facilities or RCHWs and for the provision and maintenance of RCHWs within its boundary.
- 1.9 The WDA shall give the WCAs at least six (6) months notice in writing of its intention to make a significant change to the manner in which it discharges its disposal responsibilities under this IAA.

2. PROCUREMENT

- 2.1 The WDA shall procure Facilities and/or purchase LATS with the aim of avoiding any LATS liabilities and to meet the targets in the Waste Strategy for England 2007 for Landfill for each of the key target years before 2020 as set out in the LATS. The WDA will develop these Facilities in accordance with Best Value obligations relevant to the costs and liabilities of the WDA and where appropriate and reasonable to those of the WCAs.
- 2.2 The WDA shall use reasonable endeavours to ensure that the PPP Contract represents Market Practice and shall dialogue with bidders and their funders over any matter which could result in an increase to a WCA liability for breach of the WCA Baseline as diligently as if the WDA was accepting such liability itself.
- 2.3 The WDA shall have overall control of but shall continue to consult and take on board the views of the WCAs in respect of the following matters:
- 2.3.1 the Delivery Point Standards;
 - 2.3.2 the development of the requirements for the Facilities such as but not limited to the type of plant, capacity, inputs, tolerances etc.;
 - 2.3.3 the content of the specification for the Facilities, including the Recycling and recovery targets for the Facilities and for the Project Agreement.

3. WASTE VOLUMES

Except where the Minimum Tonnage is breached as a result of a failure by a WCA to comply with the WCA Baseline, the WDA will take the risk of the volume of Contract Waste delivered to the Delivery Points or the Facilities being less than or greater than the waste volume parameters agreed with the PPP Contractor under the Project Agreement.

4. WASTE COMPOSITION

Provided that the WCAs deliver their services in accordance with the relevant WCA Baselines the WDA will take the risk of the Composition of Contract Waste delivered to the Delivery Points or Contingency Delivery Points or the Facilities being outside the waste composition parameters agreed with the PPP Contractor under the Project Agreement.

SCHEDULE 3

Waste Collection Authority Responsibilities and Commitments

1. GENERAL

- 1.1 The WCAs have and will retain the responsibility for the collection of all Municipal Waste within their own authority boundary.
- 1.2 The method and frequency of the chosen collection system shall remain the sole responsibility and discretion of each WCA. However, the WCAs agree to work together as far as is reasonably practicable through this IAA to deliver the current and any future Municipal Waste collection strategy for the area in accordance with their Service Delivery Plans and WCA Baselines and in a way that does not adversely affect the obligations of the WDA under the Project Agreement.
- 1.3 The WCAs will seek to implement best practice wherever practicable to comply with the Waste Strategy for England 2007 wherever practicable and to have regard to good practice developed in consultation with the Waste & Resources Action Programme's general initiatives and particularly with guidance issued from their Recycling and Organics Technical Advisory team.
- 1.4 The WCAs shall not and shall procure that their collection contractors do not negligently or wilfully damage any Delivery Points, Contingency Delivery Points or Facilities or parts thereof.
- 1.5 The WCA shall give the WDA at least six (6) notice in writing of its intention to make a significant change to the manner in which it discharges its Household Waste collection responsibilities, including where it intends a privatisation or disposal of these services.
- 1.6 Any Municipal Waste collected by a WCA and delivered to the WDA, other than Household Waste and Commercial and Industrial Waste collected in accordance with paragraph 5.1, including but not limited to: parks and gardens waste; highways maintenance waste; housing maintenance waste; shall be outside the remit of this IAA.

2. DELIVERY OF CONTRACT WASTE

Each WCA shall deliver or procure that its contractor delivers Contract Waste to the Delivery Point, Contingency Delivery Point or Facility nominated by the WDA.

3. CONTAMINATION

Where a WCA delivers Waste to a Delivery Point a Contingency Delivery Point or a Facility that contains Contaminants the provisions of Schedule 7 (Contamination) shall apply.

4. DRY RECYCLABLE WASTE

- 4.1 Within three months of the commencement of each calendar year during the term of this IAA, each WCA shall provide the WDA with an estimate of the types and quantities (including the numbers and sizes of containers to be emptied where relevant) of household Dry Recyclable Waste to be delivered for Recycling (where appropriate) for the forthcoming calendar year in conjunction with the Service Delivery Plans. Each WCA shall supply the WDA with monitoring reports updating the projections of Dry Recyclable Waste quantities by the following dates in each year:

30 September

31 January

15 May (containing final figures for previous financial year).

5. COMMERCIAL WASTE AND INDUSTRIAL WASTE

- 5.1 The WDA shall arrange for the processing and/ or disposal of Commercial Waste and Industrial Waste collected by the WCA and delivered to the Delivery Points or Facilities provided that this forms part of the SDP or WCA Baseline of the relevant WCA.

- 5.2 Each WCA shall be charged for the actual disposal costs plus administration costs incurred by the WDA in respect of such Waste at a rate set by the WDA. The principles for setting the rates for the disposal costs shall be subject to Annual Review and shall be varied so as to reflect changes in cost to the WDA from disposing of Commercial Waste and Industrial Waste including the introduction of and/or increases in any applicable Landfill Tax, changes in contract costs associated with disposal or treatment of Commercial Waste and Industrial Waste, and any costs associated with LATS. The WDA shall give the WCA no less than 15 months' written notice prior to the commencement of the financial year of any likely changes in the rates for budgeting purposes, and its best estimate of any such changes in the rates proposed at least six months prior to the start of the financial year. The rates shall then be confirmed no less than three months prior to the start of the financial year and shall only be subsequently revised during that financial year in the event of any significant and unforeseen changes.

- 5.3 Charges for the disposal of Commercial and Industrial Waste shall be based on actual tonnages delivered where possible. Otherwise, it will be based on estimated tonnages determined by reference to the numbers and sizes of containers emptied and the assumed average weights thereof.

- 5.4 Within three months of the commencement of each calendar year during the term of this IAA, each WCA shall provide the WDA with an estimate of the types and quantities (including the numbers and sizes of containers to be emptied where relevant) of Commercial and Industrial Waste to be delivered for disposal (where appropriate) for the forthcoming calendar year in conjunction with the Service Delivery Plans. Each WCA shall supply the WDA with monitoring reports updating the projections of Commercial and Industrial Waste quantities by the following dates in each year:

30 September

31 January

15 May (containing final figures for previous financial year).

- 5.5 The WCA shall give the WDA reasonable (approximately six months) notice in writing of its intention to make a significant change to the manner in which it discharges its Commercial and Industrial Waste collection responsibilities, including where it intends to competitively tender the services or to dispose of the business.
- 5.6 Any Commercial and/or Industrial Waste collected by a district or borough council other than in its capacity as WCA (for example, parks and gardens waste, highways maintenance waste, housing maintenance waste) and delivered to the WDA shall be the subject of a separate agreement. WCAs may make their own arrangements for the disposal of such Waste.
- 5.7 The WCAs will encourage Recycling and composting of Commercial and/or Industrial Waste where possible.
- 5.8 The WDA will issue the WCA with a monthly invoice setting out the charges levied for reception of Commercial and Industrial Waste.
- 5.9 Where charges are levied on the basis of actual tonnages (as opposed to estimated tonnages subject to adjustment), the WCA shall make payment upon being invoiced.
- 5.10 Where estimated quantities are used, payment shall be recovered on a pro rata monthly basis at the same time as the WDA receives council tax precept payments from the WCAs. Estimated quantities shall be recalculated based on actual numbers of containers when this information is available after the end of the financial year, and the WDA shall issue the WCA with an amended invoice or credit note as appropriate. The necessary financial adjustment shall be made in conjunction with adjustment of the council tax precept payments.

SCHEDULE 4

Key Waste Delivery Parameters

1. The Key Waste delivery parameters (profiled with time if appropriate) consist of:
 - 1.1. Waste growth assumptions and definition of key drivers that underpin these;
 - 1.2. Waste minimisation plans;
 - 1.3. Waste content and Waste Composition;
 - 1.4. Target Waste volume profile and allowable tolerances;
 - 1.5. acceptance protocols for special/abnormal Waste deliveries and for the delivery of Waste covered by the sites licence;
 - 1.6. Waste delivery profiles including:
 - 1.6.1. access times;
 - 1.6.2. collection frequency (weekly/fortnightly etc);
 - 1.6.3. delivery days per week;
 - 1.6.4. access routes;
 - 1.6.5. WCA collection vehicle turnaround times;
 - 1.6.6. services before and after public holidays etc;
 - 1.6.7. seasonal alternation.
 - 1.7. Contingency measures and recovery measures associated with intermittent changes in assumptions or disruptions to service levels (e.g. reactive or planned maintenance, industrial action etc.);
 - 1.8. The future profile of Commercial Waste and Industrial Waste collected assuming that this will not increase by more than 10 per cent from 2008 levels;
 - 1.9. Any foreseeable agreed or funded alterations to the service that may affect the key variables;
 - 1.10. Agreed key tolerances for the project that effectively create project boundaries (geographically, technically, efficiency, Waste Composition, etc.) which if exceeded would require either variation to the Project Agreement or new facilities to accommodate;
 - 1.11. Facilities other than those to be provided under the Project Agreement to be provided by the parties that support the obligations made in this IAA e.g. bring sites, RCHWs, transfer stations etc.

SCHEDULE 5

IAA Officer Working Group Constitution

This constitution has been approved by the Parties as the constitution of the IAA Officer Working Group. For the avoidance of doubt the IAA Officer Working Group shall be established in such a way for those Parties who participate in it to work together. The Group, however:

- shall have no legal identity or personality;
- is not intended to be a joint board for the purposes of s101 of the Local Government Act 1972 or otherwise;
- cannot and is not intended to fetter the discretion of the Member of any Authority but shall take into account the views from time to time expressed at any joint committees or other member forum within the Essex Waste Partnership;
- cannot and is not intended to make decisions which bind or are intended to bind any Authority (except to the extent that any Authority makes a decision *intra vires* upon recommendation of the Board in accordance with that Authority's standing orders); and
- shall be an executive advisory officer group and shall not have any delegated powers.

Any decision of the Group shall stand as a recommendation to each of its members and such decision shall not bind any Party unless and until it makes that decision in accordance with its own powers and authority's Constitution (including Standing Orders).

1. ESTABLISHMENT OF THE IAA OFFICER WORKING GROUP

The IAA Officer Working Group shall, unless the IAA Officer Working Group otherwise decide, be the "IAA Officer Working Group".

2. OBJECTIVES

The purpose of the Parties in establishing the IAA Officer Working Group is to facilitate the effective discharge of the respective Waste collection and disposal functions of the Parties in accordance with the IAA.

3. MEMBERSHIP AND APPOINTMENT OF THE IAA OFFICER WORKING GROUP

- 3.1 The IAA Officer Working Group shall comprise an officer appointed by each of the Parties as the Lead Officer for that authority ("Lead Officer"). Unless there are over-riding reasons to the contrary, each party shall appoint an officer with responsibility for Waste functions as the Lead Officer.
- 3.2 Each Lead Officer may appoint an alternate officer of his/her employing authority to act on his/her behalf provided that such alternative officer must have responsibility for or suitable knowledge of Waste functions, and such alternate officer shall be treated for this purpose as if he/she were the Lead Officer.

3.3 Each party may at any time appoint another officer to be that party's Lead Officer, and any member of the IAA Officer Working Group shall automatically cease to be a member of the IAA Officer Working Group upon ceasing to be an officer of his/her employing authority.

3.4 All appointments to membership of the IAA Officer Working Group shall be made by notification in writing from the authority to the other Lead Officers.

4. CHAIRMAN AND SECRETARY OF THE IAA OFFICER WORKING GROUP

The IAA Officer Working Group shall make its own arrangements for the conduct of its meetings, including electing a member of the IAA Officer Working Group to preside at its meetings and an officer to act as secretary to the IAA Officer Working Group.

5. SECRETARY TO THE IAA OFFICER WORKING GROUP

5.1 The IAA Officer Working Group shall be supported by the secretary to the IAA Officer Working Group.

5.2 The secretary of the IAA Officer Working Group shall be an officer of one of the parties appointed by the IAA Officer Working Group for this purpose. The WDA shall meet the reasonable costs of the secretary in administering the IAA Officer Working Group.

5.3 The functions of the secretary of the IAA Officer Working Group shall be:

5.3.1 to maintain a record of membership of the IAA Officer Working Group;

5.3.2 to summon meetings of the IAA Officer Working Group in accordance with paragraph 6 below;

5.3.3 to prepare and send out the agenda for meetings of the IAA Officer Working Group in consultation with the Lead Officers and the project manager;

5.3.4 to keep a record of the proceedings of the IAA Officer Working Group;

5.3.5 to take such administrative action as may be necessary to give effect to decisions of the IAA Officer Working Group; and

5.3.6 such other functions as may be determined by the IAA Officer Working Group.

6. CONVENING OF MEETINGS OF THE IAA OFFICER WORKING GROUP

6.1 Meetings of the IAA Officer Working Group shall be held at such times, dates and places as may be notified to the members of the IAA Officer Working Group by the secretary to the IAA Officer Working Group, being such time, place and location as:

6.1.1 the IAA Officer Working Group shall from time to time resolve;

6.1.2 the secretary of the IAA Officer Working Group, in consultation where practicable with the Lead Officers, shall determine in response to receipt of a request in writing addressed the secretary of the IAA Officer Working Group from any member of the IAA Officer Working Group, which request sets out an urgent item of business within the functions of the IAA Officer Working Group.

- 6.2 The secretary of the IAA Officer Working Group shall settle the agenda for any meeting of the IAA Officer Working Group and shall incorporate in the agenda any items of business and any reports submitted by any of:
- 6.2.1 the Lead Officers;
 - 6.2.2 the IAA Officer Working Group;
 - 6.2.3 the Chief Executive of an authority;
 - 6.2.4 the Chief Finance Officer to an authority; and
 - 6.2.5 the Monitoring Officer to an authority.

7. PROCEDURE FOR DECISIONS OF THE IAA OFFICER WORKING GROUP

Any decision of the Group shall stand as a recommendation to elected Members and such decision shall not bind those Parties unless and until they makes that decision in accordance with the relevant Party's own powers and authority's Constitution (including Standing Orders).

8. POWERS OF THE IAA OFFICER WORKING GROUP AS AN EXECUTIVE OFFICER BOARD

The IAA Officer Working Group shall be an executive advisory officer board and shall not have any delegated powers.

9. ATTENDANCE AT MEETINGS OF THE IAA OFFICER WORKING GROUP

- 9.1 Notwithstanding that a meeting or part of a meeting of the IAA Officer Working Group may not be open to the press and public, the officers specified out in paragraph 9.2 below of each party shall be entitled, in person or by another officer nominated by that officer, to attend all, and all parts, of such meetings, unless the particular officer has a conflict of interest as a result of a personal interest in the matter under consideration.
- 9.2 The following are the officers who shall have a right of attendance in accordance with clause 9.1:
- 9.2.1 the chief executive of any of the authorities;
 - 9.2.2 the chief finance officer of any of the authorities;
 - 9.2.3 the monitoring officer of any of the authorities;
 - 9.2.4 the officers of authorities with responsibility for waste functions (if they are not the Lead Officer); and
 - 9.2.5 the secretary to the IAA Officer Working Group.

10. ADMINISTRATIVE SUPPORT

The WDA shall provide facilities and administrative support to enable the IAA Officer Working Group to operate within its remit under this IAA.

SCHEDULE 6

Payment and Costs Schedule

1. INTRODUCTION

This Schedule is divided into the following sections:

- 1.1 general payment and cost sharing arrangements;
- 1.2 PPP payment and cost sharing arrangements;
- 1.3 Organic Waste Service payment and cost sharing arrangements; and
- 1.4 WCA specific payment and cost sharing arrangements.
- 1.5 Indexation

PART 1

General

Part A

Statutory funding to the WCAs

2. RECYCLING CREDITS

- 2.1 The WDA shall pay Recycling Credits to the WCAs on the basis of each tonne of material that is sent for Recycling.
- 2.2 With effect from the IAA Commencement Date the Recycling Credit payable for each tonne of material sent for Recycling by a WCA shall be fifty two pounds and thirty four pence (£52.34).
- 2.3 The level of Recycling Credit shall increase annually by three per cent on 1 April in each year of this IAA.
- 2.4 In accordance with Appendix A to this Schedule the WCA shall supply weighbridge data detailing source, type and quantity of Household Waste sent for Recycling by the WCA to reprocessing outlets, material recovery facilities or material merchants procured by the WCA within four weeks of the end of each month.
- 2.5 The WDA shall audit the information provided by the WCA in accordance with paragraph 2.4 to check for completeness and the eligibility of submitted tonnage for payment of Recycling Credits within 10 Business Days of receipt of the required data. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Recycling Credits.
- 2.6 The WDA shall make payments in respect of Recycling Credits to the WCAs following receipt of a valid invoice in accordance with clause 29.

2.7 The Parties acknowledge that the payment and level of Recycling Credits is set out in Legislation (primarily the 2006 Regulations) and in the event that the 2006 Regulations or any other relevant Legislation is amended or repealed then the payment and level of Recycling Credits shall be amended accordingly.

2.8 Failure of Recyclates Markets

2.8.1 In the event that there ceases to be an outlet for any of the Recyclable Materials that a WCA is collecting in accordance with its Service Delivery Plans and provided that the reason that there is no outlet for the Recyclable Materials is not due to a failure by a WCA or its contractor to deliver its services in accordance with its Service Delivery Plan then the WDA and relevant WCA shall promptly meet to discuss how to proceed.

2.8.2 At the meeting the WDA and the relevant WCA shall discuss the steps taken by the WCA to find an outlet for the relevant Recyclable Materials and where an alternative outlet can be identified that will accept the Recyclable Materials at no cost to the WCA then the WCA shall use reasonable endeavours to secure the alternative outlet for the relevant Recyclable Materials.

2.8.3 Where having used its reasonable endeavours to secure an alternative outlet no outlet has been identified by either the WCA or the WDA acting reasonably then the provisions of paragraph 2.8.4 shall apply until such point as the WDA or WCA identify a suitable outlet at which point the responsibility for sourcing the outlet for the relevant Recyclable Materials shall transfer back to the relevant WCA.

2.8.4 Where in accordance with paragraphs 2.8.1 to 2.8.3 a WCA is unable to secure outlets for the relevant Recyclable Materials the WDA shall make arrangements to accept the relevant Recyclable Materials collected by the WCA in accordance with its Service Delivery Plan and shall make arrangements for either the sale, transfer, storage or disposal of the relevant Recyclable Materials. The WDA shall use its reasonable endeavours to secure an outlet other than disposal by Landfill.

2.8.5 Where the WDA takes on responsibility for the relevant Recyclable Materials in accordance with paragraph 2.8.4 then it shall be entitled to retain any income received from the sale of the relevant Recyclable Materials and no Recycling Credits shall be payable to the relevant WCA in respect of the relevant Recyclable Materials, notwithstanding that the WCA shall continue to collect and deliver the Recyclable Materials to the WDA.

2.8.6 For so long as the WDA takes on responsibility for the relevant Recyclable Materials in accordance with paragraph 2.8.4, the WCA shall not be in breach of the WCA Baseline in failing to withhold this waste. The WCA Baseline shall be deemed amended accordingly).

3. TIPPING AWAY PAYMENTS IN RESPECT OF RESIDUAL WASTE

3.1 The WDA shall pay Tipping Away Payments to the WCAs calculated in accordance with this paragraph and section 51 of the EPA.

3.2 With effect from the IAA Commencement Date until the PPP Service Commencement Date, where the Delivery Point or Contingency Delivery Point is greater than five (5) miles from the relevant WCA boundary the WCA shall be entitled to Tipping Away Payments for each tonne of Waste it is required to transport to the Delivery Point or Contingency Delivery Point as directed by the WDA.

- 3.3 Tipping Away Payments shall be calculated in accordance with the following formula:
- 3.3.1 [£0.78 per laden tonne x no. of miles (> than five (5) miles from WCA boundary) to Delivery Point or Contingency Delivery Point]
- 3.4 The Tipping Away Payment shall be Indexed annually on 1 April.
- 3.5 The data required to support payments of Tipping Away Payments shall be provided by the operator of the relevant delivery or disposal point in accordance with Appendix A to this Schedule on a weekly basis. Following receipt of this data the WDA shall audit to check for completeness and accuracy within 10 Business Days of receipt of the required data. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Tipping Away Payments.
- 3.6 The WDA shall make payments to the WCAs in respect of Tipping Away Payments on a quarterly basis following receipt of a valid invoice in accordance with clause 29.

Part B

Discretionary Funding to the WCAs

4. COMPOST CREDITS

- 4.1 The WDA shall pay Compost Credits to the WCAs in respect of Green Waste that is sent for processing at a windrow composting facility provided by the WDA calculated in accordance with this paragraph.
- 4.2 The WDA shall pay Compost Credits on the basis of each tonne of Green Waste that is sent for processing at a windrow composting facility provided by the WDA in accordance with the following formula:
- 4.2.1 [Compost Credits = [RC – GF] x tonnage of Green Waste sent for processing]
- 4.2.2 Where: RC = Recycling Credit, GF = Gate fee for the relevant compost facility
- 4.3 Where a WCA makes its own arrangements for the composting of Green Waste, Food Waste or Food Waste and Green Waste comingled; it shall not be entitled to receive Compost Credits but shall be entitled to payment of Recycling Credits in accordance with paragraph 2 of this Schedule 6 in respect of the Green Waste sent for Composting.
- 4.4 The data required to support payments of Compost Credits shall be provided by the operator of the relevant facility in accordance with Appendix A to this Schedule on a weekly basis. Following receipt of this data the WDA shall audit to check for completeness and accuracy within 10 Business Days of receipt of the required data.
- 4.5 The WDA shall make payments in respect of Compost Credits to the WCAs on a monthly basis in arrears following receipt of a valid invoice in accordance with clause 29.
- 4.6 The WDA shall not make any payment of Compost Credits or Recycling Credits to a WCA where the WCA in accordance with its Service Delivery Plan collects both Green Waste and Food Waste on a comingled basis or Food Waste separately and delivers these to an Organic Waste Delivery Point or Organic Waste Facility provided by the WDA.

5. AVOIDED DISPOSAL PAYMENTS

- 5.1 Where a WCA exceeds the targets for Recycling contained within its Local Area Agreement the WDA shall make the following payments to the WCA in addition to Recycling Credits to reflect the WDA's Avoided Disposal Payments.
- 5.2 In each financial year from the IAA Commencement Date until 30 March 2012 the WDA shall pay Avoided Disposal Payments calculated in accordance with the following formula:
- 5.3 [Avoided Disposal Payments = (LT + ALD) – RC] x no. of tonnes above the LAA sent for Recycling or Composting
- 5.4 Where: LT = Landfill Tax per tonne at the prevailing rate for the relevant financial year, ALD = Average landfill disposal costs per tonne payable under the WDAs disposal contracts for the relevant financial year) and RC = Recycling Credit for the relevant financial year]
- 5.5 With effect from 1 April 2012 the rate of Avoided Disposal Payments shall remain at the level calculated in the 2011/2012 financial year until such time as the rate of Avoided Disposal Payments is zero due to the increase in Recycling Credits.
- 5.6 Once the rate of Avoided Disposal Payments is zero then Avoided Disposal Payments shall cease to apply and the WCAs shall continue to receive Recycling Credits.
- 5.7 A WCA shall also be entitled to claim Avoided Disposal Payments calculated in accordance with the formula in paragraph 5.3 where it has exceeded the targets for Recycling and Composting contained within its Local Area Agreement in respect of the Organic Waste it sends for Composting provided always that such Organic Waste is not sent for processing at a facility provided by the WDA.
- 5.8 As set out in Appendix A to this Schedule the data required to support payments of Avoided Disposal Payments shall be based on the weighbridge data substantiating household waste diversion rate for the financial year provided by the relevant Recycling merchants, operators of Material Recycling Facilities together with operators of the relevant Composting and disposal or delivery points/facilities on a monthly basis.
- 5.9 Following receipt of this data the WDA shall audit to check for completeness and accuracy within 6 weeks of the end of each financial year. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Avoided Disposal Payments.
- 5.10 The WDA shall make payments to the WCAs in respect of Avoided Disposal Payments following conclusion of its audit in accordance with paragraph 5.8 on an annual basis in accordance with clause 29.

5A DISPOSAL CREDITS

- 5.11 The WDA shall pay Disposal Credits to the WCAs in respect of material sent for reuse, Recycling or Composting which by virtue of its unsuitability for reprocessing is rejected by the reprocessor or sorting facility, and is disposed of outside of any arrangements made by the WDA.

- 5.12 The WDA shall pay Disposal Credits on the basis of each tonne of Household Waste sent for reuse, Recycling or Composting by the WCA which is not reprocessed in accordance with the following formula:
- 5.13 The Disposal Credits rate will be at the same level as the Recycling Credit rate.
- 5.14 Where Household Waste is rejected by a reprocessor in accordance with clause 5.11 the WCA may return the Household Waste to the WDA for treatment and/or disposal.
- 5.15 The data required to support payments of Disposal Credits shall be provided by the operator of the relevant facility via the WCA or through contamination sampling undertaken by the WCA, in accordance with Appendix A to this Schedule 6. Following receipt of this data the WDA shall audit to check for completeness and accuracy within 10 Business Days of receipt of the required data.
- 5.16 Where sampling is undertaken by the WCA to calculate contamination levels for mixed materials this will be undertaken at a frequency of no less than 12 months and in accordance with a methodology agreed with the WDA.
- 5.17 The WDA shall make payments in respect of Disposal Credits to the WCAs on a monthly basis in arrears following receipt of a valid invoice.

Part 2

PPP

6. PAYMENTS

- 6.1 With effect from the PPP Service Commencement Date the WDA shall continue to make the following payments to the WCAs in accordance with part 1 of this Schedule:
- 6.1.1 Recycling Credits;
- 6.1.2 Compost Credits; and
- 6.1.3 Avoided Disposal Payments.

7. MILEAGE PAYMENTS

- 7.1 The Parties acknowledge that under the Project Agreement the WDA is able to make deductions from the PPP Contractor where it fails to make available a Delivery Point or Facility for the WCAs to deliver Contract Waste.
- 7.2 With effect from the PPP Service Commencement Date where the WDA does not provide a Delivery Point or Contingency Delivery Point at the location or within the location parameters set out in Schedule 9 (Delivery Points) the WDA shall pay the relevant WCA the higher of:
- 7.2.1 a sum calculated in accordance with Part A paragraph 3 (the Tipping Away Payment); and

- 7.2.2 the sums which are recovered from the PPP Contractor in respect of Mileage Payment, Tipping Away (or their equivalent)
- 7.3 The data required to support payments of Mileage Payments shall be provided by the PPP Contractor on a weekly basis. Following receipt of this data the WDA shall audit to check for completeness and accuracy within 10 Business Days of receipt of the required data. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Mileage Payments.
- 7.4 The WDA shall make payments to the WCAs in respect of Mileage Payments on a quarterly basis following receipt of a valid invoice in accordance with clause 29.
- 7.5 The WCAs shall provide any further information requested by the WDA to substantiate any payments claimed under this paragraph and where requested by the WDA shall provide assistance to the WDA in respect of any claim made by the WDA against the PPP Contractor for Mileage Payments.

8. COMPENSATION PAYMENTS

- 8.1 Where after the date of Financial Close:
- 8.1.1 Waste is retained by the WCAs other than in accordance with their WCA Baseline; and/or
- 8.1.2 the WCAs do not carry out their collection services in accordance with the WCA Baseline; and/or
- 8.1.3 the provisions of paragraph 3 of Schedule 7 (Contamination) apply;
- and this directly results in an increase to the unitary charge or a payment due from the WDA to the PPP Contractor, then the relevant WCA may be required to make a Compensation Payment to the WDA calculated in accordance with this paragraph. The Compensation Payment shall be shared fairly between any number of WCAs whose activity pursuant to paragraphs 8.1.1 and 8.1.2 contributed (simultaneously or cumulatively) to the increase in the unitary charge or payment due from the WDA to the PPP Contractor. **[SP DN: housekeeping (fairly and equally may be contradictory)]**
- 8.2 A WCA shall be liable to make a Compensation Payment to the WDA where, as a direct result of that WCA's failure in accordance with paragraph 8.1, the WDA is required under the Project Agreement to either:
- 8.2.1 revise the unitary charge in accordance with the Unitary Charge Adjustment Protocol to place the PPP Contractor in a no better/no worse position; or
- 8.2.2 make a payment to the PPP Contractor which would not have been payable under the Project Agreement but for the circumstances set out in paragraph 8.1.
- 8.3 For the avoidance of doubt the WCAs shall only be liable for Compensation Payments for their own Baselines and changes thereto. In no circumstance shall this IAA create any liability or right of action between a WCA and any other WCA and nothing shall be construed or deemed otherwise.

- 8.4 The WCA shall not, pursuant to any provision of this Schedule 6 or clause 14, be liable to the WDA (nor the PPP Contractor):
- 8.4.1 if the WCA does any of the matters in paragraph 8.1 as a direct result of a fall in tonnages or change in Waste Composition (as opposed to the matters paragraph 8.1 being the cause of the reduction in tonnages or change in Waste Composition); or
 - 8.4.2 for the disposal costs of any tonne of Contract Waste (or increase in the costs of disposal resulting from the tonnage reductions or increases) even if that tonne would not have arisen for disposal but for an action of the WCA pursuant to paragraph 8.1 (it being acknowledged that disposal is a WDA function);
 - 8.4.3 for the impact or costs associated with changes in the actual tonnage volumes (from those predicated, forecasted or otherwise) and the impact of any tonnage volume changes resulting from the matters in paragraph 8.1 shall be disregarded in the application of the concept of No Better/No Worse and the Unitary Charge Adjustment Protocol shall be applied accordingly ;or
 - 8.4.4 for reduction in the tonnages of Contract Waste except to the extent that the result of the matters in paragraph 8.1 causes the Contract Waste to fall below the Minimum Tonnages.
 - 8.4.5 any of WDA's own losses, costs, expenditure, damages, fines or taxes other than the WDA's liability to the PPP Contractor in accordance with clause 15.5.
- 8.5 Where a matter under clause 8.1 results in the WDA handling or disposing of Waste outside the Project Agreement, this shall not form part of any Compensation Payment and the costs shall be met by the WDA.
- 8.6 In respect of any sums claimed by the WDA in respect of this paragraph the WDA shall:
- 8.6.1 be under a duty to mitigate any revisions to the unitary charge or sums claimed by the PPP Contractor; and
 - 8.6.2 pursue or defend any claim made/or against the PPP Contractor in respect of the proposed revisions to the unitary charge or sums claimed by the PPP Contractor with the same effort and care as if the WDA was unable to recover a Compensation Payment from the relevant WCA.
- 8.7 In respect of any payments due from a WCA under paragraph 8 the WCA shall make such payments on the same basis as such payments are required to be made to the PPP Contractor. Where the WDA has a choice over the frequency of such payments it shall consult with the relevant WCA as to its preferred method and frequency of payment.
- 8.8 The WDA shall submit an invoice or invoices to the relevant WCA based on the method and frequency agreed between the WDA and WCA in accordance with clause 29.
- 8.9 Where the relevant Delivery Point or Facility is not in accordance with the Delivery Point Standards and the WDA is able to make deductions under the PPP Contract from the PPP Contractor then the WDA shall make a payment to the relevant WCA equivalent to the amount of the deductions.

Part 3

Organic Waste Service

9. CONTRIBUTION TO COST OF DELIVERING ORGANIC WASTE SERVICE

- 9.1 Where in accordance with the Service Delivery Plan the WDA and a WCA have agreed to implement and maintain an Organic Waste Service then the provisions of this paragraph shall apply.
- 9.2 The WDA shall make the following payments to the WCA in respect of the Organic Waste Service:
- 9.2.1 The agreed capital contribution to the costs of the WCA in implementing the service (the agreed capital contribution and timing of payment for each WCA is set out in part 4 of this Schedule); and/or
- 9.2.2 The agreed contribution to the annual revenue cost to the WCA of providing the Organic Waste collection Service (the agreed annual revenue contribution and frequency of payment for each WCA is set out in part 4 of this Schedule);
- 9.3 In respect of the payments due from the WDA under paragraph 9.2.1 the WDA shall make such payments in accordance with clause 29 following the successful implementation of the Organic Waste Service in accordance with the relevant Service Delivery Plan and subject to a satisfactory audit by the WDA of the payments in accordance with Appendix A to this Schedule. [SP DN: All clarification and consistency]
- 9.4 In respect of the payments due from the WDA under paragraph 9.2.2 the WDA shall make such payments following the successful implementation of the Organic Waste Service in accordance with the relevant Service Delivery Plan on an annual basis subject to a satisfactory audit by the WDA of the payments in accordance with Appendix A to this Schedule. The WDA recognises that an Organic Waste Service may be implemented in stages and would be prepared to make staged payments to the WCA if an implementation plan is agreed in advance between the WDA and WCA and the audit conditions met.
- 9.5 The WCA shall submit an invoice or invoices to the WDA for payments due under paragraphs 9.3 and 9.4 in accordance with clause 29.
- 9.6 For the avoidance of doubt, the audit referred to in paragraphs 9.3 and 9.4 shall be to ensure that the Organic Waste Service has been or is being implemented and delivered in accordance with the SDP as agreed by the WDA and not to calculate the actual amounts incurred by a WCA in respect thereof. The capital and revenue payments in part 4 shall be made regardless of the actual costs or amounts incurred by the WCA in respect of the Organic Waste Service, provided that the WCA shall only be entitled to retain any surplus payments above actual costs or amounts incurred when such surplus is utilised for the provision of Waste Recycling services.

10. COMPENSATION FOR HAULAGE OF ORGANIC WASTE

- 10.1 With effect from the relevant implementation date for the Organic Waste Service where the WDA does not provide a Organic Waste Delivery Point at the location or within the location

parameters set out in Schedule 9 (Delivery Points) the WDA shall direct the WCA to an alternative delivery point and pay the WCAs sums calculated in accordance with the following formula:

- 10.1.1 [£0.78 per laden tonne x no. of miles (> than five (5) miles from WCA boundary) to alternative delivery or disposal point]
- 10.2 The level of Compensation for Haulage of Organic Waste per laden tonne to apply from the relevant implementation date for the Organic Waste Service shall be set with reference to the level of Tipping Away Payment payable immediately prior to the relevant implementation date for the Organic Waste Service and thereafter shall be Indexed annually on 1 April.
- 10.3 The data required to support payments of Compensation for Haulage of Organic Waste shall be provided by the contractor(s) delivering the Organic Waste Service on a weekly basis. Following receipt of this data the WDA shall audit to check for completeness and accuracy within 10 Business Days of receipt of the required data. Following successful completion of the audit the WDA shall issue the WCA with a purchase order number to raise an invoice for the Compensation for Haulage of Organic Waste.
- 10.4 The WDA shall make payments to the WCAs in respect of Compensation for Haulage of Organic Waste on a quarterly basis following receipt of a valid invoice in accordance with clause 29.
- 10.5 The WCAs shall provide any further information requested by the WDA to substantiate any payments claimed under this paragraph and where requested by the WDA shall provide assistance to the WDA in respect of any claim made by the WDA against the relevant contractor for Compensation for Haulage of Organic Waste.
- 10.6 For the avoidance of doubt where a WCA arranges for the treatment and/or disposal of Organic Waste outside of any Relevant Contract in accordance with this IAA no Compensation for Haulage of Organic Waste shall be payable by the WDA to any WCA.

11. COMPENSATION PAYMENTS IN RESPECT OF THE ORGANIC WASTE SERVICE

- 11.1 Where:
 - 11.1.1 a WCA fails to deliver the Organic Waste Service in accordance with its Baseline; and/or
 - 11.1.2 the provisions of paragraph 2 of Schedule 7 (Contamination) apply
- 11.2 and this results in the WDA breaching its Minimum Tonnages under the Relevant Contract or results in a load or part of a load being rejected, the WCA shall be liable to the WDA where as a direct result of the relevant failure in accordance with paragraph 11.1 the WDA is required under the Relevant Contract to make a payment to the contractor which would not have been payable under the Relevant Contract but for the circumstances set out in paragraph 11.1. The Compensation Payment shall be shared fairly between any number of WCAs whose activity pursuant to paragraph 11.1.1 and 11.1.2 contributed (simultaneously or cumulatively) to the liability of the WDA to the Relevant Contractor.
- 11.3 In respect of any sums claimed by the WDA in respect of this paragraph the WDA shall:
 - 11.3.1 be under a duty to mitigate any revisions to the sums claimed by the Relevant Contractor; and

- 11.3.2 pursue or defend any claim made/or against the contractor in respect of the proposed sums claimed by the contractor with the same effort and care as if the WDA was unable to recover a Compensation Payment from the relevant WCA.
- 11.4 In respect of any payments due from a WCA under paragraph 11 the WCA shall make such payments on the same basis as such payments are required to be made to the Relevant Contractor. Where the WDA has a choice over the frequency of such payments it shall consult with the relevant WCA as to its preferred method and frequency of payment.
- 11.5 The WCAs liability under this paragraph 11 shall be capped at 120% of the agreed gate fee per tonne for processing Organic Waste under the Relevant Contract multiplied by the number of tonnes the WDA is beneath the Minimum Tonnage.
- 11.6 The WDA shall submit an invoice or invoices to the relevant WCA based on the method and frequency agreed between the WDA and WCA in accordance with clause 29.
- 11.7 For the avoidance of doubt the WCAs shall only be liable for Compensation Payments for their own WCA Baselines and changes thereto. In no circumstance shall this IAA create any liability or right of action between a WCA and any other WCA and nothing shall be construed or deemed otherwise.
- 11.8 Where the relevant Organic Waste Delivery Point or Contingency Point or Facility is not in accordance with the Delivery Point Standards and the WDA is able to make deductions under the Relevant Contract from the Relevant Contractor then the WDA shall make a payment to the relevant WCA equivalent to the amount of the deductions.

12. DISPUTES

Disputes under this Schedule 6 shall be referred to the Dispute Resolution Procedure

Part 4

WCA Specific Arrangements

[insert name of relevant WCA (the "WCA")]

13. INTRODUCTION

Following agreement by the WDA and the WCA of an initial Service Delivery Plan and subject to the timely and satisfactory delivery of the complete Service Delivery Plan the WDA shall make the following payments to the WCA in accordance with the provisions of part 4 of Schedule 6 and this IAA.

14. SCHEME DETAILS

Scheme Overview	
Year and month of commencement	
Year and month of planned full scheme operation	
Number of properties served by new scheme	

15. CAPITAL FUNDING

The WDA shall make the following capital payments to the WCA:

SP Note: [Note that some WCAs?] it may be necessary to make clear that the payment is already due if they have already implemented^[j12]

Item Description	Capital Sum (£)	Payment made (timing)
TOTAL		

15.1 Where any capital payments listed above are payable in full or in part in future financial year then the relevant payments shall be Indexed.

15.2 Where, after the Organic Waste Services has been implemented by a WCA in accordance with its SDP, there is a requirement for future capital funding to replace or meet lifecycle costs of the assets required to deliver the Organic Waste Service, the WDA and the relevant WCA shall meet to discuss the required capital expenditure and how it may be funded. If the WDA or the WCA is not willing or able to fund the required capital expenditure (which for the avoidance of doubt it shall have no obligation so to do) the WCA shall be entitled to change its SDP and WCA Baseline to the extent necessary and the WDA shall not object to the changes required (and nor shall any Compensation Payment be payable in respect thereof).

16. REVENUE FUNDING

16.1 The WDA shall make the following revenue funding payments, Indexed, to the WCA with effect from [insert date]:

16.2

Description of Revenue Funding	Amount (£)	Payment Frequency

17. AUDITING OF PAYMENTS

17.1 The WDA shall be entitled to audit payments made to the WCA in accordance with the procedures set out in Appendix A to this schedule.

17.2 The WCA agrees that within 20 Business Days of receiving a written request from the WDA (or its auditors) it shall make available to the WDA (or its auditors) all data together with the operational and financial records required to enable a full audit to be undertaken in respect of any payments made to the WCA or services delivered by the WCA under the Service Delivery Plan.

17.3 Where as a result of carrying out an audit in accordance with paragraph 5.2 or otherwise, any over payment or under payment is discovered between the WDA and the WCA, the parties shall agree to make any payments required to correct the over payment or under payment within two months of the discovery of the over payment or under payment and upon receipt from the relevant party of an invoice in accordance with clause 29.

18. ASSETS

18.1 The WCA shall maintain a separate asset register for all assets purchased by the WCA with the capital funding provided to the WCA by the WDA in accordance with paragraph 3 of part 4 of this Schedule (the "Asset Register").

18.2 The WCA shall not dispose of any assets on the Asset Register without obtaining the prior written consent of the WDA to a disposal (not to be unreasonably withheld or delayed)

- 18.3 The WCA shall account to the WDA for any sums received in respect of the sale of assets on the Asset Register and where any proceeds from the disposal of assets relate to a capital funding from the WDA will be subject to clawback by the WDA.

Part 5

Indexation

19. INITIAL INDEXATION

On the 1 April 2010 and 1 April 2011 respectively where sums are expressed as Indexed in this IAA they shall be calculated with reference to such amounts multiplied by the value of the Retail Prices Index (all items) most recently published prior to the 1 April in each financial year.

20. REVIEW OF INDEXATION

20.1 In the last quarter of financial year 2011/2012 and in the last quarter of each financial year thereafter the WDA shall call an Ad Hoc Review in accordance with clause 9 to review with the WCAs the method of calculating sums that are expressed as Indexed in this IAA. As part of this review the Parties shall take account of:

- 20.1.1 Treasury efficiency targets;
- 20.1.2 Local government performance indicators relating to efficiencies;
- 20.1.3 Overall local government settlements;
- 20.1.4 the Retail Prices Index (all items); and
- 20.1.5 other relevant indices (including those relating to fuel, haulage and waste sector earnings).

20.2 The Parties shall use reasonable endeavours to agree the method of calculating sums that are expressed as Indexed to apply from 1 April in that year within the last quarter of the preceding financial year from 2011/2012. Where the Parties have failed to agree the method of calculating sums that are expressed as Indexed by the end of the last quarter of financial year 2011/2012 and in the last quarter of each financial year thereafter then any Party may refer the matter to the Dispute Resolution Procedure and any adjudicator appointed pursuant to clause 24 shall have regard to the matters listed in paragraph 20.1 in any decision.

SCHEDULE 7

Contamination

1. INTRODUCTION

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

2. ORGANIC WASTE SERVICE

- 2.1 At least two months prior to the implementation of the Organic Waste Service in respect of each WCA that has agreed to implement an Organic Waste Service in accordance with Part 4, the WDA shall prepare the Organic Waste Contamination Protocol, with reference, inter alia, to the Relevant Contract and shall submit it to the WCA for review. The WCA shall review the Organic Waste Contamination Protocol and provide a mark up and comments within 15 Business Days of its submission to the WCA. The WDA and WCA shall (both acting reasonably) agree the Organic Waste Contamination Protocol and the Organic Waste Contamination Protocol may be different for different WCAs.
- 2.2 The Organic Waste Contamination Protocol shall reflect the definition of Contamination in this IAA and include the following:
- 2.2.1 the methodology for inspection of Organic Waste delivered to the Organic Waste Delivery Points or Organic Waste Facilities provided by the WDA;
 - 2.2.2 the types and quantities of Contaminants which will be accepted and treated by the relevant contractor at no additional treatment or disposal cost;
 - 2.2.3 the types of Contaminants that will still be accepted and treated by the Relevant Contractor but which may result in an additional processing and/or disposal cost;
 - 2.2.4 the types of Contaminant which will cause all or part of the Organic Waste delivered by the WCA or its contractor to the Organic Waste Delivery Point or the Organic Waste Facility to be rejected and will need to be disposed of by the WDA or the Relevant Contractor;
 - 2.2.5 any Contaminants which if delivered by the WCA or its contractor to an Organic Waste Delivery Point or an Organic Waste Facility cause the Organic Waste Delivery Point or a Organic Waste Facility to be shut down and/or require clean-up or de-contamination (e.g. the delivery of Hazardous Waste or unexploded ordinance, etc); and
 - 2.2.6 the measures which the WDA would expect the operator of the Organic Waste Delivery Point and/or Organic Waste Facility to take in the management of the Organic Waste Delivery Point and/or Organic Waste Facility so as to minimise disruption, additional costs and rejection of Organic Waste notwithstanding the presence of Contaminants from time to time.

2.3 The Organic Waste Contamination Protocol shall be reviewed by the WDA and the relevant WCAs where there is any proposed change to the Organic Waste Facility used to treat the Organic Waste and the relevant parties shall work together in good faith to agree any changes to the Organic Waste Contamination Protocol.

2.4 Where:

2.4.1 to the extent such costs exceed the normal price the WDA would have paid to dispose of the load as residual waste; and

2.4.2 the Contamination could have been avoided by the WCA acting (and procuring its contractors act) in accordance with Good Industry Practice,

the additional costs shall be payable by the relevant WCA in accordance with the provisions of Schedule 6 (Payments and Costs Schedule).

2.5

[SP DN: This is a new point raised by a WCA who has a particular interest in this topic and had a lot to say about well known contamination cases. The concern was that a WCA would be liable for the closure and rebuild of the entire plant because of something put in a bin by a resident. I realise that this was not the intention but it could be the effect. I am not certain that Essex ever really meant this clause to cover those situations and as 2.4 covers the real issue, we would prefer to delete 2.5 and 3.3^[13]]

3. CONTRACT WASTE

3.1 As part of the Initial Review the Parties shall agree the Waste Contamination Protocol.

3.1.1 The Waste Contamination Protocol shall include the following:

- (a) the methodology for inspection of Waste delivered to the Delivery Points or Facilities provided by the WDA;
- (b) the types of Contaminants which may be accepted and treated by the PPP Contractor at no additional treatment or disposal cost;
- (c) the types of Contaminants that will still be accepted and treated by the PPP Contractor but which will result in an additional processing and/or disposal cost;
- (d) the types of Contaminant which will cause all or part of the Waste delivered by the WCA or its contractor to the Delivery Point or the Facility to be rejected and will need to be disposed of by the WDA or the PPP Contractor;
- (e) any Contaminants which if delivered by the WCA or its contractor to a Delivery Point or a Facility cause the Delivery Point or Facility to be shut down and/or require clean-up or de-contamination (e.g. the delivery of Hazardous Waste or unexploded ordinance, etc); and
- (f) the measures which the WDA would expect the operator of the Delivery Points and/or the Facilities to take in the management of the Delivery Points and/or Facilities so as to minimise disruption, additional costs and rejection of Contract Waste notwithstanding the presence of Contaminants from time to time.

3.2 Where:

3.2.1 having itself followed the Waste Contamination Protocol and having procured that the PPP Contractor follows the Waste Contamination Protocol the WDA is required pursuant to its the PPP Contract to pay additional costs for the treatment or disposal of a load or part as a result of Contamination; and

3.2.2 to the extent such costs exceed the normal price the WDA would have paid to dispose of the load as residual waste; and

3.2.3 the Contamination could have been avoided by the WCA acting (and procuring its contractors) act in accordance with Good Industry Practice;

3.2.4 then the additional costs shall be payable by the relevant WCA in accordance with the provisions of Schedule 6 (Payments and Costs Schedule).

3.3 Any disputes relating to the application of this Schedule 7 including the:

3.3.1 preparation, agreement and review of the Waste Contamination Protocol;

3.3.2 presence or otherwise of Contamination;

3.3.3 the definition of Contamination;

3.3.4 compliance by any party or by the Relevant Contractor with the agreed Waste Contamination Protocol;

3.3.5 the legal requirements for a Delivery Point to be closed as a result of Contamination;

3.3.6 the amount (if any) of any additional cost incurred by the WDA,

shall be referred to the Dispute Resolution Procedure.

SCHEDULE 8

Service Delivery Plans

Part 1

WCA Baselines

[Note: To be inserted in final version being developed as a separate document]

Part 2
Service Delivery Plans

SCHEDULE 9

Delivery Points

Part I (Residual Waste prior to Financial Close)

Opening Days and Hours	As apply at the date of this IAA or as agreed between the WDA and WCA from time to time as part of the Annual Review
Maximum Vehicle waiting times from the time the vehicle arrives at the weighbridge, or enters the queue to the weighbridge, to the time of the vehicle crossing the exit weighbridge.	None specified
Facilities (mess facilities, vehicle washing etc)	None
Restrictions, if any, on vehicle type or size	None provided that the vehicles are of a type in which it is reasonable for a WCA or a contractor of the WCA to collect Contract Waste
Parameters for location of Delivery Points	As exist at the date of this IAA or as agreed between the WDA and WCA from time to time as part of the Annual Review
Parameters for location of Contingency Delivery Point.	

Part II (Contract Waste following Financial Close)

The Delivery Point Standards for set out below are a indicative only and reflect as at the date of the IAA, those which the WDA intends to specify in its procurement process for the PPP Contractor and will use reasonable endeavours to secure. The actual Delivery Point Standards will be set out by the WDA and discussed as part of the Initial Review

Opening Days and Hours	
Maximum Vehicle waiting times from the time the vehicle arrives at the weighbridge, or enters the queue to the weighbridge, to the time of the vehicle crossing the exit weighbridge.	15 minutes
Facilities (mess facilities, vehicle washing etc)	
Restrictions, if any, on vehicle type or size	None provided that the vehicles are of a type in which is reasonable for a WCA or a contractor of the WCA to collect Contract Waste

Parameters for location of Delivery Points	Within 5 miles of the WCA boundary (along an arterial route) or the WCA will be eligible for Tipping Away or Mileage Payments compensation payments.
Parameters for location of Contingency Delivery Point.	

Part II (Organic Waste)

The Delivery Point Standards for Organic Waste Delivery Points are set out below and are indicative only, as at the date of the IAA and reflect those which the WDA will specify in its procurement process for the Relevant Contractors and will use reasonable endeavours to secure. If the IAA is not able to achieve these standards, the WDA may propose amendments as part of a Review and any affected WCA shall be entitled to review its SDP or Baseline to the extent necessary as a direct consequence of the amendments.

Opening Days and Hours	Monday to Friday 07:00 to 16:30, Saturday 07:00 to 13:30 and on Saturdays following bank holidays between 07:00 and 13:30.
Maximum Vehicle waiting times from the time the vehicle arrives at the weighbridge, or enters the queue to the weighbridge, to the time of the vehicle crossing the exit weighbridge.	30 minutes
Facilities (mess facilities, vehicle washing etc)	Vehicle washing facilities will be provided where necessary to comply with the Animal By Products Regulations and to prevent the deposition of foreign materials to the highway.
Restrictions, if any, on vehicle type or size	None provided that the vehicles are of a type in which is reasonable for a WCA or a contractor of the WCA to collect Organic Waste
Parameters location for Organic Waste Delivery Points	Within 5 miles of the WCA boundary (along an arterial route) or the WCA will be eligible for Compensation for Haulage of Organic Waste..
Parameters for location of Organic Waste Contingency Delivery Point.	Within a distance that it is reasonably practical for the WCA to access while still meeting the SDP and Baseline and without incurring additional expenditure in excess of the Compensation for Haulage of Organic Waste as provided in Schedule 6.

SCHEDULE 10

Delivery Addresses for Notices

Waste Disposal Authority

ESSEX COUNTY COUNCIL of PO Box 11, County Hall, Chelmsford, Essex CM1

Waste Collection Authorities

BASILDON DISTRICT COUNCIL of The Basildon Centre, St Martin's Square, Basildon, Essex, SS14 1DL

BRAINTREE DISTRICT COUNCIL of Causeway House, Bocking End, Braintree, Essex CM7 9HB

BRENTWOOD BOROUGH COUNCIL of Town Hall, Ingrave Road, Brentwood, Essex CM15 8AY

CASTLE POINT BOROUGH COUNCIL of Kiln Road, Thundersley, Benfleet, Essex, SS7 1TF

CHELMSFORD BOROUGH COUNCIL of Civic Centre, Duke Street, Chelmsford, CM1 1JE

EPPING FOREST DISTRICT COUNCIL of Civic Offices, High Street, Epping, Essex CM16 4BZ

HARLOW DISTRICT COUNCIL, of Civic Centre, The Water Gardens, Harlow, Essex CM20 1WG

MALDON DISTRICT COUNCIL of Princes Road, Maldon, Essex CM9 5DL

ROCHFORD DISTRICT COUNCIL of Council Offices, South Street, Rochford, Essex, SS4 1BW

TENDRING DISTRICT COUNCIL of Town Hall, Station Road, Clacton on Sea, Essex CO15 1SE

UTTLESFORD DISTRICT COUNCIL of Council Offices, London Road, Saffron Walden, Essex CB11 4ER

SCHEDULE 11

IAA Commencement Dates