

**CURRENT DRAFT OF LEVY  
ALLOCATION METHODOLOGY AGREEMENT**



**DATED**

**2018**

- (1) Greater Manchester Waste Disposal WDA
- (2) Bolton Borough Council
- (3) Bury Metropolitan Borough Council
- (4) The Council of the City of Manchester
- (5) Oldham Metropolitan Borough Council
- (6) Rochdale Metropolitan Borough Council
- (7) Salford City Council
- (8) Stockport Metropolitan Borough Council
- (9) Tameside Metropolitan Borough Council
- (10) Trafford Borough Council

# **WASTE MANAGEMENT LEVY ALLOCATION METHODOLOGY (LAMA) AGREEMENT**

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**THIS LEVY ALLOCATION METHODOLOGY AGREEMENT (LAMA) is made on the**

**2018**

**BETWEEN**

- (1) Greater Manchester Waste Disposal Authority of 1st Floor, Churchgate House, 56 Oxford Street, Manchester, M1 6EU (“the WDA”);
- (2) Bolton Borough Council of Town Hall, Victoria Square, Bolton, BL1 1RU;
- (3) Bury Metropolitan Borough Council of Town Hall, Knowsley Street, Bury, BL9 0SW;
- (4) The Council of the City of Manchester, PO Box 532, of Town Hall, Albert Square, Manchester, M60 2LA;
- (5) Oldham Borough Council of Civic Centre, West Street, Oldham, OL1 1UG;
- (6) Rochdale Metropolitan Borough Council of Rochdale OL16 1LQ Number One Riverside, Smith Street, Rochdale, OL16 1XU
- (7) Salford City Council of Civic Centre, Chorley Road, Swinton, Salford, M27 5DA;
- (8) Stockport Metropolitan Borough Council of Town Hall, Edward Street, Stockport, SK1 3XE
- (9) Tameside Metropolitan Borough Council of; and Dukinfield Town Hall, King Street, Dukinfield, Tameside, SK16 4LA
- (10) Trafford Borough Council of Trafford Town Hall, Talbot Road, Stretford, Manchester, M32 0TH;

EACH (other than the WDA) being a Waste Collection Authority and which are (other than the WDA) collectively referred to as “the WCAs”.

## RECITALS

- (A) The WDA is a Waste Disposal Authority and has a statutory duty to dispose of waste. From 1<sup>st</sup> April 2018 the WDA will be abolished and all its functions will transfer to the Greater Manchester Combined Authority (GMCA) under the Greater Manchester Combined Authority (Functions and Amendment) Order 2017. From that time forwards all references to WDA in this agreement will be read as references to GMCA.
- (B) The WCAs have a statutory duty to collect waste and deliver it to the WDA.
- (C) The LAMA is designed to support delivery of the WDA's Waste Management Strategy, delivery of the English 50% minimum recycling target and to promote diversion from landfill in a way that maximises financial and environmental benefits. Policy on waste management is currently being reviewed at a European level, and as such whilst the LAMA is intended to reflect an expected increase in the levels of recycling performance and diversion from landfill that will be required, it will need to be reviewed over its 10 year period to ensure it reflects final policy decisions.
- (D) The Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 established the WDA's power to issue levies on its constituent councils (the WCAs) to meet all liabilities falling to be discharged by the WDA.
- (E) The WDA has continued with a Viridor Operating Contract (VC) and will enter into new Replacement Operating Contracts for the disposal of residual waste and treatment of recyclates, pulpables and green waste (amongst other things). The WCAs have agreed, subject to the terms of this LAMA, to support the WDA in fulfilling its responsibilities under these arrangements, which includes a commitment to deliver recyclable material to VC and the Replacement Operating Contracts.
- (F) For the 10 year duration of the LAMA the WDA is: -
1. Continuing the existing *Operating Contract* with the operator Viridor Waste (Greater Manchester) Limited (VC) which provides a short term 'run off' contract, which is estimated to cease in April 2019;
  2. Proposing to enter into Replacement Operating Contracts which are expected to be awarded covering: -
    - Lot 1 - known as the "Waste and Resource Management Services" (WRMS).
    - Lot 2 - known as the "Household Waste Recycling Centre management services" (HWRCMS).
    - Lot 3 - known as the "Biowaste Management Services" (BMS).

**AND**

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

## **1. DEFINITIONS**

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

<b>“2019/20 Base Financial Model”</b>	This is a cost allocation model developed by the WDA and made available to WCA Treasurers, to support the levy allocation process. The model contains commercially sensitive information and is not therefore part of this Agreement
<b>“Administrative Area”</b>	The administrative area(s) of the Parties at the date of this Agreement
<b>“Agreement”</b>	This agreement and the Schedules hereto
<b>“Best Value”</b>	The obligation continuously to improve both the quality and cost of the collection of Residual Waste and Recycling pursuant to the provision of the Local Government Act 1999
<b>“Best Value Duty”</b>	The duty of continuous improvement in relation to, inter alia, the collection of Residual Waste and Recycling imposed on WCAs by Section 3 (1) of the Local Government Act 1999
<b>“Bulky Waste”</b>	District collected waste that by its nature will not fit in the usual residual waste receptacles (such as large items of furniture etc.), often referred to as Bulky Waste
<b>“Change”</b>	Any change agreed in accordance with clauses 6 (WCA Best Value) or 7 (Change) and Schedule 4 (Change Control Procedures)
<b>“Change in Law”</b>	The coming into effect, after the date of this Agreement, of:- <ul style="list-style-type: none"><li>(a) Legislation, other than any Legislation which on the date of this Agreement has been published<ul style="list-style-type: none"><li>(i) in a draft Bill as part of a Government Departmental Consultation Paper;</li><li>(ii) in a Bill;</li><li>(iii) in a draft statutory instrument;</li><li>(iv) as a proposal in the official Journal of the European Union;</li></ul></li><li>(b) any Guidance; or</li><li>(c) any applicable judgement of a relevant court of law which establishes or changes a binding</li></ul>

	precedent
<b>“Commencement Date”</b>	1 <sup>st</sup> April 2018
<b>“Comingled Waste”</b>	Dry recycling that is usually collected as mixed materials by WCA; initially comprising cans, plastic bottles, and glass
<b>“Delivery Points”</b>	The delivery points for waste to be deposited by type to be agreed by the WCAs on an annual basis as provided for by the process set out in Schedule 2 (Facilities) or such other delivery points as the Parties shall agree.
<b>“EIR”</b>	The Environmental Information Regulations 2004
<b>“EPA”</b>	The Environmental Protection Act 1990
<b>“Exceptional Circumstances”</b>	<p>A decision to be made by the GMCA Treasurer to exercise his/her discretion in circumstances that are outside the direct decision making control of the WCAs under which Recycling Minimum Performance Level is triggered.</p> <p>In these Exceptional Circumstances the GMCA Treasurer shall apply a tonnage adjustment rate that is at the LAM Variable costs, rather than the total cost rate.</p>
<b>“Expiry Date”</b>	Subject to any earlier termination of this Agreement the expiry date shall be 31 <sup>st</sup> March 2028, and “Expiry” shall be construed accordingly
<b>“Facility”</b>	Each and any facility for the reception of Waste from WCAs including the Delivery Points provided and/or operated or to be provided under the VC or the Replacement Operating Contracts with all supporting infrastructure and equipment
<b>“FOIA”</b>	The Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time-to-time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act
<b>“GMCA”</b>	Greater Manchester Combined Authority
<b>“HWRC”</b>	Household Waste Recycling Centre
<b>“IVC”</b>	In-vessel Composting Facility
<b>“LAM fixed costs”</b>	<p>The LAM model costs which are not expected to vary by volumes of tonnages processed, and are by definition mostly fixed by their nature. The 2019/20 Base Financial Model applied the following elements as fixed:</p> <ul style="list-style-type: none"> <li>• Finance charges, in respect of the TPSCo and VLGCM Compensation Sum;</li> <li>• Facility modification financing costs;</li> <li>• Other Financing costs (including former GMCDF);</li> </ul>

	<ul style="list-style-type: none"> <li>• National Non Domestic Rates (NNDR); and</li> <li>• Insurance</li> </ul>
<b>“LAM variable costs”</b>	The LAM model costs which are expected to vary by volumes of tonnages processed. The 2019/20 Base Financial Model applied the following elements as variable: <ul style="list-style-type: none"> <li>• Replacement Operating Contracts;</li> <li>• Runcorn RVC; and</li> <li>• landfill costs</li> </ul>
<b>“Legislation”</b>	Any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom
<b>“Levy”</b>	The charge to the WCAs in accordance with Schedule 3
<b>“Levy Allocation Model (LAM)”</b>	A financial model that is used to allocate cost between fixed, variable and WDA own costs as set out Schedule 3
<b>“Levy Requirement”</b>	The annual budget requirement, less any contributions for reserves, that the WDA needs to raise from WCA by the Levy to produce a balanced budget.
<b>“MBT”</b>	Mechanical and Biological Treatment Facility, which is expected to be utilised for the financial year 2018/19 only
<b>“MT”</b>	Mechanical Treatment Facility, which is expected to operate from 2019/20 onwards
<b>“Parties”</b>	The WDA and the WCAs, and “Party” shall mean any of them
<b>“Partnering Ethos”</b>	The aspirational aims set out at clause 3.2
<b>“Performance Deductions”</b>	As defined in the VC and the Replacement Operating Contracts
<b>“Performance Standards”</b>	The criteria set out in the VC and the Replacement Operating Contracts as agreed or amended from time-to-time
<b>“Planned Maintenance”</b>	Planned maintenance by VC and Replacement Operating Contractors at any of the Delivery Points
<b>“Recyclable Materials”</b>	Any materials collected separately or otherwise separated from Residual Waste for the purposes of Recycling (and including materials collected and delivered comingled), including the materials listed below: <ul style="list-style-type: none"> <li>(a) paper and cardboard;</li> <li>(b) plastics;</li> <li>(c) ferrous and non-ferrous metals;</li> </ul>

	<p>(d) textiles;</p> <p>(e) glass;</p> <p>(f) wood;</p> <p>(g) organic kitchen and garden waste;</p> <p>(h) tyres; and</p> <p>(i) waste electrical equipment,</p> <p>or such other materials as shall be agreed in writing between the Parties from time-to-time</p>
<b>“Recycle”</b>	The delivery of Recyclable Materials for Reprocessing (as evidenced by a Defined Audit Trail) but excluding Energy Recovery or Beneficial Use for inclusion in a reprocessing process, and the terms “Recycling” and “Recycled” shall be interpreted accordingly
<b>“Recyclate Performance Adjustment”</b>	Below the Recyclate Minimum Performance level the level of adjustment applied per tonne shall be the total of LAM fixed and LAM variable costs (both expressed in £ per tonne levels)
<b>“Recyclate Base Performance level (RBP)”</b>	<p>This is the actual level of recycling achieved in 2017/18 at an individual district level expressed as a percentage of total waste arisings less trade waste, as set out in the formula below: -</p> $\text{District RBP} = \frac{dg+dc+dp}{dw-dt}$ <p>where;</p> <p>dg = district food and garden waste tonnes</p> <p>dc = district comingled recycling tonnes</p> <p>dp = district pulpables tonnes</p> <p>dw = district total waste arisings tonnes</p> <p>dt = district trade waste</p>
<b>“Recyclate Minimum Performance level”</b>	<p>This is the level by which recycling levels can reduce, below which the Recyclate Performance Adjustment is applied.</p> <p>It is expressed as shown in the formula below:</p> $\text{RBP} - 1\%$
<b>“Replacement Operating Contracts”</b>	<p>Three waste management operating contracts to be let around April 2019 comprising: -</p> <ul style="list-style-type: none"> <li>• Lot 1 - known as the “Waste and Resource Management Services” (WRMS).</li> <li>• Lot 2 - known as the “Household Waste Recycling Centre management services” (HWRCMS).</li> <li>• Lot 3 - known as the “Biowaste Management Services” (BMS).</li> </ul>
<b>“Residual Waste”</b>	All Waste delivered to the WDA that is not recycling, or

	Trade Waste
<b>“Runcorn RVC”</b>	The Residual Value Contract entered into by the Authority and Thermal Power Station (Runcorn) Limited (TPSCo) for the end disposal in a combined heat and power plant by thermal means of the refuse derived fuel produced from residual waste.
<b>“Service Delivery Plans”</b>	The plans in VC and the Replacement Operating Contracts which sets out how the Residual Waste and Recycling services and certain of the standards to which the services must be performed in respect of the relevant Facilities
<b>“Smoothing Factor”</b>	An adjustment to the 2018/19 Levy only to reflect the adjustments caused by methodology changes from the 2017/18 Inter Authority Agreement (IAA) basis, and the 2019/20 LAMA, as set out in Schedule 3, para. 9
<b>“Trade Waste”</b>	Waste of similar composition to Residual Waste which is collected from commercial and office premises for or by the Districts and is treated in accordance with Schedule 3, para. 6
<b>“TRF”</b>	The Thermal Recovery Facility located at Raikes Lane, Bolton
<b>“Transport Levy Base”</b>	The mid-year 2016 population base, as applied to the 2018/19 levy year.
<b>“TLS”</b>	Transfer Loading Station
<b>“Unavailable/Un-availability”</b>	That a Delivery Point is for a period of time or permanently unavailable for the reception of Residual Waste and Recycling, as further defined in VC and the Replacement Operating Contracts
<b>“Waste”</b>	The types of waste described in Schedule 1 (WCA Forecast) to be delivered by the WCAs to the WDA pursuant to this Agreement and other provisions relating thereto
<b>“WCA Collection Contractor”</b>	Any collection contractor engaged by a WCA to collect Contract Waste
<b>“WCA Forecast”</b>	<p>The forecast, made by each WCA, of all Waste arising, for a five year forward period that takes account of expected increase in housing and population, and which is set out at Schedule 1 (WCA Forecast).</p> <p>Each district will prepare at least two forecasts annually, which will be subject to scrutiny by the WDA. Those forecasts will be required each year in: -</p> <ul style="list-style-type: none"> <li>• September - to complement the initial budget forecast and inform the initial allocation of levy at district level; and</li> <li>• December - which will be used as the basis of setting the annual Levy at a district level</li> </ul>
<b>“WCA Operations”</b>	The methods of operation from time-to-time of each

	WCA in collecting and delivering its Waste to Delivery Points
“WDA”	The Greater Manchester Waste Disposal Authority
“WET Act”	The Waste and Emissions Trading Act 2003

## **2. COMMENCEMENT AND DURATION**

This Agreement will commence on the Commencement Date and continue in full force and effect until the earlier of:-

- 2.1 the Expiry Date; or
- 2.2 earlier if all of the WCAs and the WDA agree to amend or terminate this Agreement.

## **3. PARTNERING ETHOS**

- 3.1 The Parties will work in good faith and in accordance with the Partnering Ethos.
- 3.2 Partnering Ethos shall mean that each party shall:-
  - 3.2.1 act reasonably and co-operatively with the other Parties;
  - 3.2.2 provide information to each other which they consider (acting reasonably) to be relevant relating to waste collection and waste disposal;
  - 3.2.3 use reasonable endeavours to mitigate any losses arising from a Party’s failure under this Agreement and to reduce the detrimental impact on the other Parties (or the council tax payers of any one of them) of any failure to carry out its obligations under this Agreement;
  - 3.2.4 use reasonable endeavours working together and in co-operation with VC and the Replacement Operating Contractors, to minimise waste, to educate the public and the commercial sector about recycling schemes and why their participation in these schemes is crucial, and to ensure that as much Waste as possible is (in order of priority) reduced, re-used, recycled or recovered; and
  - 3.2.5 without prejudice to the express rights, remedies and obligations of the WCAs under this Agreement and Legislation

the WCAs shall (using reasonable endeavours) not knowingly do anything under their reasonable control which would put the WDA in material breach of VC and the Replacement Operating Contracts.

#### **4. PRINCIPAL OBLIGATIONS OF THE WDA**

- 4.1 The WDA will discharge its statutory duties and contractual obligations to the WCAs (to receive and dispose of Waste at the Delivery Points) through VC and the Replacement Operating Contracts referred to in the Recitals.
- 4.2 The WDA will apportion the costs incurred in relation to these obligations pursuant to Schedule 3 (Levy Allocation to WCAs Methodology).
- 4.3 Where an act or omission of the WDA or any relevant Contractor of the WDA, including a failure of VC and the Replacement Operating Contractors to achieve any of the Performance Standards, causes any loss to one or more WCAs, the WDA will use its best endeavours to pursue any appropriate remedies available to it including the recovery of Performance Deductions under the VC and Replacement Operating Contracts referred to in the Recitals and pay such monies to the affected WCA. Where more than one WCA has suffered the same performance failure the payment of any compensation or the Performance Deduction shall be shared between the affected WCAs pro-rata based upon the amount of losses incurred by each WCA arising out of the performance failure. The payment shall be made to WCAs by the WDA through the LAMA in the month following the month in which the Performance Standard was not achieved.
- 4.4 Any money compensation obtained or payable by the WDA pursuant to clause 4.3 will be returned to the WCAs in appropriate proportions through the LAM.
- 4.5 Subject to clauses 4.7 the WDA will use its reasonable endeavours to notify a WCA of any changes within the VC and the Replacement Operating Contracts set out in the Recitals which might be of relevance to it or affect its obligations flowing from that contract or this Agreement.
- 4.6 The WDA shall use its reasonable endeavours to ensure that the VC and the Replacement Operating Contractors achieves the Performance Standards and shall ensure that each WCA is made aware of the Performance Standards and of the current Service Delivery Plans and, where relevant, is consulted about them.

- 4.7 The WDA shall agree the basis for the new contractual arrangements with the Replacement Operating Contractors and the WCAs and once agreed shall use its best endeavours to ensure that any material change to the Replacement Operating Contracts shall be agreed with the WCAs in advance and shall use its best endeavours to mitigate any impact on the WCAs

## **5. PRINCIPAL OBLIGATIONS OF THE WCAs**

- 5.1 Each WCA will deliver or cause to be delivered all Waste to the Delivery Points for that WCA set out in Schedule 2 (Facilities).
- 5.2 Without prejudice to clauses 6 (WCA Best Value) and 7 (Change to the VC and the Replacement Operating Contracts), each WCA shall commit Residual Waste and Recycling (to the extent set out in Schedules 1 & 2) to the WDA.
- 5.3 If any act or omission of a WCA causes loss to the WDA (including, without limitation, through entitling the VC or the Replacement Operating Contractors of the WDA to increase its charges or seek any other remedy from the WDA) or to any other WCA, then that WCA will bear the cost of the relevant losses, so that they do not fall equally, through the LAM, on those WCAs which were not at fault.
- 5.4 The WCAs will pay the WDA for the waste disposal services it provides to the WCAs pursuant to the Levy Regulations as defined in Schedule 3 in accordance with the principles set out in Schedule 3 (Levy Allocation to WCAs Methodology).
- 5.5 Prior to the start of the initial WCA Forecast projections (annually in September) the WDA will facilitate the production of guidance on the impact of population and housing growth on potential levels of waste arisings. Each WCA shall, in preparing the WCA Forecast for its Administrative Area, take account of those expected impacts. The WDA will act as a 'critical friend' to challenge the WCA Forecasts produced, and seek explanations that it deems appropriate. Comments by the WDA will be given due consideration by the WCA and if no changes are proposed the WCA will be required to supply a written explanation of why changes have not been made to the WCA Forecast. The WCA Forecast shall be provided annually and will cover a 5-year rolling period, or other shorter period as the WDA deems appropriate.
- 5.6 Nothing contained in this Agreement and no consent or approval given by any party to this Agreement shall prejudice restrict interfere with or otherwise affect any of the statutory or other rights powers or obligations and duties for the time being vested in that party or the performance by that party of any such obligations

or duties or the means by which that party shall in its absolute discretion exercise its respective rights or powers or fulfil or discharge any such obligations or duties.

## **6. WCAs' BEST VALUE DUTY**

- 6.1 The WDA acknowledges that WCAs are subject to the Best Value Duty and it agrees to assist WCAs in discharging the Best Value Duty in relation to the continuous improvement in the delivery of their waste collection services.
- 6.2 The WDA shall comply with requests for information, data or other assistance made by WCAs in pursuance of the Best Value Duty.

## **7. CHANGE TO VC AND THE REPLACEMENT OPERATING CONTRACTS**

- 7.1 WCAs may request a change to the VC and the Replacement Operating Contracts in accordance with the provisions of Schedule 4 (Change Control Procedures).

## **8. EXIT AND ENTRY ARRANGEMENTS**

- 8.1 Expiry and Termination
  - 8.1.1 Not before 1<sup>st</sup> April 2025 the Parties shall meet to discuss and, all acting reasonably and in good faith, determine the arrangements for the disposal of waste after the expiry of the Agreement and the Replacement Operating Contracts.
- 8.2 New Entrant
  - 8.2.1 If at any time during the term of this Agreement, any third party wishes to utilise any part of the Replacement Operating Contracts, the Parties will meet to discuss and, acting reasonably and in good faith, determine whether agreement should be given to that third party utilising the Replacement Operating Contracts and, if so, the terms of that agreement with the intention that the WCAs are in no worse position as a result of the third party's use, and that such third party is not put in any better position than the WCAs.

## **9. NO WORSE/NO BETTER**

- 9.1 Any reference in clause 8 to leaving the WCAs in a “no worse position” shall be construed by reference to the WCAs:-
- 9.1.1 rights, duties and liabilities under or arising pursuant to performance of this Agreement; and
  - 9.1.2 their ability to perform their obligations and exercise their rights under this Agreement, so as to ensure that:
  - 9.1.3 each WCA is left in a position which is no worse in relation to its financial position under this Agreement and its operating methods for the collection and delivery of Waste had the third party not utilised the Replacement Operating Contracts; and
  - 9.1.4 the ability of the WCAs to comply with this Agreement is not adversely affected as a consequence of that utilisation.
- 9.2 Any reference in clause 8 to putting the third party in “any better position than the WCAs” shall be construed by reference to the WCAs’ rights and financial position under this Agreement.

## **10. FREEDOM OF INFORMATION**

- 10.1 Each Party acknowledges that each of the other Parties is subject to the requirements of the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the General Data Protection Regulation Data Protection Act 2018 and shall assist and co-operate with the other Parties to comply with these information disclosure requirements.

## **11. PRIVACY**

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

## **12. NO AGENCY**

- 12.1 None of the parties shall hold itself out as being the servant or agent of any other Party, otherwise than in circumstances expressly permitted by this Agreement.

12.2 None of the parties shall hold itself out as being authorised to enter into any contract on behalf of any other Party or in any other way to bind any other Party to the performance, variation, release or discharge of any obligation.

12.3 No WCA shall in any circumstances hold itself out as having the power to make, vary, discharge or waive any bye-law or any regulation of any kind relating to the disposal of Waste.

### **13. NO PARTNERSHIP**

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

### **14. ENTIRE AGREEMENT**

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

14.2 Each of the Parties acknowledges that:-

14.2.1 it does not enter into this Agreement on the basis of and does not rely, and has never relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made and agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

14.2.2 this clause 14 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

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

- 15.1 This Agreement shall be governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

## SCHEDULE 1

GMWDA						
Summary of Inter-Authority Agreement Tonnages - September 2017						
		2017/18	2018/19	2019/20	2020/21	2021/22
<b>BOLTON</b>	Residual	45,433	45,659	45,856	46,053	46,251
	Pulpables	11,279	11,331	11,376	11,420	11,465
	Dry recyclables (excl. pulpables)	13,090	13,160	13,220	13,279	13,339
	In-Vessel Composting (IVC)	20,182	20,305	20,409	20,514	20,618
	Trade waste	4,854	4,878	4,903	4,927	4,952
	<b>TOTAL</b>	<b>94,838</b>	<b>95,333</b>	<b>95,764</b>	<b>96,193</b>	<b>96,625</b>
<b>BURY</b>	Residual	28,987	29,132	29,278	29,424	29,571
	Pulpables	7,815	7,854	7,893	7,933	7,972
	Dry recyclables (excl. pulpables)	9,291	9,337	9,384	9,431	9,478
	In-Vessel Composting (IVC)	17,961	18,051	18,141	18,232	18,323
	Trade waste	4,790	4,814	4,838	4,862	4,887
	<b>TOTAL</b>	<b>68,844</b>	<b>69,188</b>	<b>69,534</b>	<b>69,882</b>	<b>70,231</b>
<b>MANCHESTER</b>	Residual	70,087	70,087	70,087	70,087	70,087
	Pulpables	14,598	14,598	14,598	14,598	14,598
	Dry recyclables (excl. pulpables)	18,537	18,722	18,910	19,099	19,290
	In-Vessel Composting (IVC)	30,074	30,074	30,074	30,074	30,074
	Trade waste	0	0	0	0	0
	<b>TOTAL</b>	<b>133,296</b>	<b>133,481</b>	<b>133,669</b>	<b>133,858</b>	<b>134,049</b>
<b>OLDHAM</b>	Residual	41,000	41,200	41,400	41,600	41,800
	Pulpables	7,600	7,500	7,400	7,300	7,200
	Dry recyclables (excl. pulpables)	9,150	9,200	9,250	9,300	9,350
	In-Vessel Composting (IVC)	15,300	15,375	15,450	15,525	15,600
	Trade waste	8,800	8,900	9,000	9,100	9,200
	<b>TOTAL</b>	<b>81,850</b>	<b>82,175</b>	<b>82,500</b>	<b>82,825</b>	<b>83,150</b>
<b>ROCHDALE</b>	Residual	35,731	35,874	36,053	36,224	36,415
	Pulpables	6,964	6,999	7,034	7,069	7,104
	Dry recyclables (excl. pulpables)	8,695	8,738	8,782	8,826	8,870
	In-Vessel Composting (IVC)	18,692	18,785	18,879	18,974	19,069
	Trade waste	0	0	0	0	0
	<b>TOTAL</b>	<b>70,082</b>	<b>70,396</b>	<b>70,748</b>	<b>71,093</b>	<b>71,458</b>
<b>SALFORD</b>	Residual	47,425	47,175	47,675	48,175	48,675
	Pulpables	9,360	9,560	9,660	9,760	9,860
	Dry recyclables (excl. pulpables)	10,450	10,500	10,600	10,700	10,800
	In-Vessel Composting (IVC)	17,250	17,400	17,500	17,600	17,700
	Trade waste	9,150	9,250	9,250	9,250	9,250
	<b>TOTAL</b>	<b>93,635</b>	<b>93,885</b>	<b>94,685</b>	<b>95,485</b>	<b>96,285</b>
<b>STOCKPORT</b>	Residual	42,000	42,170	42,330	42,500	42,660
	Pulpables	13,115	13,167	13,218	13,270	13,322
	Dry recyclables (excl. pulpables)	13,156	13,208	13,260	13,311	13,363
	In-Vessel Composting (IVC)	36,540	36,684	36,828	36,972	37,115
	Trade waste	0	0	0	0	0
	<b>TOTAL</b>	<b>104,811</b>	<b>105,229</b>	<b>105,636</b>	<b>106,053</b>	<b>106,460</b>
<b>TAMESIDE</b>	Residual	30,949	31,104	31,259	31,416	31,573
	Pulpables	8,398	8,440	8,482	8,525	8,567
	Dry recyclables (excl. pulpables)	12,872	12,936	13,001	13,066	13,131
	In-Vessel Composting (IVC)	18,920	19,015	19,110	19,205	19,301
	Trade waste	6,759	6,793	6,827	6,861	6,895
	<b>TOTAL</b>	<b>77,898</b>	<b>78,288</b>	<b>78,679</b>	<b>79,073</b>	<b>79,467</b>
<b>TRAFFORD</b>	Residual	32,237	32,479	32,804	33,132	33,463
	Pulpables	9,831	9,800	9,800	9,800	9,800
	Dry recyclables (excl. pulpables)	10,623	10,676	10,729	10,783	10,837
	In-Vessel Composting (IVC)	26,505	25,525	25,653	25,781	25,910
	Trade waste	7,000	7,070	7,141	7,212	7,284
	<b>TOTAL</b>	<b>86,196</b>	<b>85,550</b>	<b>86,127</b>	<b>86,708</b>	<b>87,294</b>
<b>WCA TOTAL</b>	Residual	373,849	374,880	376,742	378,611	380,495
	Pulpables	88,960	89,249	89,461	89,675	89,888
	Dry recyclables (excl. pulpables)	105,864	106,477	107,136	107,795	108,458
	In-Vessel Composting (IVC)	201,424	201,214	202,044	202,877	203,710
	Trade waste	41,353	41,705	41,959	42,212	42,468
	<b>TOTAL</b>	<b>811,450</b>	<b>813,525</b>	<b>817,342</b>	<b>821,170</b>	<b>825,019</b>
<b>HWRCs</b>	Residual	158,506	162,425	166,441	170,556	174,773
	Dry recyclables	80,818	82,816	84,863	86,961	89,111
	Windrow	17,495	17,928	18,371	18,825	19,291
	Rubble	48,394	49,590	50,816	52,073	53,360
	<b>TOTAL</b>	<b>305,212</b>	<b>312,759</b>	<b>320,491</b>	<b>328,415</b>	<b>336,535</b>
	<b>TOTAL CONTRACT WASTE</b>		<b>1,116,662</b>	<b>1,126,284</b>	<b>1,137,833</b>	<b>1,149,585</b>

## SCHEDULE 2

### Facilities

The Facilities set out at **clause 5.1** will be agreed with each WCA on an annual basis and will cover by waste stream type (e.g. pulpables, Comingled, Food and Green Waste, and Residual (including Trade and Bulky Waste)), in a format similar to the template table set out below. Any changes to these Delivery Points, whether temporary or permanent will be dealt with in accordance with the Change Control Procedure (Schedule 4). For the avoidance of doubt 'tipping away' payments will be applied in the event of temporary changes necessitated by unavailability of named facilities.

	<b>Delivery Point</b>
<b>Pulpables</b>	
<b>Comingled</b>	
<b>Kitchen &amp; Garden</b>	
<b>Residual (including Bulky and Trade Waste)</b>	

Notes:

- **Excludes** clinical waste, which is directed to third party sites for disposal.
- **Excludes** hazardous waste, which is directed to WDA specific sites licensed accordingly.
- **'Third Party - WDA'**: This waste stream is delivered by the WCA to an agreed WDA third party site. Disposal is committed to the WDA VC or Replacement Operating Contracts at the Commencement Date.

## SCHEDULE 3

### LEVY ALLOCATION METHODOLOGY

1. Payment by the WCAs to the WDA for the waste disposal services received, and apportionment of the Levy under the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 (“the Levy Regulations”) will be established in accordance with the principles set out in this Schedule 3. Therefore, the levy allocation mechanism set out in this Schedule represents an agreed basis for apportioning the Levy under Regulation 4 (1) (a) of the Levy Regulations.
  
2. Under the proposed post April 2019 Replacement Operating Contracts the WDA is expected to have costs which comprise:
  - a) A Fixed Cost element, such as financing costs (LAM Fixed Costs);
  - b) A Variable Cost element, such as the Replacement Operating Contracts (LAM Variable Costs). The variable element is directly linked to the expected tonnages processed via the Facilities, as set out in Schedule 1; and
  - c) The WDA’s own direct costs.

Collectively these costs will be used to determine annual budget requirements, which after application of any reserves, generates a Levy Requirement.

3. The following table sets out the key design characteristics, and reasons for their inclusion (based on expected 2019/20 costs) using the volumes of Residual Waste and Recycling arisings set out in Schedule 1 in apportioning the Levy.

Key design characteristics	Reasons for their inclusion
A. District Collected Waste (c £136m, 78.6% of net costs)	
<p>1. Retain 4 waste stream approach, based upon:-</p> <ul style="list-style-type: none"> <li>i. Comingled/pulpables (as one);</li> <li>ii. Organics (food and Garden);</li> <li>iii. Trade Waste, and</li> <li>iv. Residual Waste.</li> </ul> <p>2. Retain year-end adjustments for tonnages (introduced from 2017/18). Adjustments to be at a pre-agreed annual rate, reflecting LAM Variable Costs of processing (subject to items A3 below).</p> <p>3. Allocate costs on the basis of an Levy Apportionment Model (LAM) which comprises:-</p> <ul style="list-style-type: none"> <li>i. LAM Fixed Costs element (i.e. are related to costs which don't vary, such as debt charges). These will be allocated to Districts based on adjusted<sup>1</sup> 2017/18 actual tonnages, and will be reviewed and reset after 5 years for the 2022/23 financial year.</li> <li>ii. LAM Variable Costs - which reflect marginal processing cost.</li> </ul>	<p>Reflects current WCA collection working practices and ensures costs/environmental benefits from improvements are retained.</p> <p>Ensures a direct link to performance and encourages direct link to benefits of improving recycling performance. Variable costs are used to match any cost/reductions at a WCA level with broadly corresponding changes in costs paid to the Replacement Operating Contractors.</p>

<sup>1</sup> An adjustment may be made to Salford City and Trafford Council figures (only) to reflect the part year impact of reduced waste capacity roll out and potential impact of charging for Garden Waste (respectively).

	<p>4. For WCAs whose recycling falls below the Recycling Minimum Performance Level they will be required to make an additional levy contribution calculated by:</p> <ul style="list-style-type: none"> <li>i. expected total Recycling tonnes arisings as per 2017/18 actuals (total Recycling calculated as dc+dp+dg)</li> <li>ii. less actual total Recycling tonnes arisings in year</li> <li>iii. equals additional tonnes of waste to be charged</li> <li>iv. cost allocation additional sum is additional tonnes of waste multiplied by LAM Fixed Costs per tonne for Residual Waste.</li> </ul> <p>5. Common assumptions to be used in tonnage estimates, as per schedule 1.</p>	<p>Ensures that one District can't adversely impact others by reducing its recycling performance.</p> <p>In case of Exceptional Circumstances this additional levy contribution can be over-ridden by the GMCA Treasurer.</p> <p>Ensures that all future year increases are based upon common factors and also ensure re-procurement facilities/capacity are correctly sized.</p>
<p><b>B. Household Waste Recycling Centres (c. £31m, 17.9% of net costs)</b></p>		
	<p>Cost allocation to be based upon:</p> <ul style="list-style-type: none"> <li>i. 50% Council Tax Base (Band D equivalent)</li> <li>ii. 50% Car Ownership (2011 Office of National Statistics census)</li> </ul> <p>but subject to a survey of users (in 2018/19) to establish the WCA in which they are resident.</p>	<p>Move is away from 100% based on Council Tax Base (Band D equivalent), to better reflect that usage will be linked to access by cars.</p> <p>Validation of these 'proxy' designed to reflect usage measures, to be undertaken by conducting a survey of HWRC site users in the 2018/19 financial year (as part of a Waste Composition Analysis work stream).</p> <p>Cost allocation factors to be reviewed and amended, as needed, for future years LAM.</p>
<p><b>C: WDA Own costs (c. £5m, 2.9% of net costs) - including direct costs (such as salaries/running costs)</b></p>		
	<p>Equal share to each WCA</p>	<p>Costs don't vary much by activity, and are thus linked to an 11.1% each WCA allocation basis.</p>
<p><b>D: Non-Key Services (c. £1m, 0.6% of net costs) - this comprises specialised waste services, such as asbestos, plasterboard, clinical waste, dog waste, etc.</b></p>		

	Waste arisings	No change from the existing basis. It is intended that the majority of 'regular' waste will in future be included in the Replacement Operating Contracts and thus the value of this element of the LAM will fall further.
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4. As soon as practical after the year end an adjustment will be determined by the WDA to vary district Levy allocations to reflect variations in actual costs, income from recyclates and actual tonnages delivered (compared to WCA Forecasts). The WDA will aim to provide the year end Levy adjustment information by the third week of May, at the latest.
5. As part of the annual budget and levy process the WDA will determine and publish the LAM Variable Cost rates which will be made available to the WCA Treasurers. Given the commercial sensitivity of that information it will not be published in an open format, but will be part of the closed budget and levy report, which will be provided on or before the Statutory latest Levy fixing date of 15<sup>th</sup> February prior to the commencement of each financial year. The 2019/20 Base Financial Model results for those LAM Variable Costs have already been shared.
6. For the WCA declarations for Trade Waste (offices, shops, traders etc.) the WDA will set an annual rate per tonne in accordance with the 2013/14 rate inflated in accordance with the RPIx. An adjustment to the Trade Waste element of the Levy will be carried out as part of the financial year end reconciliation process and any difference between actual WCA tonnages and WCA Forecasts will be made at the pre-agreed per tonne rate.

A review of the Trade Waste area has been commissioned, for completion in 2018/19, and the recommendations from that will be used to inform a review of this paragraph of the LAMA for 2019/20

**2018/19 only Transitional Arrangements.**

7. The 2017/18 WDA Levy included an additional Levy sum of £77.8m to provide headroom and facilitate the restructuring of the former Waste PFI Contract. That additional Levy sum was allocated to individual WCAs on the basis of the mid 2015 population figures as set out below: -

	<b>Mid 2015 Population</b>
Bolton	281,619
Bury	187,884
Manchester	530,292
Oldham	230,823
Rochdale	214,195

Salford	245,614
Stockport	288,733
Tameside	221,692
Trafford	233,288
	<b>2,434,140</b>

8. The additional Levy sum will be fully reimbursed to WCAs in 2018/19 but based on the mid 2016 population numbers. To ensure the impact of the roll forward of population numbers is corrected and adjustment may need to be made, either through the inclusion of an additional factor in the 2018/19 LAMA, or via the GMCA Treasurer's adjustments on the AGMA budget requirements. The purpose of the adjustment is to ensure that the impact at a district level overall is £nil.
9. A Smoothing Factor will be included for 2018/19 only to cushion the impact of methodology changes. That is calculated by taking 'half the difference' of the impact of methodology changes between the 2017/18 IAA basis and 2019/20 full LAMA basis (i.e. average of 2017/18 revised estimate and 2019/20 estimates). That adjustment will be subject to a further change in May 2019 to reflect actual tonnages at the LAM Variable Cost Tonnage rate.

## SCHEDULE 4

### Change Control Procedures

- A. Change to the VC and the Replacement Operating Contracts and WCA Operations from the operations set out in the agreed Service Delivery Plan will be governed by the procedures set out in this Schedule 4

#### 1. Principles

- 1.1 Where a WCA sees a need for a change to the services provided under the VC and the Replacement Operating Contracts affecting a WCA then a WCA may at any time request a change in accordance with the procedure set out in paragraph 2 below.
- 1.2 The WDA shall not unreasonably withhold its agreement to any change.
- 1.3 The obligations of the Parties shall not be effected until a Change Control Note has been signed by the relevant WCA and sent to the WDA.

#### 2. Procedure

- 2.1 The WCA and the WDA shall discuss changes proposed by the WCA and such discussion shall result in:
  - 2.1.1 a decision not to proceed further; or
  - 2.1.2 a written request for a change by the WCA.
- 2.2 Each Change Control Note shall contain details of the change including, where applicable:
  - 2.2.1 the title of the change;
  - 2.2.2 the originator and the date of the request or recommendation for the change;
  - 2.2.3 the reason for the change;

- 2.2.4 full details of the change including any specifications;
  - 2.2.5 a timetable for implementation, together with any proposals for acceptance of the change;
  - 2.2.6 the impact, if any, of the change on other aspects of the VC and the Replacement Operating Contracts;
  - 2.2.7 the date of expiry of validity of the Change Control Note; and
  - 2.2.8 provision for signature by the WCA/WDA if the change is agreed.
- 2.3 For each Change Control Note submitted to the WDA, the WDA shall, within twenty working days from receipt of the Change Control Note, evaluate the Change Control Note and notify the relevant WCA whether the WDA (acting reasonably) agrees to the change.
- 2.4 A Change Control Note signed by both Parties shall constitute a variation to this Agreement.

B. Amendment to the Agreement

No amendment to or modification of this Agreement (other than an amendment under paragraph A of this Schedule) shall be valid or binding on any Party unless it is made in writing, refers expressly to this Agreement and is executed by all of the Parties.