

DATED

2014

- (1) CONWY COUNTY BOROUGH COUNCIL
- (2) DENBIGHSHIRE COUNTY COUNCIL
- (3) FLINTSHIRE COUNTY COUNCIL
- (4) GWYNEDD COUNCIL
- (5) ISLE OF ANGLESEY COUNTY COUNCIL

**SECOND INTER-AUTHORITY AGREEMENT
in relation to the joint procurement of
a Residual Waste Treatment Facility pursuant to
the North Wales Residual Waste Partnership Agreement**

DRAFT

The Draft IAA is subject to a cross referencing and definitions check. The Agreement will need to be further monitored and updated in line with the final agreed form Project Agreement.

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BETWEEN

- (1) **CONWY COUNTY BOROUGH COUNCIL** of Bodlondeb, Conwy, North Wales, LL32 8DU ("**Conwy Council**");
- (2) **DENBIGHSHIRE COUNTY COUNCIL** of Environmental Services, Kinmel Park Depot, Bodelwyddan, Denbighshire, LL18 5UX ("**Denbighshire Council**");
- (3) **FLINTSHIRE COUNTY COUNCIL** of County Hall, Mold, Flintshire, CH7 6NB ("**Flintshire Council**");
- (4) **GWYNEDD COUNCIL** of Council Offices, Shirehall Street, Caernarfon, Gwynedd, LL55 1SH ("**Gwynedd Council**"); and
- (5) **ISLE OF ANGLESEY COUNTY COUNCIL** of Council Offices, Llangefni, Anglesey, LL77 7TW ("**Isle of Anglesey Council**")

(together referred to as the "**Councils**" and individually as a "**Council**")

BACKGROUND

- (A) The Councils have agreed to work together in a partnering relationship to jointly procure a residual waste treatment facility and deliver residual waste treatment services (the "**Solution**") in furtherance of the objectives of the North Wales Residual Waste Treatment Partnership (the "**Partnership**") and the project known as the North Wales Residual Waste Treatment Project (the "**Project**").
- (B) The Councils (pursuant to the powers conferred on them by Sections 51 and 55 of The Environmental Protection Act 1990, Section 19 of the Local Government Act 2000 and all other enabling powers) entered into the first Inter-Authority Agreement on 24 June 2010 (the "**First Inter-Authority Agreement**") to formalise their respective roles and responsibilities in relation to the joint working arrangements for the procurement of the Project and the appointment of Flintshire Council as Lead Council in carrying out the procurement in accordance with the terms of the Outline Business Case and the common decision made by each Council to approve the affordability envelope for the Project and commence the procurement.
- (C) The Councils acknowledge that the First Inter-Authority Agreement regulated the procurement of the Project up to Financial Close. Pursuant to the First Inter-Authority Agreement, the Councils have agreed to enter into this second Inter-Authority Agreement (the "**Agreement**") which will set out the respective rights and obligations of each Council in relation to the implementation and operational phases of the Project.
- (D) The Councils have agreed that the Lead Council shall enter into a contract (the "**Project Agreement**") with [Name of Contractor]¹, (Company No. []), a private sector contractor, of [] (the "**Contractor**") involving the design, construction, installation, commissioning, financing, operation and maintenance of the Facilities and the provision of the Services (including the Interim Services and the Commissioning Services).
- (E) Following the successful entry into the Project Agreement, the Councils have agreed to enter into this Agreement to formalise their respective roles and responsibilities in relation to the joint working arrangements for the operational phase of the Project following financial close and the appointment of Flintshire Council as Lead Council.

¹ Details to be included when confirmed in respect of the Project Agreement.

- (F) The Councils acknowledge that this Agreement sets out the basis on which risks and liabilities are apportioned between the Councils in relation to the implementation and operational phases of the Project. Such agreement is intended to reflect the terms of the Project Agreement.
- (G) The Councils agree to work together in the implementation and contract management of the Project Agreement and acknowledge that all decisions relating to the Project and the operation of the Project Agreement shall be made in accordance with the terms of this Agreement and shall be implemented by the Lead Council under the Project Agreement for and on behalf of itself and the other Councils.
- (H) The Councils wish to enter into this Agreement and implement the Project pursuant to the powers conferred on them by sections 51 and 55 of the Environmental Protection Act 1990, sections 19 and 20 of the Local Government Act 2000, and all other enabling powers.
- (I) Under Section 113 of the Act the Councils may enter into an agreement with each other for the placing at their disposal the services of officers employed by them.
- (J) By virtue of Section 111 of the Act, each of the Councils has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- (K) By virtue of Section 3 of the Local Government Act 1999 substituted by the Local Government and Public Involvement Health Act 2007, each of the Councils has a duty to make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness.
- (L) By virtue of Section 2 of the Local Government Act 2000, each of the Councils has power to do anything that it considers is likely to achieve the promotion or improvement of the economic, social or environmental well-being of its area.
- (M) The Councils have agreed to establish and participate in a joint committee (whose remit is presently limited to the Project but may be extended to cover other activities by agreement) to facilitate the delivery and management of the Project from the date of financial close of the Project when the Project Agreement and supporting documentation is completed.
- (N) The Councils acknowledge that this Agreement shall be certified for the purposes of the Local Government (Contracts) Act 1997.

1. **DEFINITIONS AND INTERPRETATION**

[DN: Definitions to be reviewed and updated.]

1.1 In this Agreement and the Recitals, unless, the context otherwise requires the following terms shall have the meaning given to them below:-

- "**AB Accounts**" has the meaning given in Clause 14 (Accounts)
- "**Accounting Period**" means those periods set out in Schedule 6 (Accounting Periods) as may be amended from time to time in accordance with the terms of this Agreement
- "**Act**" means the Local Government Act 1972
- "**Allocated Site**" means a site (or sites) offered to the Project by a Council;

"Annual Budget"	means the sum set out in Schedule 5 (Annual Budget) which represents the upper limit of the financial threshold calculated by the Project Board for each Council's annual contribution to the necessary funding of the Lead Council to discharge its functions on behalf of all the Councils under this Agreement as managed by the Project Board, notified to the Joint Committee and approved by each Council in respect of this Project (and the Councils acknowledge that the Annual Budget does not include the Unitary Charge payment made under the Project Agreement)
"Business Day"	means any day other than a Saturday or Sunday or a public or bank holiday in England and Wales
"Chair"	means the chair of the Joint Committee (duly appointed pursuant to paragraph 11 of Part 2 of Schedule 2 (Joint Committee Terms of Reference)) or the Project Board (duly appointed pursuant to Clause 8.4 (Project Board) (as the case may be))
"CIWM"	means the Chartered Institute of Wastes Management
"Commencement Date"	means the date of this Agreement
"Confidential Information"	means all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of all or any Council, which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure
"Contract Documents"	means the Project Agreement, the [Collateral Warranties, the Independent Certifier's Appointment and the Parent Company Guarantee, the Haulage Sub-Contract (each as defined in the Project Agreement)] ² and any other document entered into between the Lead Council and the Contractor or an Affiliate of the Contractor in respect of the Project
"Contract Manager"	means the person appointed to manage the Project
"Contract Procedure Rules"	means the Lead Council's contract procedure rules
"Contractor"	Is the term used to define the Contractor in the Project Agreement
"Conwy's Payment Proportion"	has the meaning given in Clause 12 (Payments)
"Core Policies"	means those policies set out at Schedule 13 (Authority's Policies) of the Project Agreement

² List to be reviewed in line with the final solution.

"Cost Sharing Formula"	means, when the Councils are responsible for the cost of any item and payment is due from the Lead Council to the Contractor, that costs shall be shared between each of the Councils in the proportions set out in Part 1 of Schedule 9 (Payment Proportions) (and subsequently reconciled on an annual basis)
"Council Procedure Rules"	means the Lead Council's procedure rules
"Counternotice"	has the meaning given in Clause 2.2.2 (Breaches of this Agreement and Remediation)
"Decision Period"	means the period of [fourteen (14) Business Days] ³ from the date of the Liability Report or such other time as is unanimously agreed by all the Councils
"Project Officer"	has the meaning given in Clause 9 (Project Officers)
"Deductions"	means the deductions imposed by the Lead Council pursuant to Schedule 4 (Payment Mechanism) of the Project Agreement
"Default Interest Rate"	means two per cent (2%) above the base rate of Barclays Bank plc
"Default Notice"	has the meaning given in Clause 2.2.1 (Breaches of this Agreement and Remediation)
"Defaulter"	has the meaning given in Clause 2.3.1 (Termination)
"Denbighshire's Payment Proportion"	has the meaning given in Clause 12.8 (Payments)
"Dispute"	means any difference or dispute between the Councils arising out of or in connection with this Agreement and/or the Project
"DPA"	means the Data Protection Act 1998
"Due Date"	has the meaning given in Clause 12.7 (Payments)
"EIR"	has the meaning given in Clause 19 (Freedom of Information and Environmental Information)
"EU Procurement Rules"	means the Public Contracts Regulations 2006
"Facility"	means the waste management facility (or facilities) procured as the Solution under the Project designed for processing residual waste, waste being defined in the Waste and Emissions Trading Act 2003
"Final Business Case" or "FBC"	means the final business case for the Project, prepared by the Councils and subject to the Council's delegated approval before submission to the Welsh Government for funding to support the Project

³ Time period to be agreed by the Councils.

"FoIA"	has the meaning given in Clause 19 (Freedom of Information and Environmental Information)
"Gwynedd's Payment Proportion"	has the meaning given in Clause 12.9 (Payments)
"Intellectual Property"	means any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them
"IP Material"	means the Intellectual Property in the Material
"Isle of Anglesey's Payment Proportion"	has the meaning given in Clause 12.10 (Payments)
"JC Unresolved Matter"	has the meaning given in Clause 6.3 (Joint Committee)
"Joint Committee"	shall have the meaning given to it in Clause 6.1 (Joint Committee) being the joint board of members of the Councils with delegated power to discharge the functions of the relevant Council as provided for in this Agreement in relation to the Project established under the provisions of Part VI of the Act
"Joint Committee Meeting"	means a meeting of the Joint Committee duly convened in accordance with Clause 6 (Joint Committee)
"Key Facility"	means the key residual waste treatment facility procured as part of the Solution under the Project
"LAS"	means the Landfill Allowance Scheme (LAS) Regulations (Wales) 2004
"LAS Allowances"	means the annual allowances for each local authority pursuant to the LAS
"Lead Council"	means the Council appointed under Clause 4 (Duties of the Lead Council and Other Councils) as the lead administering authority for the Project whose duties are set out in this Agreement
"Lead Finance Officer"	means the person so appointed from time to time by the Lead Council to represent the interests of the Councils in respect of financial matters of the Project and to ensure the provision of regular update reports are provided to the Project Board from time to time and who shall be called the Lead Finance Officer reporting to the Project Section 151 Officer

"Liability Report"

means a report prepared by the Lead Council (or such other Council nominated under Clause 2.3.4(b) (Termination) in the event that the Lead Council is a Defaulter or Clause 16.3 (Withdrawal) in the event that the Lead Council issues the Withdrawal Notice) acting reasonably setting out the financial and resource commitments of the relevant Council under Clause 2.3.4(b) (Termination) upon termination or Clause 16.6 (Withdrawal) upon withdrawal including the items set out in 7 (Liability Report)

"Local Authority"

means a principal council (as defined in section 270 of the Act) or any body of government in Wales established as a successor of a principal council

"Market Value"

means the best price at which the Allocated Site in question might reasonably be expected to have been disposed of unconditionally for cash consideration at the relevant time assuming:-

- (a) a willing seller;
- (b) that prior to the relevant time there has been a reasonable period for the proper marketing of such Allocated Site and for the agreement of price and terms for completion of the disposal of such Allocated Site;
- (c) the state of the market, levels of values and other circumstances are on any earlier assumed date of exchange of contracts the same as at the relevant time;
- (d) the relevant Council has good and marketable title to such Allocated Site;
- (e) all necessary consents for any building or other works at such Allocated Site have been obtained and such Allocated Site can be lawfully used;
- (f) any damage to such Allocated Site caused by any insured risk has been made good;
- (g) that where the Project (or one of the Councils in furtherance of the Project) has made an investment into improving an Allocated Site (whether by obtaining planning permission or other permits or necessary consents, regardless of whether they are used or capable of being used for the Project, or otherwise) to confer an advantage on the value of such Allocated Site compared to its pre-Project value then such enhancement shall be taken into account,

and otherwise taking into account of the actual circumstances as shall exist at the time including the results of any site investigation survey, ground conditions survey or ground contamination survey to identify any pre-existing abnormal issues or contamination,

provided further that for the purposes of calculating valuation to determine whether proposed Allocated Site disposals under the terms of the Act any Council willing to dispose of its land at less than Market Value as established under the RICS Valuation Standards will have regard to the Local Government Act 1972: General Disposal Consent (Wales) 2003

"Material"	means all data, text, graphics, images and other materials or documents created, used or supplied by a Council in connection with this Agreement (unless before the first use or supply, the Council notifies the other Councils that the data, text supplied is not to be covered by this definition)
"Matter Reserved To The Councils"	means those actions, matters and/or functions as defined in Clause 5 (Decision Making)
"Model Procedure"	means the Centre for Dispute Resolution Model Mediation Procedure
"Non-Defaulting Councils"	has the meaning given in Clause 2.3.1 (Termination)
"Notice of Acceptance"	has the meaning given in Clause 2.2.2 (Breaches of this Agreement and Remediation)
"Notice of Dispute"	has the meaning given in Clause 2.2.2 (Breaches of this Agreement and Remediation)
"Performance and Improvement Plan"	means the plan to be prepared and updated as and when necessary by the Contract Manager indicating any anticipated Authority Changes under the Project Agreement, major milestones and activities, and resources required in relation to the Project, to be presented annually to the Project Board in accordance with Clause 10 (Business Plan and Work Programme);
"Personal Data"	means personal data as defined in the DPA
"PB Unresolved Matter"	has the meaning given in Clause 8 (Project Board)
"Project Board"	has the meaning given to it in Clause 8 (Project Board)
"Project Board Meeting"	means a meeting of the Project Board duly convened in accordance with Clause 8 (Project Board)
"Project"	means as defined in Recital (A)

"Project Agreement"	means the contract for the preferred Solution to dispose of the Councils' residual waste to be entered into by the Lead Council (acting on behalf of itself and the Councils) and the Contractor in connection with the Project
"Project Section 151 Officer"	means the person so appointed by the Lead Council (as their officer appointed pursuant to section 151 of the Act) as the officer responsible for the proper administration of the financial affairs under the Project and who shall manage the Lead Finance Officer and collate regular reports on Project accounting matters (provided that for the avoidance of doubt each Council's own officer appointed pursuant to section 151 of the Act shall be entitled to attend Project Board Meetings and Joint Committee Meetings from time to time as non-voting members pursuant to Clauses 8 (Project Board) and 6.18 (Joint Committee) respectively)
"Project Tasks"	means as defined in Clause 4.1 (Duties of the Lead Council and other Councils) being the administrative tasks as set out in Schedule 1 (Project Tasks) as may be amended from time to time by the Councils in accordance with the terms of this Agreement
"Solution"	means as defined in Recital (A)
"Statutory Officer"	means each Council's head of paid service, monitoring officer (both as defined pursuant to the Local Government and Housing Act 1989) and Chief Finance Officer (section 151 officer) as defined in the Act
"Termination Sum"	means any sum payable for Project assets by the Lead Council to the Contractor as compensation on termination caused due to Lead Council default or voluntary termination or relevant discharge terms paid due to the Lead Council acting ultra vires, Contractor default on a no retendering basis (fair market valuation), Contractor default due to breach of the refinancing provisions, force majeure, uninsurability consequences or corrupt gifts and fraud early termination of the Project Agreement
"Vice-Chair"	means the vice-chair of the Joint Committee (duly appointed pursuant to paragraph 10 of Part 2 of Schedule 2 (Joint Committee Terms of Reference)); and
"WG"	means the Welsh Government.

1.2 The principles set out in Clause 1.1 above shall be borne in mind and applied so far as appropriate in the interpretation of this Agreement and in the resolution of any dispute under this Agreement.

1.3 **Interpretation**

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

1.3.1 each gender includes all genders;

- 1.3.2 except as where expressly defined within the Agreement, all words and expressions used throughout this Agreement shall have the same meaning as given under the Project Agreement;
- 1.3.3 the singular includes the plural and vice versa;
- 1.3.4 a reference to any clause, sub-clause, paragraph, Schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
- 1.3.5 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.3.6 any reference to legislation (including subsidiary legislation), determinations and directions shall be construed as a reference to any legislation, determinations, directions and statutory guidance as amended, replaced, consolidated or re-enacted;
- 1.3.7 a reference to a public organisation (to include, for the avoidance of doubt, any Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both of the waste disposal functions and responsibilities of such public organisation;
- 1.3.8 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.3.9 any reference to a requirement for "**consent**" or "**approval**" shall be taken to be the prior written consent or approval of the relevant body or person;
- 1.3.10 the schedule, clause, sub-clause and (where provided) paragraph headings and captions in the body of this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation;
- 1.3.11 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;
- 1.3.12 any reference to the title of an officer or any of the Councils shall include any person holding such office from time to time by the same or any title substituted thereafter or such other officer of the relevant Council as that Council may from time to time appoint to carry out the duties of the officer referred to; and
- 1.3.13 in this Agreement, save where otherwise provided, references to amounts expressed to be "**indexed**" are references to such amounts, multiplied by:

$$\frac{\text{Index}_1}{\text{Index}_2}$$
- 1.3.14 where "**Index₁**" is the value of RPIX most recently published prior to the relevant calculation date and "**Index₂**" is the value of RPIX on [REDACTED].

1.4 Schedules

The Schedules to this Agreement form part of this Agreement. This Agreement and its Schedules shall be read and taken together. In the event of any inconsistency or conflict between these terms and conditions in this Agreement and the contents of any of the Schedules these terms and conditions shall prevail.

2. COMMENCEMENT, DURATION AND TERMINATION

2.1 Duration of Agreement

2.1.1 Subject to Clause 2.1.2 this Agreement shall continue in full force and effect from the Commencement Date until the earlier of the following dates:-

- (a) all the Councils agree in writing to its termination; or
- (b) there is only one (1) remaining Council who has not withdrawn from this Agreement in accordance with Clause 16 (Withdrawal); or
- (c) the date falling six (6) months after the expiry or earlier termination of the Project Agreement.

2.1.2 Notwithstanding the provisions of Clause 2.1.1, Clause 17 (Dispute Resolution) of this Agreement shall continue in respect of any Dispute arising prior to the expiry of this Agreement until the date upon which such Dispute has been finally agreed or determined.

2.1.3 The Councils agree that following the Commencement Date the rights, liabilities and obligations of each Council set out within the First Inter-Authority Agreement shall be superseded by the rights, liabilities and obligations set out in this Agreement.

2.2 Breaches of this Agreement and Remediation

[DN: The process and time limits for dealing with failures to comply with this Agreement should be discussed and agreed between the Councils]

2.2.1 At any time the Chief Executive of any of the Councils (the “**First Council**”) may serve a notice on one of the other Councils (the “**Other Council**”) a notice (the “**Default Notice**”), alleging that the Other Council has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the First Council has or is likely to suffer as a result of the alleged failure.

2.2.2 A Council in receipt of a Default Notice shall have **[ten (10) Business Days]** (or such longer period as agreed between the Parties (acting reasonably)), within which to serve on the Chief Executive of the First Council who served the Default Notice a “**Counternotice**”, setting out in respect of every matter contained in the Default Notice proposals for the remediation of the alleged failure including a proposed timescale in which the remediation will be completed and making good any loss which the First Council has suffered or may suffer as a result of the failure or the reasons why that alleged failure is disputed.

2.2.3 Within **[ten (10) Business Days]** (or such longer period as agreed between the Parties (acting reasonably)) of receipt of a Counternotice, the Chief Executive of the First Council shall send to the Chief Executive of the Other Council a notice (the “**Notice of Acceptance**”) of any proposals contained in the Counternotice in so far as those proposals are accepted by the First Council, and may send a notice (the “**Notice of Dispute**”) of any proposals contained in the Counternotice insofar as those proposals are not accepted and setting out in respect of each proposal which is not accepted by the First Council why it is considered to be unacceptable.

2.2.4 Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the Other Council shall implement that proposal as soon as reasonably practicable.

2.2.5 Where any matter is contained in a Notice of Dispute, it shall fall to be dealt with under the disputes procedure set out in Clause 17 (Dispute Resolution).

2.3 Termination of Participation of a Partner Council or Lead Council

2.3.1 Without prejudice to any other rights or remedies, this Agreement may be terminated in relation to any Council ("**Defaulter**") by the other Councils ("**Non-Defaulting Councils**") acting unanimously in giving written notice to the Defaulter effective on receipt where the Defaulter breaches any of the provisions of this Agreement and in the case of a breach capable of remedy fails to remedy the same within [sixty (60) Business Days] (or such other period as agreed by the Councils) of being notified of each breach in writing by the Non-Defaulting Councils and being required to remedy the same.

2.3.2 The Councils acknowledge that a decision to terminate the participation of a Council shall be treated as a Matter Reserved To The Councils.

2.3.3 If this Agreement is terminated in accordance with Clause 2.1 (Duration of Agreement), Clause 2.3.1 (Termination of Participation of a Partner Council or Lead Council), save for the obligations set out in [Clause 11 (Sites)], Clause 23 (Councils' Obligations Following Expiry or Earlier Termination), Clause 25 (Confidentiality and Announcements) and Clause 2.4 (Effects of Termination of the Lead Council), the Councils shall be released from their respective obligations described in this Agreement⁴.

2.3.4 The Councils acknowledge and agree that:

- (a) the Project has been modelled on the basis of participation by the Councils and that there are considerable economic benefits to be achieved as a result of such joint working; and
- (b) accordingly, in the event that this Agreement is terminated in relation to any Council pursuant to Clause 2.3.1 (Termination of Participation of a Partner Council or Lead Council) such Defaulter shall, subject to Clause 23 (Councils' Obligations Following Expiry or Earlier Termination), be liable to the Non-Defaulting Council or Councils for their consequential loss as set out in a Liability Report issued to the Defaulter within [fourteen (14)] days of the notice of termination (such Liability Report being prepared by the Contract Manager and provided to all the Councils which shall be discussed and agreed by the Joint Committee at its next meeting or a specially convened meeting if the next meeting falls more than two (2) weeks after the issue of the Liability Report). The Non-Defaulting Councils shall have a duty, acting reasonably, to mitigate any losses which they suffer due to the financial and resource implications set out in the Liability Report.
- (c) pursuant to Clause 23 (Councils Obligations Following Early Termination of the Project Agreement), if a Defaulter causes the early termination of the Project Agreement, such Defaulter shall be liable to the other Councils in accordance with Clause [] and the Liability Report (prepared in accordance with Clause [] above) shall reflect such liabilities;
- (d) any amounts payable by a Defaulter set out in a Liability Report shall be paid by the Defaulter within [] Business Days⁵

⁴ To draft out and list any continuing obligation/survivorship clauses.

⁵ Time period to be agreed.

following agreement of the Liability Report by the Joint Committee or determined under Clause 2.8.5; and

- (e) any failure by the Joint Committee to agree the amounts payable as set out in the Liability Report within [] Business Days⁶ shall be referred under Clause 17 (Dispute Resolution) as a dispute for resolution.

2.4 Effects of Termination of the Lead Council

The Councils acknowledge and agree that if the Lead Council (or any subsequent lead council) is terminated in accordance with the provisions of Clause 2.3 (Termination of Participation of a Partner Council or Lead Council), then the Lead Council (or any subsequent lead council), shall, prior to their termination from the Project:-

2.4.1 novate each of the Contract Documents (including but not limited to the Project Agreement, Independent Certifiers' Appointment, Parent Company Guarantee) to the new lead council as selected by the remaining Councils; and

2.4.2 comply with the obligations set out at Clause 11.2.

3. PRINCIPLES AND KEY OBJECTIVES

3.1 The Councils intend this Agreement to be legally binding.

3.2 The Councils agree to work together to carry out the Project Tasks and activities in accordance with the terms of this Agreement.

3.3 Each of the Councils hereby represents to each other Council that it has obtained all necessary consents sufficient to ensure the delegation of functions provided by this Agreement for the Project.

3.4 The Councils commit to share data and knowledge relevant to the Project where appropriate and in accordance with their duties under the DPA.

3.5 Without prejudice to the terms of this Agreement, the Councils agree that they will conduct their relationship in accordance with the following principles:-

3.5.1 Openness and Trust

in relation to this Agreement the Councils will act in accordance with a duty of good faith to each other, be open and trusting in their dealings with each other, make information and analysis available to each other, use such information to support the Project, discuss and develop ideas openly and contribute fully to all aspects of making the joint working successful. Whilst respecting the mutual need for commercial confidentiality, the Councils will willingly embrace a commitment to transparency in their dealings and in particular a need to comply with statutory access to information requirements including the Environmental Information Regulations 2004 (SI 2004/3391) and the Freedom of Information Act 2000 and supporting codes of practice. The Councils will be aware of the need for and respect matters of commercial confidentiality and potential sensitivity;

⁶ As above.

3.5.2 **Commitment and Drive**

the Councils will be fully committed to working jointly, will seek to fully motivate employees and will address the challenges of the Project with drive, enthusiasm and a determination to succeed;

3.5.3 **Skills and Creativity**

the Councils recognise that each brings complementary skills and knowledge which they will apply creatively to achieving the Councils' objectives, continuity, resolution of difficulties and the development of the joint working relationship and the personnel working within it. It is recognised that this will involve the appreciation and adoption of common values;

3.5.4 **Effective Relationships**

the roles and responsibilities of each Council will be clear with relationships developed at the appropriate levels within each organisation with direct and easy access to each other's representatives;

3.5.5 **Developing and Adapting**

the Councils recognise that they are engaged in what could be a long term business relationship for mutual benefit through the achievement of the Project which needs to develop and adapt and each Council will use reasonable endeavours to develop and maintain an effective joint process to ensure that the relationship develops appropriately and in line with these principles and objectives including ensuring that the Lead Council's obligations within the Project Agreement are met at all times;

3.5.6 **Reputation and Standing**

the Councils agree that, in relation to this Agreement and the Project generally, they shall pay the utmost regard to the standing and reputation of one another and shall not do or fail to do anything which may bring the standing or reputation of any other Council into disrepute or attract adverse publicity to any other Council;

3.5.7 **Reasonableness of Decision Making**

the Councils agree that all decisions made in relation to this Agreement and the Project generally shall be made by them acting reasonably and in good faith; and

3.5.8 **Members and Officers' Commitments**

each Council shall use its reasonable endeavours to procure that their respective members and officers who are involved in the Project shall at all times act in the best interests of the Project, devote sufficient resources to the Project and respond in a timely manner to all relevant requests from the other Councils.

3.5.9 **Welsh Language Measure**

the Councils agree to cooperate in good faith with each other in the compliance of their obligations under the Welsh Language Measure.

4. DUTIES OF THE LEAD COUNCIL AND OTHER COUNCILS

- 4.1 Subject to section 101(4) of the Act, the Councils (acting severally) have agreed, with effect from the Commencement Date, that Flintshire Council acting through its Chief Executive will be the Lead Council for the carrying out of the Project administrative and representative functions (following, where relevant, any approvals required from the Councils) (the "**Project Tasks**") which shall be carried out for and on behalf of itself and the other Councils and Flintshire Council agrees to act in that capacity subject to and in accordance with the terms of this Agreement.
- 4.2 The Councils shall recognise the existence of and comply with the decisions that have been delegated to the Joint Committee. For the avoidance of doubt the Councils shall have the right to and shall make individual independent decisions on matters referred to each of them by the Joint Committee for decision and on matters not delegated or referred to the Joint Committee.
- 4.3 The Joint Committee shall decide:
- 4.3.1 the detailed scope and authority of the Lead Council role;
 - 4.3.2 by reference to the Contract Documents the administrative and representative functions of the Lead Council being:
 - (a) administrative functions which can be undertaken by the Lead Council without the need for consultation with the Joint Committee; or
 - (b) representative functions which will be instructed by the Joint Committee (whether in accordance with the established standing orders of the Joint Committee or otherwise) and communicated to the Contractor by the Lead Council;
 - 4.3.3 consultation and reporting requirements between the Lead Council and the Joint Committee.
- 4.4 For the avoidance of doubt the Councils have agreed that the role of Lead Council includes (but is not limited to):-
- 4.4.1 acting on behalf of the Councils in the management and supervision of the Project;
 - 4.4.2 acting under the direction of the Joint Committee provided always that the Joint Committee can only direct in accordance with terms of the Project Agreement;
 - 4.4.3 for any function the Lead Council shall act on behalf of and in the interests of the Partnership;
 - 4.4.4 liaising with the Contractor and the Contractor's Representative;
 - 4.4.5 participating in the Liaison Committee (and co-ordination of the ten (10) Council representatives, being two representatives from each of the Councils, who are appointed to the Liaison Committee for the purposes of Schedule 18 (Liaison Procedure) of the Project Agreement));
 - 4.4.6 subject to indemnities acting as the employing authority for any staff involved in the administration of the Project who shall report to the Project Board in accordance with this Agreement (including the Contract Manager);
 - 4.4.7 being the legal point of contact for the purposes of managing the Project;

- 4.4.8 providing such additional administrative resources and office facilities that may be necessary for the purpose of discharging the Project and holding all central funds;
 - 4.4.9 responsibility for liaison and communication with WG and co-ordination of communication and public relations;
 - 4.4.10 responsibility for conducting an internal audit and reporting on its findings to the Joint Committee;
 - 4.4.11 managing the application of the Annual Budget in respect of the Project and reporting on expenditure to the Joint Committee; and
 - 4.4.12 having powers to enter into contracts for consultants as required for the purposes of the Project following prior approval from the Project Board.
- 4.5 If the Lead Council defaults and the Agreement is terminated in respect of it pursuant to Clause 2.3.1 (Termination) or the Lead Council withdraws pursuant to Clause 16 (Withdrawal), then a replacement Lead Council will be appointed by the Joint Committee and the withdrawing Lead Council or Lead Council as Defaulter (as the case may be) voting members on the Joint Committee will not have the right to vote in regard to any such appointment.
- 4.6 The Councils acknowledge that the Lead Council role in the administration of the Project Agreement shall be largely discharged by the Contract Manager acting as the Authority's Representative as defined under the Project Agreement.
- 4.7 The Contract Manager shall:
- 4.7.1 be employed by or seconded to the Lead Council and report to the Project Board as line manager;
 - 4.7.2 conduct all day to day business for the Project to satisfy the Lead Council's obligations to the Contractor under the Project Agreement;
 - 4.7.3 potentially have staff reporting to him or her who may be seconded from the other Councils (not being the Lead Council);
 - 4.7.4 notify the Lead Council (without undue delay) of any matter that may reasonably be expected to have a local and/or political significance to any Council.

[DN: The Councils acknowledge and agree that under the terms of the Project Agreement there will be a commitment to make payments for not less than the Minimum Tonnage of Contract Waste to the Contractor per year. Accordingly, if any Council fails to deliver its Minimum Tonnage guarantee of Contract Waste in any year, such Council shall still be liable for its Minimum Payment. Details in respect of each Councils Minimum Tonnage guarantee/Minimum Payment will be set out in Schedule 9 (Payment Proportions).]

- 4.8 The Councils agree and undertake to commit to the Project in accordance with the terms of this Agreement and not to commission and/or undertake any procurement and/or Project that seeks or would procure the delivery of all or any part of the Project outside the terms of this Agreement (including (without limitation) wilfully diverting Contract Waste away from the Project) unless and until it shall have withdrawn from the Project in accordance with Clause 16 (Withdrawal). The Councils acknowledge that their commitment to a minimum tonnage guarantee for residual waste remains whether they consider alternative waste collection or recycling programmes and that pursuant to [Part 3 of Schedule 9 (Payment Proportions) they shall be collectively liable for the minimum tonnage guarantee payments where there is an overall shortfall by the Councils collectively in supplying sufficient waste to the Key Facility (and that

the terms of Part 3 of Schedule 9 (Payment Proportions) shall address any intra-Councils commercial arrangements in meeting the Project's minimum tonnage guarantee).]

- 4.9 Each Council warrants to the other Councils that it shall observe and comply with the terms of each of the Contract Documents and shall, subject to the remaining provisions of this Agreement, indemnify the other Councils in respect of any loss, damage or expense caused as a result of its breach of any of the Contract Documents.
- 4.10 Each Council shall co-operate with the other Councils in good faith in order to facilitate the performance of their respective obligations under the Contract Documents and to avoid and/or mitigate any additional costs, expenses, delays or disruption to the Project provided that (subject to the specific obligations within this Agreement) no Council shall be under any duty to fulfil obligations which are the responsibility of any other Council.
- 4.11 Each Council acknowledges that it shall not exercise or waive any right under any of the Contract Documents where such exercise or waiver has not first been approved in accordance with this Agreement.
- 4.12 Each Council in entering into the Contract Documents shall be deemed to have satisfied itself of all relevant matters and shall not rely on any representations made by any other Council in respect of the Contract Documents.
- 4.13 For the duration of this Agreement, the Lead Council shall act as the primary interface with the Contractor, WG, Infrastructure UK and any other body necessary to carry out the Project Tasks in accordance with the terms of this Agreement.
- 4.14 For the duration of this Agreement, the Lead Council shall act diligently and in good faith in all its dealings with the Contractor and the other Councils and it shall use all reasonable endeavours to carry out the Project Tasks in accordance with any WG guidance and any other applicable legislation.

5. **DECISION MAKING**

- 5.1 In terms of the need for decisions and other actions to be taken and carried out for the Project Tasks, the Councils have identified the following four (4) categories together with the means by which they will be taken:-

- 5.1.1 **"Contract Manager Matter"** – being the day to day management of the Project (in accordance with the terms of the Project Agreement) pursuant to Clause [4.7] which shall include any decision which has (or is reasonably expected to have) an annual financial impact on the Project of up to (and including) [£]⁷, except in circumstances where such decision could reasonably be expected to have local and/or political significance to any of the Councils, in which case such decision shall be elevated to the Project Board, provided always that the Contact Manager may refer any matter to the Project Board;

- 5.1.2 **"Project Board Matter"** - being a matter which is to be decided upon [(pursuant to Clause 8 and Schedule 3 (Project Board Terms of Reference))] at a quorate meeting of the Project Board by those present and entitled to vote and which shall have (or is reasonably expected to have) an annual financial impact on the Project of up to [£] or be a matter referred to the Project Board by the Contract Manager. Any decision made by the Project Board in relation to a Project Board Matter within these financial parameters shall be binding on all of the Councils. Any decision to be made on a matter

⁷ Appropriate figure to be determined.

with an impact (or expected impact) in excess of these parameters shall be elevated to the Joint Committee, provided always that the Project Board can refer any matter of any financial value to the Joint Committee if they so decide;

5.1.3 **"Joint Committee Matter"** – being a matter which is to be decided upon at a quorate meeting of the Joint Committee by those present and entitled pursuant to Clause (Joint Committee Terms of Reference) to vote and which shall have (or is reasonably expected to have) an annual financial impact on the Project of up to [£] or be a matter referred to the Joint Committee by the Project Board. Any decision made by the Joint Committee in relation to a Joint Committee Matter within these financial parameters shall be binding on all of the Councils. Any decision to be made on a matter with an impact (or expected impact) in excess of these parameters shall be referred as a Matter Reserved To The Councils. The Joint Committee may determine that any Joint Committee Matter or any Project Board Matter may be referred back to each Council for decision as a Matter Reserved To The Councils and/or make a decision to delegate any matter to the Project Board for decision; and

5.1.4 **"Matter Reserved To The Councils"** – being a matter which will have to be referred to each Council for decision (at a meeting of either the relevant cabinet or full Council at the discretion of each Council) and, for the avoidance of doubt, any such matter will not be dealt with by the Project Board or the Joint Committee (as the case may be) until the matter has been determined by all of the Councils. If the Councils fail to reach the same decision in respect of such matter then the matter shall be referred under Clause 17 (Dispute Resolution) as a dispute for resolution.

and in each case, such matters are identified in Schedule 1 (Project Tasks).

5.2 [The Councils agree that in due course, should they elect to set up a joint scrutiny committee, each Council shall seek the necessary approvals in order to set up such a committee.]⁸

5.3 Each Council acknowledges and agrees that the Lead Council shall have the power and the entitlement to require a decision that in its opinion (acting reasonably) shall either:

5.3.1 mean a substantive change to the size or nature of the Facilities; or

5.3.2 mean a substantive change to the size or nature of the Project,

to be referred as a Matter Reserved To The Councils and such decision shall not be implemented unless approved by all of the Councils.

6. **JOINT COMMITTEE**

6.1 The Councils shall form the joint committee ("**Joint Committee**"), which shall, for the avoidance of doubt, supersede and replace the "Joint Committee" formed pursuant to the First Inter-Authority Agreement to carry out the functions set out in Schedule 2 (Joint Committee Terms of Reference).

6.2 The Joint Committee shall not have power to approve any Matter Reserved To The Councils pursuant to Clause 5.1.4.

⁸ It is noted that whilst the Councils would prefer to determine their own Scrutiny process internally, would Councils prefer to leave the above wording in to cover the possibility of a joint scrutiny committee being set up at some point in the future or should this be removed?

- 6.3 At meetings of the Joint Committee each elected member from each Council shall have one vote. Subject to the Lead Council's right to refer a decision pursuant to Clause 5.3 as a Matter Reserved To The Councils, decisions at meetings of the Joint Committee will be taken by a majority vote. The Contract Manager shall not have a vote.
- 6.4 If, at a meeting of the Joint Committee, a matter is not determined by a majority vote pursuant to Clause 6.3, that matter ("**JC Unresolved Matter**") shall be deferred for consideration at the next Joint Committee Meeting which shall be convened within [ten (10) Business Days] of that meeting. If at the reconvened Joint Committee meeting the JC Unresolved Matter is not determined by a majority vote, the Chairperson shall have a casting vote in respect of that JC Unresolved Matter.
- 6.5 Without prejudice to Clause 6.4, if one Council requests that a decision of the Joint Committee be deferred, the Chairperson shall defer such decision until the next Joint Committee Meeting which shall be convened within the next [ten (10) Business Days] of that meeting.
- 6.6 Each Council shall provide all relevant information reasonably required upon request by the Joint Committee and shall comply with any decisions of the Joint Committee to request such information.
- 6.7 Each Council shall consult with the other Councils to ensure the diligent progress of the day to day matters relating to any Joint Committee Matters.
- 6.8 The administrative costs and expenses of the Joint Committee incurred in accordance with the Annual Budget for setting up and conducting meetings of the Joint Committee shall be reimbursed by the Councils and arrangements for such reimbursement shall be agreed between the Councils and reviewed each year when the draft Annual Budget is prepared by the Project Board, considered by the Joint Committee and approved by the Councils.
- 6.9 The costs and expenses of the Joint Committee for the Contract Year [2014-2015] (which will precede the preparation of the first Annual Budget and be a transitional Contract Year) will be reimbursed as follows:
- 6.9.1 each of the Councils agrees in principle to pay any costs required in accordance with the cost sharing arrangements agreed by the Councils in place immediately prior to the completion of this Agreement; and
- 6.9.2 the costs shall be met by the Councils (following recommendations by the Project Board) as the Joint Committee may decide, else in absence of agreed recommendations shall be met equally.
- 6.10 When working as a member of a Joint Committee, the members shall be deemed to be working on behalf of their own Council even where the particular matter under consideration relates to or also relates to one of the other Councils.
- 6.11 When working on behalf of the Project, officers shall be deemed to be working on behalf of all their employing Councils, and made available and working on behalf of the other Councils under section 113 of the Act.
- 6.12 In consequence of the above, both members and officers shall be treated as falling within the statutory immunity provided by section 265 of the Public Health Act 1875, as amended, in respect of the Project.
- 6.13 None of the Councils shall have any liability to the other Councils in respect of any loss which those other Councils may suffer as a consequence of any action or omission by any officer whilst working on the Project on behalf of the Joint Committee.

- 6.14 The Lead Council will provide clerical support for the Joint Committee including convening meetings and maintaining minutes.
- 6.15 Constitutional arrangements for the Joint Committee are set out in Part 2 of Schedule 2 (Joint Committee Terms of Reference).
- 6.16 The Joint Committee shall delegate such operational functions to the Project Board as specified in Schedule 1 (Project Tasks) which may in turn delegate appropriate matters to the Contract Manager.

7. ANNUAL BUDGET

[It is agreed in principle that during the Works Period of the Project the Contract Management Costs associated with the Project shall be split equally between the Councils. During the Services Period of the Project when the Facility is operational and up until expiry or early termination, the Contract Management Costs shall be on a pro-rata basis proportional to the actual tonnages delivered by each Council.]

- 7.1 The Joint Committee shall by not later than November in each Contract Year consider and recommend a draft Annual Budget prepared by the Project Board for the following Contract Year which, in its opinion and based on the preceding Contract Year's actual spend and the Project plan prepared pursuant to Clause 10.1 (Business Plan and Work Programme), it reasonably requires to achieve its objectives in relation to the Project and to secure the funding requirement for the Lead Council to fulfil its obligations under this Agreement on behalf of the Councils. For the avoidance of doubt the Joint Committee has no budget setting or managing responsibility and the approval of the Annual Budget (as part of the Councils' wider budget setting procedure) is a Matter Reserved To The Councils.
- 7.2 The draft Annual Budget shall contain draft estimates of revenue income and expenditure of the Joint Committee for or in relation to the discharge of the Joint Committee's agreed functions. The estimates shall include details as to how the expenditure is to be financed including a breakdown of the contributions required from each Council.
- 7.3 [The Councils each agree and undertake to contribute an annual sum for each "Spend year".
- 7.4 Each of the Councils shall irrevocably make available to the Lead Council their share of the Annual Budget.⁹ The Annual Budget (including any contingency sum) shall not be exceeded without the prior approval of the Councils.
- 7.5 The Lead Council shall be the accountable body for the Annual Budget and shall, pursuant to Clauses 13.1 to 13.4 (Accounts), prepare and keep accounts and shall make all accounts records and other documents available for inspection by any Council on request. The Joint Committee role is to oversee and procure the monitoring of the Annual Budget for the purposes of Councils' scrutiny.
- 7.6 Whenever any sum of money is recoverable from or payable by a Council it may be deducted from any sum then due to that Council under this Agreement and vice versa.
- 7.7 The Lead Council shall within twenty-eight (28) days of the conclusion of an Accounting Period prepare and serve on each Council a schedule of payments itemised by reference to the Heads of Expenditure set out in Schedule 5 (Annual Budget) and certified by the Lead Finance Officer as being in respect of that Council's

⁹ For the avoidance of doubt these costs will include the Lead Councils costs including any recruitment, legal and financial costs incurred by the Lead Council associated with its role of management and supervision of the Project (see Schedule 5 for further details).

proportion of the costs which have been properly incurred in accordance with the terms of this Agreement for that Accounting Period. Such schedule of payments shall be payable by the Councils within thirty-five (35) days.

7.8 The costs associated with providing internal resources in relation to the Project Tasks shall (if not included within the Annual Budget and shared between the Councils), subject to Clause 7.10, be borne by the Council providing that internal resource. However, any additional costs and external costs required shall be shared equally by the Councils provided that such costs have received prior written approval from the Project Team (subject to where such additional costs and/or external costs exceed or are anticipated to exceed an aggregate total of five thousand pounds (£5,000) (indexed) in value in any single Contract Year they shall require the Project Team to secure prior written approval from the Project Board) and that such sums fall within the Project spend profile agreed by the Councils set out at Schedule 5 (Annual Budget). Any additional costs and external costs sought from Project funds which are not included in the spend profile at Schedule 5 (Annual Budget) will be dealt with pursuant to Clause 7.9 below.

7.9 The Councils hereby agree that:-

7.9.1 if one of the Councils wishes to carry out any work or incur any cost or expenses in relation to the Project exceeding an aggregate total of one thousand pounds (£1,000) (indexed) in any single Contract Year or requests the Joint Committee, the Project Board or any member or officer appointed to or engaged to support the Project to carry out any work or to incur any cost or expense that is not envisaged by the spend profile set out at Schedule 5 (Annual Budget) then such Council shall seek the prior written approval of the Contract Manager to approve it and allocate Project funding else it shall have to bear the cost itself; and

7.9.2 if one of the Councils carries out any work or incurs any cost or expenses or requests the Joint Committee, the Project Board or any member or officer appointed to or engaged to support the Project to carry out any work or to incur any cost or expense in relation to the Project that is not envisaged by the Contract Manager to be an efficient use of time and/or resources, that matter shall, at the discretion of the Contract Manager or at the request of the relevant Council, be referred to the Project Board for a decision as to whether such work, cost or expense is part of the Project or whether such work, cost or expense should be the entire responsibility of the Council so carrying it out or requesting it (as the case may be),

subject to such approval or decision not being unreasonably withheld or delayed by the Contract Manager and/or the Project Board and in the case of dispute Clause 17 (Dispute Resolution) shall apply.

7.10 The Councils hereby agree that if one of the Councils believes it is likely to incur disproportionate internal resource costs (compared to the Project spend profile set out at Schedule 5 (Annual Budget)) pursuant to Clause 7.8 that matter shall be referred to the Project Board for a decision as to whether such costs will be disproportionate and whether any contributions should be made to this cost by the other Councils.

8. **PROJECT BOARD**

8.1 The Councils shall form the Project Board ("**Project Board**") for the purpose of the day-to-day management of the Project and the Contract Manager and the implementation and monitoring of the process and to carry out those functions set out in Schedule 1 (Project Tasks) as being functions of the Project Board and in accordance with the Project Board's Terms of Reference as set on in Schedule 3 (Project Board Terms of Reference).

- 8.2 The Project Board shall have the powers to make decisions and recommendations within its Terms of Reference as set out in Schedule 3 (Project Board Terms of Reference) but shall not have power to approve any Joint Committee Matter or any Matter Reserved To The Councils pursuant to Clause 5.1.4.
- 8.3 Notwithstanding the above, the following specific functions are given to the Project Board:-
- 8.3.1 prior approval of all reports for decision by the Joint Committee save if impractical in the case of a special meeting; and
- 8.3.2 monitoring of:
- (a) the Annual Budget as agreed by the Joint Committee and approved by the Councils;
 - (b) the costs expended against the Annual Budget to ensure that the Project remains within budget; and
 - (c) the Unitary Charge payments or other payments to the Contractor for Services (including the Commissioning Services and the Interim Services) delivered against the overall forecast Unitary Charge for each Contract Year.
- 8.4 Each Council shall appoint one senior officer representative [(being a director or head of service)]¹⁰ to the Project Board. The Chairperson of the Project Board shall be a director of the Lead Council appointed by the Project Board from time to time. Each such representative shall have one vote on any matter to be determined by the Project Board. Decisions at meetings of the Project Board will be taken by a majority vote.
- 8.5 The quorum necessary for a Project Board Meeting shall be a senior officer representative each Council unless such a quorum is not reached in which case the relevant meeting shall be re-convened and the required quorum shall be a senior officer representative from each of the five (5) Councils (in person or by telephone or video-conference facility). The Contract Manager, the Lead Finance Officer, the legal, procurement and technical officers for each Council shall be entitled to attend the meetings of the Project Board but not vote.
- 8.6 The section 151 officer and/or the monitoring officer for each Council shall be entitled to attend and participate in Project Board Meetings in a non-voting capacity.
- 8.7 If, at a meeting of the Project Board, a matter is not determined by a majority vote pursuant to Clause 8.4, such matter ("**PB Unresolved Matter**") shall be deferred for consideration at the next Project Board Meeting which shall be convened within [ten (10) Business Days] of that meeting. If at the reconvened Project Board Meeting the PB Unresolved Matter is not determined by a majority vote, subject to the Lead Council's right to refer a decision pursuant to Clause 5.3 as a Matter Reserved To The Councils, that matter shall be referred for a decision by the Joint Committee.
- 8.8 The Councils may, at their discretion, replace their representatives appointed to the Project Board provided that such replacement shall be on the same basis as the original appointed and provided further that no senior technical officer of the Project Board shall be removed or replaced by any Council without that Council giving prior written notice as soon as reasonably practicable of its intention to remove or replace that representative.

¹⁰ Councils to confirm.

- 8.9 Each Council shall also appoint one (1) substitute representative in the event that appointed representatives to the Project Board are unable or incapable of discharging their functions.
- 8.10 Each Council's substitute representative shall be entitled to attend meetings of the Project Board but shall only be entitled to vote in the absence of his or her corresponding voting representative.
- 8.11 The Project Board shall meet as and when required in accordance with the timetable for the Project.

9. **PROJECT OFFICERS**

- 9.1 The Joint Committee shall determine from time to time the necessity of the officers set out below (the "**Project Officers**") for the purposes of the Project:

9.1.1 the Contract Manager; and

9.1.2 such further officers (including but not limited to financial advisors, legal advisors and technical advisors) acting under the direction of the Contract Manager in his responsibilities in respect of the Project (insofar as the costs of such officers have been identified within the Annual Budget or otherwise provided for by one (1) or more of the Councils).

- 9.2 The Councils shall make their officers available as necessary for the purpose of the Project.

- 9.3 As and when requested by the Joint Committee, the Lead Council shall appoint the Project Officers (advised by the head of human resources or equivalent officer of the Lead Council and shall act within the employment procedure rules and policies of the Lead Council):

- 9.4 Project Officers may be:

9.4.1 appointed specifically and exclusively for the purpose of the Project to the employment of the Lead Council, on terms and for such duration as may be appropriate to that purpose, and the Lead Council shall make them available full-time or part-time for the performance of their functions under this Agreement; or

9.4.2 seconded by the Councils for the purpose of the Project to the Lead Council on terms and for such duration as may be appropriate to that purpose, and the relevant Council shall make them available full-time or part-time for the performance of their functions under this Agreement.

10. **BUSINESS PLAN AND WORK PROGRAMME**

- 10.1 The Contract Manager shall continually monitor all aspects of the Project's performance and prepare the Performance and Improvement Plan.

- 10.2 No later than []¹¹ in any Contract Year, the Contract Manager shall present the draft Performance and Improvement Plan including any resource requirements for the Project and the draft Annual Budget to the Project Board to enable the Project Board to be made aware of any significant changes which they may refer for approval and recommendation to the Joint Committee including any anticipated Authority Changes under the Project Agreement.

¹¹ Date to be agreed and confirmed by Councils.

10.3 The Performance and Improvement Plan for the Project, as amended where necessary and as approved by the Joint Committee, shall form:

10.3.1 the basis of the Joint Committee's request to each Council for future budgetary provision and for resources pursuant to Clause 7.1 (Annual Budget); and

10.3.2 an instruction from the Joint Committee to the Project Board.

10A **AIR QUALITY MONITORING**

The Councils agree that there will be additional air quality monitoring undertaken for the period of 1 year from the Service Commencement Date at the discretion of the Joint Committee. Costs will be shared on a pro rata basis per actual tonnages delivered. Thereafter, the said monitoring will be subject to review by the Joint Committee.

11. **SITES AND DECOMMISSIONING**

Arrangements on Expiry or Early Termination

11.1 The Councils acknowledge that, upon the expiry of the Project the Site shall be retained by Flintshire Council.

11.2 In the event that Flintshire Council is terminated or withdraws from the Project (pursuant to Clause 2.3 (Termination of Participation of a Partner Council or Lead Council) or Clause 16 (Withdrawal) of this Agreement), then the Site will transfer¹² to the new lead council for the duration of the Project and upon expiry of the Project, the remaining Councils shall ensure that the Site is transferred back to Flintshire Council as soon as reasonably practicable.

[DN: It is agreed in principle that on an early termination of the Project if the Facility is operational then the Partnership should seek to agree appropriate arrangements to continue the use of the Facility for the purposes of the remainder of the 25 years. If however, the Facility has not been built, then the Site shall be retained by Flintshire County Council and there shall be no further obligation for the Site to be used for the purposes of the Project.]

If the Facility has been partly built but is not yet operational, then the Councils shall seek to discuss and agree appropriate arrangements for the Site and the Councils shall equally share the liability of any associated costs.]

Decommissioning

11.3 Upon expiry or termination of the Project, the cost of decommissioning will be split equally between the Councils, unless Flintshire Council (in its absolute discretion) elects not to undertake decommissioning at the time of expiry or the early termination of the Project, in which case Flintshire Council shall be solely liable for any future decommissioning costs.

11.4 **[New Waste Transfer Station**

The Councils acknowledge and agree that the new Waste Transfer Station (the "WTS") that is to be built for the purposes of the Project shall be funded by the Councils on an equal basis. If it is determined that the new WTS shall be built on a site that is provided by Conwy Council, then upon expiry or early termination of the Project the Site shall be retained by Conwy Council. If, however, the Partnership jointly fund and provide a site for the new WTS, then upon expiry or early termination

¹² Details in respect of the transfer to be confirmed by Property advisers.

of the Project the Councils agree to discuss and determine appropriate arrangements in respect of the site and the WTS].

11.5 **Cost of Managing Waste prior to Haulage and Treatment**

[DN: It is agreed in principle that where Welsh Government do not provide a grant for the element that covers the cost of managing waste prior to haulage and treatment, each Council would be responsible for their own transfer station operating costs, with no recourse to other Councils.]

Where Welsh Government do provide a grant for that element, all Councils will pay in to the Partnership an agreed amount per tonne for the Waste being managed within each Council area, and all Councils will receive an equitable share of the payment back, with the addition of the Welsh Government Grant. The amount aid "in" to the Partnership per tonne will be an amount agreed between the Councils (the starting point for the discussion would be the rate identified by the market testing / procurement exercise for the intended Conwy transfer station; this will ensure that the amount is based on a market rate).]

12. **PAYMENTS**

[DN: Provisions setting out the process for receipt of payments from the Welsh Government and any banking and interest related provisions to be considered and confirmed by Finance.]

Incoming payment to the Lead Council of WG grant funding and other sums

12.1 [Any grant funding from WG to the Councils in respect of the Project shall be paid to the Lead Council and each of the Councils' entitlement shall be on a pro rata basis in proportion to the forecast tonnages delivered by each of the Councils [in accordance with Schedule 9 (Payment Proportions), the Lead Council making such payments to the other Councils within **five (5) Business Days**]. In the event that the Lead Council fails to pay a Council within the five (5) Business Day period referred to above the Lead Council shall be liable to pay interest to the relevant Council at the Default Interest Rate, calculated from the due date for payment until (but excluding) the actual date of payment.]

12.2 [It is agreed in principle that in the event that the WG grant funding is withdrawn from the Project (and the Contractor is nor liable to replace the lost WG funding in accordance with the provisions of the Project Agreement), then the Councils shall be liable to cover the lost WG funding on a pro-rata basis in proportion to the actual tonnage provided by each of the Councils.]

Invoices from Contractor

[DN: Finance to review and consider the below payment provisions.]

12.3 The Councils acknowledge that the Lead Council's ability to agree and make payments to the Contractor is governed by the terms of the Project Agreement (specifically the Payment Mechanism).

12.4 The Councils acknowledge that Clause 45 (Payment and Invoicing) of the Project Agreement governs the process by which the Contractor invoices the Lead Council in respect of the Monthly Contract Payment and that, for the purposes of Clause 45 (Payment and Invoicing) of the Project Agreement, Flintshire Council (as Lead Council) will be responsible for making payment to the Contractor following receipt of such invoices.

- 12.5 The Councils acknowledge that the Lead Council's payment of the Monthly Contract Payment assumes a one hundred per cent (100%) availability and performance model.
- 12.6 On a monthly basis the Contract Manager (on behalf of the Lead Council) shall be responsible for taking decisions as to the appropriateness of any adjustments or Deductions (and contract default points or other remedies of the Lead Council) to be applied and made to the Contractor's invoice to the Lead Council due to poor performance or non-performance.
- 12.7 Within fifteen (15) Business Days of receipt of the Contractor's invoice in accordance with Clause 45.4 (Payment and Invoicing) of the Project Agreement, Conwy Council shall pay to Flintshire Council on receipt of a schedule of payments its proportion of the Monthly Contract Payment and any other relevant payments ("**Conwy's Payment Proportion**"), in each case calculated by reference to the relevant financial liabilities of the Councils as set out in Schedule 10 (Payment Proportions). In the event that Conwy Council fails to pay Conwy's Payment Proportion within the fifteen (15) Business Day period referred to above (the "**Due Date**") Conwy Council shall be liable to pay interest to Flintshire Council at the Default Interest Rate, calculated from the Due Date until (but excluding) the actual date of payment.
- 12.8 Within fifteen (15) Business Days of receipt of the Contractor's invoice in accordance with Clause 45.4 (Payment and Invoicing) of the Project Agreement, Denbighshire Council shall pay to Flintshire Council on receipt of a schedule of payments its proportion of the Monthly Contract Payment and any other relevant payments ("**Denbighshire's Payment Proportion**"), in each case calculated by reference to the relevant financial liabilities of the Councils as set out in Schedule 10 (Payment Proportions). In the event that Denbighshire Council fails to pay Denbighshire's Payment Proportion within the fifteen (15) Business Day period referred to above (the "**Due Date**") Denbighshire Council shall be liable to pay interest to Flintshire Council at the Default Interest Rate, calculated from the Due Date until (but excluding) the actual date of payment.
- 12.9 Within fifteen (15) Business Days of receipt of the Contractor's invoice in accordance with Clause 45.4 (Payment and Invoicing) of the Project Agreement, Gwynedd Council shall pay to Flintshire Council on receipt of a schedule of payments its proportion of the Monthly Contract Payment and any other relevant payments ("**Gwynedd's Payment Proportion**"), in each case calculated by reference to the relevant financial liabilities of the Councils as set out in Schedule 10 (Payment Proportions). In the event that Gwynedd Council fails to pay Gwynedd's Payment Proportion within the fifteen (15) Business Day period referred to above (the "**Due Date**") Gwynedd Council shall be liable to pay interest to Flintshire Council at the Default Interest Rate, calculated from the Due Date until (but excluding) the actual date of payment.
- 12.10 Within fifteen (15) Business Days of receipt of the Contractor's invoice in accordance with Clause 45.4 (Payment and Invoicing) of the Project Agreement, Isle of Anglesey Council shall pay to Flintshire Council on receipt of a schedule of payments its proportion of the Monthly Contract Payment and any other relevant payments ("**Isle of Anglesey's Payment Proportion**"), in each case calculated by reference to the relevant financial liabilities of the Councils as set out in Schedule 10 (Payment Proportions). In the event that Isle of Anglesey Council fails to pay Isle of Anglesey's Payment Proportion within the fifteen (15) Business Day period referred to above (the "**Due Date**") Isle of Anglesey Council shall be liable to pay interest to Flintshire Council at the Default Interest Rate, calculated from the Due Date until (but excluding) the actual date of payment.
- 12.11 The Councils shall ensure that there are always cleared funds paid in accordance with their respective share of contributions set out in a schedule of payments such that, subject to each Council fulfilling its payment obligations, the Lead Council shall always be capable of meeting its payment obligations to the Contractor. The Councils shall

not withhold payment of any intra-Councils sum due to the Lead Council which may be due to intra-Council disputes.

- 12.12 The Councils shall procure that, as regards this Project, the Lead Council is to remain cost and cash neutral for the planned term of the Project only insofar as the Lead Council satisfies its payment proportion and the payment obligations of the other Councils are set out in the Annual Budget.
- 12.13 The Councils agree that Flintshire Council as Lead Council shall (with the agreement of Conwy Council, Denbighshire Council, Gwynedd Council and Isle of Anglesey Council) be entitled to withhold payment of any disputed amounts as between the Lead Council and the Contractor in accordance with Clause 45 (Payment and Invoicing) of the Project Agreement but that the Lead Council shall not be entitled to withhold payment on the basis of a dispute solely between the Councils (any such dispute to be resolved in accordance with the provisions of Clause 17 (Dispute Resolution)).
- 12.14 Flintshire Council as Lead Council shall not agree to set-off any amounts owed by the Contractor to the Lead Council in accordance with Clause 46 (Set-Off) of the Project Agreement without the agreement of Conwy Borough Council, Denbighshire Council, Gwynedd Council and Isle of Anglesey Council (such agreement to include an agreement as to how Conwy's Payment Proportion, and/or Denbighshire's Payment Proportion and/or Gwynedd's Payment Proportion and/or Isle of Anglesey's Payment Proportion shall be amended as a result of such set-off).
- 12.15 [Subject to Clause 12.16 the Councils shall review their payment proportions as defined in Schedule 9 (Payment Proportions) for the items set out in Schedule 10 (Payment Proportions) (using fair and objective criteria supplied by the Project Board and recognising the principle of mutual benefit) on [30 September] following the Services Commencement Date (as defined in the Project Agreement) and at one (1) yearly intervals thereafter (or such other period as is agreed by the Councils) and shall agree any necessary amendments to this Clause 12. In default of such agreement, no amendment shall be made.
- 12.16 The Lead Council shall (following agreement by the Project Board and notification to the Joint Committee) be authorised to make adjustments, reconciliations or payments to recompense for significant anomalies in Project mutual benefit between the Councils (and for the avoidance of doubt where an anomaly between the Councils' modelled contributions exceeds [fifty thousand pounds (£50,000)] (indexed) per Accounting Period it shall be construed as significant).]

Payments from Contractor

- 12.17 Any payments to be made by the Contractor to the Lead Council in accordance with the terms of the Project Agreement (whether via an indemnity or through the imposition of Deductions or sanctions whose effects as between the Councils are set out in Part 2 of Schedule 9 (Payment Proportions) or otherwise) shall be apportioned between the relevant Councils to reflect the respective effects on each Council which are the subject of such payment:
- 12.17.1 where related to a [Performance Management Framework] item set out in Schedule 9 (Payment Proportions) in such proportions as defined in Part 2 of Schedule 9 (Payment Proportions); or
- 12.17.2 where not related to a [Performance Management Framework] item set out in Schedule 9 (Payment Proportions) by the Project Board in proportion to the level of cost incurred by each Council as a consequence of the actions and obligations pertaining to that Council's administrative area and works or services carried out under the Project Agreement in relation to that Council's administrative area.

- 12.18 The Lead Council shall, where Deductions apportioned to a Council exceed fifty thousand pounds (£50,000) (indexed) at the end of an Accounting Period, pay the sum of the Deductions to a Council within twenty (20) Business Days, unless otherwise agreed by the Project Board.

Taxation

- 12.19 Each Council shall bear its own liability for any taxation or duty chargeable in the United Kingdom in respect of its participation in the arrangements under this Agreement and each Council undertakes to indemnify the other Councils in respect of any such taxation assessed on and paid by the other in respect of which the former is primarily liable.
- 12.20 Any supply made by one (1) Council to any other Council pursuant to this Agreement shall be exclusive of any value added tax chargeable on it, which shall (where required by law), be paid by the Council to whom the supply is made in addition to the payment for the supply, subject to the provision to it of a valid value added tax invoice.
- 12.21 All payments to be made by one (1) Council to another Council under this Agreement shall be made in full without deduction of or withholding for or on account of any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature unless the Council making the payment is required by law to make any such deduction or withholding. If such withholding or deduction is so required by law, then the Council making the payment shall increase the amount of the payment so that the other Council receives the same amount as it would have received in the absence of the requirement to make the withholding or deduction, and the Council making the payment shall give to the other Council an appropriate certificate as may be required by law showing the amount.
- 12.22 If the Council receiving the payment subsequently obtains relief or credit in respect of the withholding or deduction, then it shall promptly repay to the Council which made the payment an amount equal to the credit or relief obtained up to a maximum of the amount by which the payment was increased to take account of the withholding or deduction. The Councils shall co-operate with a view to allowing each Council to obtain any available relief or credit in respect of any such withholding or deduction in respect of taxation and in particular but without prejudice to the foregoing generality shall give any information reasonably required by the other Council in connection with the making of a claim for relief under an applicable double taxation treaty.

Community Benefit Fund

[DN: It is noted that the Councils have agreed in principle to payments in respect of a Community Benefit Fund. Each of the Councils shall pay into the fund and the payments shall be determined on a pro-rata basis in proportion to the tonnage provided by each of the respective Councils.]

13. ACCOUNTS¹³

Accounts to reconcile Annual Budget

- 13.1 Clauses 13.2 to 13.4 shall apply to Conwy Council, Denbighshire Council, Gwynedd and Isle of Anglesey Council only where Clause 7.9 applies.
- 13.2 Each Council shall be required to prepare accounts including (reporting by exception) details of any expenditure incurred pursuant to Schedule 5 (Annual Budget) (the "**AB Accounts**") in respect of each Accounting Period and for such further and/or other

¹³ Drafting to be incorporated to capture 3 year accounting cycle plans, with agreed accounts for the following year and then 2 year projections/indicators for subsequent years.

accounting periods as the Project Board shall determine and which shall be incorporated into Schedule 6 (Accounting Periods).

13.3 Each Council shall:-

13.3.1 in the AB Accounts make true and complete entries of all relevant payments and receipts made by it during the previous Accounting Period;

13.3.2 within ten (10) Business Days of the end of the Accounting Period, the Councils shall provide to the Lead Council unaudited AB Accounts for such Accounting Period together with certification that such AB Accounts comply with this Clause 13.3;

13.3.3 nominate an individual to be responsible for ensuring that Council's own compliance with this Clause 14 and the name, address and telephone number of each individual nominated pursuant to this Clause 13.3 shall be notified to the other Councils in accordance with Clause 27 (Notices); and

13.3.4 acknowledge that the Lead Council shall within ten (10) Business Days of receipt of the AB Accounts submitted by each of the Councils, in accordance with Clause 13.3.2 prepare a reconciliation statement identifying the payments made by each Council and the balance due from or owing to each Council. The Lead Council shall within twenty (20) Business Days of the preparation of the reconciliation statement send out a copy of the reconciliation statement together with either a balancing schedule of payments or credit payment to each Council. A Council receiving a schedule of payments for payment shall pay it in full within twenty (20) Business Days. Any error in a balancing schedule of payments must be notified to the Lead Council within five (5) Business Days of such balancing schedule of payments being sent out. An amended balancing schedule of payments will be issued by the Lead Council and the Council receiving such schedule of payments shall pay it in full within twenty (20) Business Days.

13.4 If an individual nominated by a Council pursuant to Clause 13.3.3 changes, that Council shall notify the other Councils forthwith of the replacement nominees.

Audits

13.5 Subject to ensuring compliance with each Council's audit requirements, the Councils agree that the auditor for the Lead Council shall carry out the audit of the Project.

13.6 The Lead Council shall at all times maintain an up to date register of the assets and committed liabilities of each of the Councils in relation to the Joint Committee and the Councils will each advise the Lead Council of any such assets and committed liabilities.

13.7 The books of account for the Joint Committee shall be the subject of the audit arrangements of the Lead Council and shall be open to inspection by the Councils.

14. INTELLECTUAL PROPERTY

14.1 Each Council will retain all Intellectual Property in its Material.

14.2 Each Council will grant all of the other Councils a non-exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its IP Material for the Project Tasks and any other purpose resulting from the Project Tasks whether or not the party granting the licence remains a party to this Agreement or the Project Tasks.

- 14.3 Without prejudice to Clause 14.1, if more than one (1) Council owns or has a legal or beneficial right or interest in any aspect of the IP Material for any reason (including without limitation that no one (1) Council can demonstrate that it independently supplied or created the relevant IP Material without the help of one (1) or more of the other Councils), each of the Councils who contributed to the relevant IP Material will grant to all other Councils to this Agreement a non-exclusive, perpetual, non-transferable and royalty free licence to use and exploit such IP Material as if all the other Councils were the sole owner under the Copyright Design and Patents Act 1988 or any other relevant statute or rule of law.
- 14.4 For the avoidance of doubt, any entity or person who is at the date of this Agreement a party to this Agreement and who has licensed any Intellectual Property under this Agreement will have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.
- 14.5 Each Council warrants that it has or will have the necessary rights to grant the licences set out in Clauses 14.2 and 14.3 in respect of the IP Material to be licensed.
- 14.6 Each Council shall indemnify the other Councils against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its Intellectual Property rights by use of that Council's Intellectual Property for the purposes of the Project.
- 14.7 Each Council agrees to execute such further documents and take such actions or do such things as may be reasonably requested by any other Council (and at the expense of the Council(s) making the request) to give full effect to the terms of this Agreement concerning management and control of Intellectual Property.

15. LIABILITY OF THE COUNCILS

- 15.1 The Lead Council shall indemnify and keep fully indemnified each of the other Councils to this Agreement against any losses, damage, claims, proceedings, expenses, actions, demands, costs and liabilities suffered by or incurred in respect of or in connection with:

15.1.1 any damage to property, real or personal; and/or

15.1.2 any injury to, or the death of, any person whomsoever; and/or

15.1.3 any third party actions, claims or demands

to the extent such damage, injury, death, third party actions, claims or demands arise from any breach by the Lead Council of its obligations under the Contract Documents or any negligent act, omission or default in relation to such obligations and the Lead Council shall make payment to the other Councils sums for which it becomes liable under this Clause 15.1 within twenty (20) Business Days of the date of another Council's written demand.

- 15.2 No claim shall be made against the Lead Council to recover any loss or damage which may be incurred by reason of or arising out of the carrying out by the Lead Council of its obligations under this Agreement unless and to the extent such loss or damage arises from any breach by the Lead Council under Clause 15.1.

- 15.3 Each of the other Councils (acting severally) shall indemnify and keep fully indemnified the Lead Council against any losses, damage, claims, proceedings, expenses, actions, demands, costs and liabilities suffered by or incurred in respect of or in connection with:

15.3.1 any damage to property, real or personal; and/or

15.3.2 any injury to, or the death of, any person whomsoever; and/or

15.3.3 any third party actions, claims or demands

if to the extent such damage, injury, death, third party actions, claims or demands arise from breach of the Contract Documents or from negligence or other act, omission or default on the part of the indemnifying party in relation to the Project and each Council shall make payment to the Lead Council sums for which it becomes liable under this Clause 15.3 within twenty (20) Business Days of the date of the Lead Council's written demand.

- 15.4 The Councils agree and acknowledge that the amount to be paid to the Lead Council by any of the other Councils under Clause 15.3 shall be borne by each of the Councils to the extent of its responsibility, however in the event that the responsibility is a shared one between the Councils (so that it is not reasonably practicable to ascertain the exact responsibility between the Councils) then the amount to be paid shall be divided between the Councils who share such responsibility in such proportions as the Joint Committee may decide.
- 15.5 In the event of a claim under this Clause 15 in which it is not reasonably practicable to determine the extent of responsibility as between the Councils (including the Lead Council), then the amount shall be divided between the Councils (including the Lead Council) as the Project Board may decide.
- 15.6 A Council (including the Lead Council) who receives a claim for losses, expenses, actions, demands, costs and liabilities shall notify and provide details of such claim as soon as is reasonably practicable to the other Councils.
- 15.7 Criminal fines or sanctions of individual Councils incurred through Council activities which are not in furtherance of the Project shall not be apportioned and the liability shall remain with the Council responsible for such fine or sanction.
- 15.8 No Council shall be indemnified in accordance with this Clause 15 unless it has given notice in accordance with Clause 15.6 to the other Council against whom it will be enforcing its right to an indemnity under this Agreement.
- 15.9 Each Council ("**Indemnifier**") shall not be responsible or be obliged to indemnify the other Councils (including the Lead Council) ("**Beneficiary**") to the extent that any insurances maintained by the Beneficiary at the relevant time provide an indemnity against the loss giving rise to such claim and to the extent that the Beneficiary recovers under such policy of insurance (save that the Indemnifier shall be responsible for the deductible under any such policy of insurance and any amount over the maximum amount insured under such policy of insurance).
- 15.10 Any liability to the Contractor in respect of any indemnity (which for the avoidance of doubt shall include Compensation Events and any other remedy of the Contractor under the Project Agreement which results in a financial obligation on the Lead Council) contained within the Project Agreement shall be for the account of the Council in breach of the indemnity in question (and where such breach has not been caused wholly by one (1) Council in such proportions as are agreed or determined by the Joint Committee else in accordance with Clause 17 (Dispute Resolution) to reflect the respective liability of each Council).
- 15.11 The Lead Council will have regard to, and to the extent not dealt with by the Contractor, administer all Project insurances in accordance with the provisions of the Project Agreement.
- 15.12 The Councils shall ensure that adequate insurance cover is effected and maintained in respect of any liabilities they may have in the event of any neglect or default on their part.

15.13 The Lead Council acting through the Project Board shall ensure that adequate insurance cover is effected and maintained in respect of any property and assets held by them for the purposes of the Joint Committee.

16. **WITHDRAWAL**

Termination by a Council is not Withdrawal

16.1 For the avoidance of doubt Clause 2.3.1 (Termination) addresses early termination for breach by a Council.

Withdrawal

16.2 If for any reason any Council (including the Lead Council) determines to withdraw from this Agreement then Clauses 16.3 to 16.6 shall apply.

16.3 If any Council wishes to withdraw from the Project it shall provide written notice to all the other Councils as soon as reasonably practicable ("**Withdrawal Notice**"). The Lead Council (or such other Council as nominated by the Joint Committee in the event that the Lead Council issues the Withdrawal Notice) shall within fourteen (14) days of receipt of the Withdrawal Notice provide to all the Councils a Liability Report which shall be discussed by the Joint Committee at its next meeting or a specially convened meeting if the next meeting falls more than two (2) weeks after the issue of the Liability Report. Those Councils who do not wish to withdraw from the Project shall have a duty, acting reasonably, to mitigate any losses which they suffer due to the financial and resource implications set out in the Liability Report.

16.4 Within the Decision Period each Council shall indicate either:-

16.4.1 that it withdraws from the Project and this Agreement; or

16.4.2 that it wishes to continue with the Project and this Agreement.

16.5 Where a Council does not indicate its intentions as required by Clause 16.4 then it shall at the expiry of the Decision Period be taken to have indicated that they wish to continue with the Project and this Agreement.

16.6 Where a Council indicates that it wishes to withdraw from the Project in accordance with Clause 16.4.1 then:-

16.6.1 the Council who shall have indicated its wish to withdraw shall pay all amounts due to be paid by it in accordance with the Liability Report within twenty (20) Business Days of the date of its notification under Clause 16.4.1 and comply with its obligation to contribute to the Project up to the date of its withdrawal; and

16.6.2 if in the event of such a withdrawal the Project timetable is delayed then the Council who shall have indicated its wish to withdraw may be responsible for any increased costs associated with such delay (as determined by the Joint Committee and notified as the sum payable in full and final settlement of such Council's liability, subject always to that Council meeting any additional antecedent liabilities incurred prior to the date of withdrawal).

Effects of Withdrawal

16.7 Unless agreed otherwise by the remaining Councils, the Council who shall have indicated its wish to withdraw from the Project shall not remove its appointees to the Project Board for a period of three (3) months commencing on the date of such Council's withdrawal, [provided that the costs associated with those appointees to the Project Board shall be borne by the remaining Councils to the Project and this

Agreement in equal shares]. For the avoidance of doubt, the Council who shall have indicated its wish to withdraw from the Project acknowledges that its voting members shall remain on the Joint Committee but shall be unable to vote on matters pertaining to the Project with effect from the date of its confirmation under Clause 16.4.1.

- 16.8 If the Lead Council is the withdrawing Council, then the Lead Council shall be required, prior to its withdrawal from the Project, to novate each of the Contract Documents (including but not limited to the Project Agreement, Independent Certifier's Appointment, Parent Company Guarantee) to the new lead Council as selected by the remaining Councils.
- 16.9 [The Lead Council (and any subsequent lead council) (agrees that if it exercises its rights to withdraw from the Project pursuant to this Clause 16 (Withdrawal) then it shall transfer its interest in the Site to the new lead council (as selected by the remaining Councils), for use for the purposes of the Project only, in accordance with Clause [].
- 16.10 Any Council to which the Site is transferred acknowledges and agrees that upon expiry of the Project the Site shall be transferred back to Flintshire Council (at no cost to Flintshire Council.)]

17. **DISPUTE RESOLUTION**

- 17.1 Subject to section 103 of the Act, any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Clause 17. The Councils undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this partnership between the Councils) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute which avoids legal proceedings and maintains a strong working relationship between the Councils. Any interim determination will be applied but will be subject to the full dispute resolution procedure.

General disputes or disagreements

- 17.2 in the event of any dispute, disagreement or difference between the Councils relating to this Agreement (whether this may be a matter of contractual interpretation or otherwise) then save in relation to disputes or disagreements relating to a Matter Reserved To The Councils, the matter shall be dealt with by referral in the first instance to the Project Board who shall meet within ten (10) Business Days of notification of the occurrence of such dispute and attempt to resolve the disputed matter in good faith.

Elevation of disputes

- 17.3 If the Project Board fails to resolve a dispute or disagreement within **five (5) Business Days** of meeting pursuant to [Clause 17.2], or fails to meet in accordance with the timescales set out in [Clause 17.2], the dispute shall be referred to the Joint Committee for resolution at the next programmed meeting (or a special meeting of the Joint Committee shall be called to resolve the dispute as agreed by the Councils).
- 17.4 In relation to a dispute or disagreement relating to a Matter Reserved To The Councils, or if the Joint Committee fails to resolve a dispute or disagreement within **five (5) Business Days** of meeting pursuant to Clause 17.3, then the Councils in dispute or the Joint Committee (as the case may be) may refer the matter for resolution to the Chief Executive(s) or equivalent officer(s) (as appropriate) of each of the Councils as a pre-condition to mediation followed by:
- 17.4.1 a mediation facilitated by the President of the CIWM or his nominated representative or such other party as the Councils may agree (or the CIWM may direct) for resolution by them; or

- 17.4.2 the exclusive jurisdiction of the Courts of England and Wales where a dispute or disagreement relates specifically to the vires of the Councils;
- and on referral to mediation or the Courts of England and Wales the Project Board shall furnish the Joint Committee with a briefing report on the dispute or disagreement for information.
- 17.5 Any dispute and/or disagreement to be determined by the Chief Executives (as appropriate), CIWM or the Courts of England and Wales or such other body as agreed by the Councils (as the case may be) under this Agreement shall be promptly referred for determination to them and in any event within thirty (30) Business Days of the Project Board's failure to reach agreement.
- 17.6 The Councils shall on request promptly supply to the Chief Executive(s) or CIWM (as the case may be) all such assistance, documents and information as may be required for the purpose of determination and the Councils shall use all reasonable endeavours to procure the prompt determination of such reference.
- 17.7 If the CIWM is appointed to determine in dispute pursuant to Clause 17.5, then the CIWM shall be deemed to act as an expert and not as an arbitrator and its determination shall (in the absence of manifest error) be conclusive and binding upon the Councils.
- 17.8 The costs of the resolution of any dispute and/or disagreement between the Councils under this Agreement shall be borne equally by the Councils to the dispute in question save as may be otherwise directed by the Chief Executive(s) (as appropriate), CIWM or the Courts of England (as the case may be).
18. **DATA PROTECTION**
- 18.1 In relation to all Personal Data, each Council shall at all times comply with the DPA, (as a data controller if necessary) which includes (but is not limited to) maintaining a valid and up to date registration or notification under the DPA covering the data processing activities to be performed in connection with the Project Tasks.
- 18.2 Each Council:-
- 18.2.1 shall process Personal Data belonging to any other Council only on the instructions of that Council (subject to compliance with applicable law);
- 18.2.2 shall only undertake processing of Personal Data reasonably required in connection with the Project Tasks and shall not transfer any Personal Data to any country or territory outside the European Economic Area; and
- 18.2.3 shall use all reasonable endeavours to procure that all relevant sub-contractors and the Contractor comply with this Clause 18.2. For the avoidance of doubt a relevant sub-contractor is one which processes Personal Data belonging to one or any of the Councils.
- 18.3 The Councils shall not disclose Personal Data to any third parties other than:-
- 18.3.1 to employees and sub-contractors and the Contractor to whom such disclosure is reasonably necessary in order for the Councils to carry out the Project Tasks; or
- 18.3.2 to the extent required under a court order or to comply with any applicable laws including (but not limited to) any statute, bye law, European Directive or regulation,

provided that any disclosure to sub-contractors or the Contractor under Clause 18.3.1 shall be made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 18 and that the Councils shall give notice in writing to all other Councils of any disclosure of Personal Data belonging to them which they or a sub-contractor or the Contractor are required to make under Clause 18.3.2 immediately as they are aware of such a requirement.

18.4 Any Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by any other Council and the relevant sub-contractors referred to in Clause 18.3.1. Within five (5) Business Days of such a request, the Council requested to do so shall supply written particulars of all such measures as it is maintaining detailed to a reasonable level such that the requesting Council can determine whether or not, in connection with the Personal Data, it is compliant with the DPA. All Councils shall use all reasonable endeavours to ensure that the sub-contractors and the Contractor also comply with such request from any other Council.

18.5 All Councils shall ensure that any Personal Data they obtain and provide to any other Council has been lawfully obtained and complies with the DPA and that the use thereof in accordance with this Agreement shall not breach any of the provisions of the DPA.

18.6 If:-

18.6.1 under the DPA any Council is required to provide information to a data subject (as defined in the DPA) in relation to Personal Data when such data is in the possession or under control of any other Council; and

18.6.2 the required Council informs the controlling Council in writing that this is the case,

then the controlling Council shall guarantee reasonable and prompt co-operation to the required Council in meeting its obligations under the DPA including making copies of the relevant Personal Data to the extent the same are in its possession.

18.7 Each Council shall provide the other as soon as reasonably practicable, with such information in relation to Personal Data and their processing as the other Council may reasonably request in writing and the party asked to provide the relevant data may reasonably be able to provide in order for the other Council to:-

18.7.1 comply with its obligations under this Clause and the DPA; and

18.7.2 assess whether the processing of the relevant Personal Data in connection with this Agreement is breaching or may breach the DPA in a manner which is material and not effectively sanctioned by any guidance statement issued by the Information Commissioner.

18.8 The Councils shall each take reasonable precautions (having regard to the nature of their respective obligations under this Agreement) to preserve the integrity of any Personal Data.

19. **FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION**

19.1 Each Council acknowledges that the other Councils are subject to the requirements of the Freedom of Information Act 2000 ("**FoIA**") and the Environmental Information Regulations 2004 ("**EIR**") and each Council shall where reasonable assist and co-operate with the other Councils (at their own expense) to enable the other Councils to comply with these information disclosure obligations.

- 19.2 Where a Council receives a request for information under either the FoIA or the EIR in relation to information which it is holding on behalf of any of the other Councils in relation to the Project, it shall:-
- 19.2.1 transfer the request for information to the other Councils as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
 - 19.2.2 provide the other Councils with a copy of all information in its possession or power in the form that the Councils reasonably require within ten (10) Business Days (or such longer period as the Councils may specify) of the Council requesting that information; and
 - 19.2.3 provide all necessary assistance as reasonably requested by the other Councils to enable the Council to respond to a request for information within the time for compliance set out in the FoIA or the EIR.
- 19.3 Where a Council receives a request for information under the FoIA or the EIR which relates to this Agreement or the Project, it shall inform the other Councils of the request for information as soon as practicable after receipt and in any event at least two (2) Business Days before disclosure and shall use all reasonable endeavours to consult with the other Councils prior to disclosure and shall consider all representations made by the other Councils in relation to the decision whether or not to disclose the information requested.
- 19.4 The Councils shall be responsible for determining in their absolute discretion whether any information requested under the FoIA or the EIR:-
- 19.4.1 is exempt from disclosure under the FoIA or the EIR; or
 - 19.4.2 is to be disclosed in response to a request for information.
- 19.5 Each Council acknowledges that the other Councils may be obliged under the FoIA or the EIR to disclose information:-
- 19.5.1 without consulting with the other Councils where it has not been practicable to achieve such consultation; or
 - 19.5.2 following consultation with the other Councils and having taken their views into account.

20. **CHANGES AND CHANGE IN LAW**

- 20.1 The Councils agree to be bound by the obligations on the Lead Council set out in [Clause 43 (Authority and Contractor Changes)] and Schedule 21 (Change Protocol) of the Project Agreement.
- 20.2 In relation to any proposed variations under the Project Agreement (whether the proposed variation is a Qualifying Change in Law, an Authority Change, a Contractor Change) or any other matter affecting the Project which may have an equivalent effect, the Councils shall work with the Contractor to achieve the best value solution for the Project in respect of such Qualifying Change in Law, Authority Change, Contractor Change or any other such matter as described in this Clause 20.2.
- 20.3 If, following a decision of the Contract Manager, the Project Board, the Joint Committee or the Councils (in respect of a Matter Reserved To The Councils) (as applicable) that the Councils decide to support a proposed variation under the Project Agreement, then Lead Council shall seek an Authority Change with the Contractor in the Project Agreement then:

- 20.3.1 where the proposed Authority Change is agreed by the Contract Manager, the Project Board, the Joint Committee or the Councils (in respect of a Matter Reserved To The Councils) (as applicable) to have a mutual benefit to the Project the costs of such proposed Authority Change shall be shared between the Councils by agreement else in absence of agreement according to the [Cost Sharing Formula];
- 20.3.2 where the proposed Authority Change is agreed by the Contract Manager, the Project Board, the Joint Committee or the Councils (in respect of a Matter Reserved to the Councils) (as applicable) to not have a mutual benefit to the Project the Council seeking such Authority Change in the Project Agreement shall bear responsibility for payment and indemnify the other Councils to hold them harmless against losses caused to each other Council by such Authority Change;
- 20.3.3 in requesting an Authority Change such proposing Council shall consider and address the impact on the other Councils; and
- 20.3.4 where a potential Authority Change falls within the grounds set out in paragraph 2 of Part 1 of Schedule 21 (Change Protocol) of the Project Agreement such Authority Change shall not be proposed or implemented.

21. STEP-IN TO THE PROJECT AGREEMENT

- 21.1 The Councils acknowledge the provisions of Clause 33 (Authority Step-In) of the Project Agreement where the Lead Council has rights to step into service delivery where it reasonably believes that it needs to take action in connection with the services because a serious risk exists to the health and safety of persons or property or to the environment or to discharge a statutory duty.
- 21.2 Under the provisions of Clause 33 (Authority Step-In) of the Project Agreement the Lead Council shall only be permitted to exercise such step in rights whereby the Councils agree to exercise such step in rights together and shall not be permitted to adopt differing approaches.

22. TERMINATION OF THE PROJECT AGREEMENT

- 22.1 Should the Lead Council become entitled to terminate the Project Agreement or otherwise serve a notice pursuant to Clause 67 (Termination for Contractor Default), Clause 69 (Termination on Force Majeure), Clause 71 (Termination on Corrupt Gifts and Fraud) and Clause 75 (Termination for Breach of the Refinancing Provisions) of the Project Agreement, the Councils shall meet as soon as reasonably practicable thereafter to decide as a Matter Reserved To The Councils whether the Project Agreement should be terminated (and for the avoidance of doubt no partial termination is contemplated, any changes of scope in the Project to be addressed as an Authority Change), taking into account:
 - 22.1.1 the point during the Project term at which termination of the Project Agreement would occur;
 - 22.1.2 the financial consequences of such termination and the rights of the Contractor pursuant to Schedule 17 (Compensation on Termination) of the Project Agreement;
 - 22.1.3 the financial consequences of continuing with the Project;
 - 22.1.4 the views of each Council concerning such termination;
 - 22.1.5 any alternative providers or means of provision of the works and/or services available to the Lead Council (and the other Councils);

22.1.6 whether the Councils are required to step in to provide the works and/or services; and

22.1.7 any other matters relevant to the termination or continuance of the Project.

22.2 For the avoidance of doubt, the Lead Council shall not be entitled to issue a notice of voluntary termination in accordance with Clause 73 (Voluntary Termination by the Authority) of the Project Agreement unless such action has been approved by all of the Councils as a Matter Reserved To The Councils.

23. **COUNCILS' OBLIGATIONS FOLLOWING EXPIRY OR EARLIER TERMINATION OF THE PROJECT AGREEMENT**

Extension

23.1 The Councils acknowledge that pursuant to Clause 3.3 of the Project Agreement, there is an option for the Authority to extend the Expiry Date by a period of up to five (5) years. The Councils agree that any decision to extend the Expiry Date shall be a Matter Reserved To The Councils.

23.2 The Councils shall determine no later than sixty (60) months prior to expiry of the Project Agreement, what information is required (if any) from the Contractor, which will enable the Councils to determine if any extension of the Expiry Date is required by the Councils.

23.3 The Councils acknowledge that any decision to extend the Contract Period must be determined and notified to the Contractor no later than 36 months prior to the Expiry Date in accordance with Clause 3.3 of the Project Agreement.

After Project expiry or earlier termination

23.4 The Councils agree that, following expiry or earlier termination of the Project Agreement they shall, prior to termination of this Agreement, seek to agree such arrangements as are appropriate in respect of the continuing operation or otherwise of the Facilities in accordance with Clause 11 (Sites and Decommissioning). The Councils acknowledge however that on expiry of the Project there is no obligation on Flintshire Council to utilise the Site for any continued arrangements with Partnership (or any of the Councils separately) and any arrangements that are agreed in respect of the continued utilisation of the Site will need to be agreed and documented in a separate agreement.

23.5 Subject to the provisions at Clause 11. The Councils assume that on early termination of the Project Agreement that leases and/or licences shall cross default with the Project Agreement and that [Allocated Sites] shall remain in the possession of the Council which acquired them and/or contributed them to the Project.

Termination Payments

[It is agreed in principle that the Councils shall be liable (and shall indemnify each other) for equal proportions of the termination sum payable to the Contractor following an early termination of the Project Agreement where the early termination occurs during the Works Period and prior to completion of the Facility. If termination occurs during the Services Period, when the Facility is operational, then liability shall be determined on a pro-rata basis in respect of the actual tonnage delivered by each of the Councils. An exception to this principle applies in circumstances where one Council is wholly responsible for the termination, or the Councils are not equally at fault, in which case the Councils agree that the Council or Councils whose acts or omissions gave rise to the early termination shall be liable for a greater proportion of the termination sum or all of the termination sum.]

- 23.6 The Councils shall be liable for (and indemnify each other) in the proportions described in the Cost Sharing Formula for the Termination Sum payable to the Contractor following the early termination of the Project Agreement, save in respect of any Termination Sum payable in accordance with Clause 66 (Compensation on Termination for Authority Default) or Clause 4.4 (Relevant Discharge Terms) and Schedule 28 (Relevant Discharge Terms) of the Project Agreement, in which case liability for payment of the Termination Sum shall rest with the Council responsible for such termination (and where such termination has not been caused wholly by a single Council in such proportions as are agreed or determined in accordance with Clause 20 (Dispute Resolution) to reflect the respective liability of each Council and the concept of mutual benefit shall not apply).
- 23.7 The Councils' liability on early termination of the Project Agreement shall be defined by reference to the Lead Council's obligation to pay compensation on early termination to the Contractor as follows:
- 23.7.1 Clause 65 (Termination for Authority Default) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;
 - 23.7.2 Clause 67 (Termination for Contractor Default) and Part 3 of Schedule 17 (Compensation on Termination) of the Project Agreement;
 - 23.7.3 Clause 69 (Termination on Force Majeure) and Part 5 of Schedule 17 (Compensation on Termination) of the Project Agreement;
 - 23.7.4 Clause 71 (Termination on Corrupt Gifts and Fraud) and Part 4 of Schedule 17 (Compensation on Termination) of the Project Agreement;
 - 23.7.5 Clause 73 (Voluntary Termination by the Authority) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;
 - 23.7.6 Any other provision within the Project Agreement that affects liability on termination of the Project Agreement; and
 - 23.7.7 Any other liability that the Lead Council may reasonably incur which flows from or is connected to the termination of the Project Agreement.
- 23.8 Notwithstanding any other provisions of this Agreement it is agreed that no Council shall be entitled to derive any financial or other benefit from an early termination event at the cost of any other Council.

24. **POLICIES**

- 24.1 In respect of the policies referred to in Schedule 13 (Authority Policies) of the Project Agreement, the policies of the Lead Council shall apply in relation to the operation of the Project Agreement within the Councils' administrative areas and to employees operating within those areas.

25. **CONFIDENTIALITY AND ANNOUNCEMENTS**

- 25.1 The Councils shall comply with the confidentiality provisions of the Lead Council set out in the Project Agreement as if they were set out in this Agreement.
- 25.2 Each Council ("**Covenanter**") shall, both during the currency of this Agreement and at all times following its termination or expiry, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any Confidential Information about the business of and/or belonging to any other Council or the Contractor which has come to its attention as a result of or in connection with this Agreement, in particular (but without prejudice to the generality of the foregoing) Confidential Information relating to the Project Agreement.

- 25.3 The obligation set out in Clause 25.1 shall not relate to information which:-
- 25.3.1 comes into the public domain or is subsequently disclosed to the public (other than through default on the part of the Covenanter or any other person to whom the Covenanter is permitted to disclose such information under this Agreement); or
 - 25.3.2 any disclosure to enable a determination to be made under Clause 17 (Dispute Resolution);
 - 25.3.3 is required to be disclosed by law; or
 - 25.3.4 was already in the possession of the Covenanter (without restrictions as to its use) on the date of receipt; or
 - 25.3.5 is required or recommended by the rules of any governmental or regulatory body including any guidance from time to time as to openness and disclosure of information by public bodies; or
 - 25.3.6 is necessary to be disclosed to provide relevant information to any insurer or insurance broker in connection with obtaining any insurance required by this Agreement.
- 25.4 Where disclosure is permitted under Clauses 25.3.3, 25.3.4 or 25.3.5, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 25 and the disclosing Council shall make this known to the recipient of the information.
- 25.5 No Council shall make any public statement (which shall include speaking or presenting at public conferences or other analogous situations) or issue any press release or publish any other public document relating, connected with or arising out of this Agreement and/or the Project Agreement (excluding any disclosure required by legal or regulatory requirements) without obtaining the prior written approval of the other Councils as to the contents thereof and the manner of its presentation and publication provided that prior approval shall be required if such public statement materially affects any Council.
- 25.6 Each Council agrees to make available to the other Councils any books and records which may be required for the purposes of an internal audit and the Councils agree that any disclosure of such books and records to an appointed external auditor shall not breach the provisions of this Agreement.

26. **CONTRACTS (THIRD PARTY RIGHTS)**

The Councils as parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

27. **NOTICES**

- 27.1 Any notice or demand in connection with this Agreement shall be in writing and may be delivered by hand, prepaid first class post, special delivery post, facsimile or email (with a copy following by facsimile or post), addressed to the recipient at the address or facsimile number as the case may be set out in Schedule 4 (Addresses of the Councils) or such other recipient address or facsimile number as may be notified in writing from time to time by any of the parties to this Agreement to all the other Councils to this Agreement.
- 27.2 The notice or demand shall be deemed to have been duly served:-

- 27.2.1 if delivered by hand, when left at the proper address for service;
- 27.2.2 if given or made by prepaid first class post or special delivery post, forty-eight (48) hours after being posted (excluding days other than Business Days);
- 27.2.3 if given or made by facsimile, at the time of transmission;
- 27.2.4 if given or made by email, at the time of transmission,

provided that, where in the case of delivery by hand or transmission by facsimile or email such delivery or transmission occurs either after 4.00pm on a Business Day or on a day other than a Business Day service shall be deemed to occur at 9.00am on the next following Business Day.

- 27.3 For the avoidance of doubt, where proceedings to which the Civil Procedure Rules apply have been issued, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
- 27.4 Each Council shall notify the other Councils in writing within five (5) Business Days of any change in its address for service.

28. **GOVERNING LAW**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Clause 17 (Dispute Resolution), the English and Welsh Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

29. **ASSIGNMENTS**

- 29.1 The rights and obligations of the Councils under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) save in circumstances of an amalgamation of the Councils to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the relevant Council under this Agreement being:-
 - 29.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
 - 29.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the relevant Council under this Agreement.

30. **WAIVER AND COSTS**

- 30.1 No failure or delay by any Council to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right, power or remedy unless a waiver is given in writing by that Council.
- 30.2 Each Council shall pay their own respective costs and expenses incurred in connection with the preparation, execution, completion and implementation of this Agreement, except as expressly provided for in this Agreement.
- 30.3 Save where otherwise provided, the Councils will pay interest on any amount payable under this Agreement not paid on the due date from that date to the date of payment

at a rate equal to two per cent (2%) above the base rate from time to time of Barclays Bank plc.

31. ENTIRE AGREEMENT

This Agreement contains all the terms which the parties have agreed in relation to the subject of this Agreement and supersedes any prior written or oral agreements, representations, communications, negotiations or understandings between the Councils relating to such subject matter. No Council has been induced to enter into this Agreement or any of these documents by statement or promise which they do not contain, save that this Clause 31 shall not exclude any liability which one (1) Council would otherwise have to the other in respect of any statements made fraudulently by that Council.

32. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which so executed shall be an original but together shall constitute one and the same instrument.

33. RELATIONSHIP OF COUNCILS

Each Council is an independent body and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Councils of partnership or (except as expressly provided in this Agreement) of principal/agent or of employer/employee. No Council shall have the right to act on behalf of another, make any representations or give any warranties to third parties on behalf or in respect of any other Council nor to bind (or hold themselves out as having authority or power to bind) any other Council by contract or otherwise except to the extent expressly permitted by the terms of this Agreement or where a statutory provision otherwise requires. In particular for the avoidance of doubt, none of the provisions relating to the principles of working in partnership shall create, or be deemed to create, any partnership as defined by The Partnership Act 1890.

34. MITIGATION

Each Council shall at all time take all reasonable steps to minimise and mitigate any loss for which the relevant Council is entitled to bring a claim against the other Council(s) pursuant to this Agreement.

35. STATUTORY RESPONSIBILITIES

Notwithstanding anything apparently to the contrary in this Agreement, in carrying out their statutory duties, the discretion of any Council shall not be fettered or otherwise affected by the terms of this Agreement. Nothing contained or implied herein shall prejudice or affect the Councils' rights and powers, duties and obligations in the exercise of their functions as Local Authorities and/or in any other capacity and all rights, powers, discretions, duties and obligations of the Councils under all laws may at all times be fully and effectually exercised as if the Councils were not a party to this Agreement and as if the Agreement had not been made.

36. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

The certificate in respect of this Agreement to be provided by the Councils (not being the Lead Council) in respect of their powers to enter into this Agreement and support the Lead Council model whereby the Lead Council enters into the Project Agreement with the Contractor and accepts a contingent liability for the Relevant Discharge Terms (as defined in the Project Agreement) on behalf of itself assuming the other Councils are committed to underwriting their proportion of any compensation payable under the Relevant Discharge Terms pursuant to section 3 of the Local Government

(Contracts) Act 1997 shall be provided by the Councils (not being the Lead Council) to the Lead Council on or before the date of this Agreement.

37. **VARIATIONS**

37.1 The Councils may vary the terms of this Agreement including admitting additional Councils to the Joint Committee, the terms of such admission to be agreed by the Councils.

37.2 Where an additional Council is admitted to the Joint Committee it shall enter a deed of variation in a form agreed by the Joint Committee and from the date of its admittance to the Joint Committee all provisions of this Agreement shall apply to the admitted Council and the definition of "**Councils**" shall include it.

37.3 No amendment to this Agreement shall be binding unless it is in writing and signed by the duly authorised representatives of each of the Councils and expressed to be for the purpose of such amendment.

37.4 The Councils shall endeavour to review this Agreement on an annual basis to monitor and reflect on the operation of the Project and the performance of the obligations set out in this Agreement.

38. **SEVERABILITY**

In the event of any provision of this Agreement being or becoming legally ineffective, invalid, illegal or unenforceable as declared by the courts of other competent authority the remaining provisions of this Agreement shall not be invalidated and the Councils shall negotiate in good faith in order to agree a mutually satisfactory substitute provision.

AS WITNESSED the duly authorised representatives of the Councils have signed this Agreement as a deed on the date written at the beginning of this Agreement.

SCHEDULE 1 – PROJECT TASKS

[Note: The below table of Project Tasks will need to be monitored and updated to reflect the main body of the IAA as it progresses. Councils will need to review and confirm each of the Project Tasks.]

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
1. Agree to terminate Agreement	2.2					Y
2. Issue Default Notice for Council breach of Agreement	2.2.1					Y
3. Respond to Default Notice with Counternotice proposing remediation of Default Notice matters	2.2.2					Y
4. Issue of Notice of Acceptance or Notice of Dispute concerning Counternotice proposals to remediate breaches of Agreement	2.2.3					Y
5. Implement Notice of Acceptance	2.2.4					
6. Issue of written notice of termination of Agreement by Non-Defaulting Councils to Defaulter	2.3.1					
7. Liability for losses caused due to termination by a Defaulter	2.8.2					
8. Issue of Liability Report by Lead Council to Defaulter	2.8.2					
9. Discussion of Liability Report					Y	
10. All necessary consents obtained						Y

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
11. Share data and knowledge relevant to the Project	3.4					
12. Conduct relationship in accordance with stated principles	3.5					
13. Agreement that Flintshire Council shall be Lead Council	4.1					Y
14. Recognition of existence of Joint Committee and compliance with decisions delegated to Joint Committee	4.2					
15. Deciding detailed scope of Lead Council role	4.3.1				Y	
16. Deciding administrative and representative functions of the Lead Council	4.3.2				Y	
17. Communicate representative functions to Contractor	4.3.2		Y			
18. Consultation and reporting requirements between Lead Council and Joint Committee	4.3.3				Y	
19. Act on behalf of Partnership in management and supervision of Project	4.4.1		Y			
20. Acting under direction of Joint Committee	4.4.2		Y			
21. Act on behalf of other Councils	4.4.3		Y			
22. Liaising with Contractor and Contractor's representatives	4.4.4		Y			
23. Participating in Liaison Committee under Project Agreement	4.4.5		Y			
24. Act as employing authority for Lead Council staff or supervisor of Councils' seconded staff	4.4.6		Y			

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
25. Legal point of contact for managing Project	4.4.7		Y			
26. Providing additional resources and office facilities	4.4.8		Y			
27. Providing senior officers to Project	4.4.9		Y			
28. Determining level of involvement of senior officers	4.4.9				Y	
29. Responsibility for liaison and communication with WG and co-ordination of communication and public relations	4.4.10		Y			
30. Managing application of Annual Budget for Core Project Team and reporting to Project Board	4.4.11		Y			
31. Reviewing Annual Budget expenditure	4.4.11			Y		
32. Having powers to enter into contracts with consultants	4.4.11		Y			
33. Appointing a replacement Lead Council if the Lead Council defaults or withdraws from the Agreement	4.5				Y	
34. Performing much of Lead Council role	4.6	Y				
35. Employing Contract Manager	4.7.1		Y			
36. Line manager of Contract Manager	4.7.1			Project Team		
37. No competing procurement to the Project unless outside the terms of the Agreement	4.8					
38. Commitment to a minimum tonnage guarantee	4.8					Y

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
39. Warranty to comply with the Contract Documents (and indemnity in respect of loss)	4.9					Y
40. Co-operate in good faith	4.10					Y
41. No exercise or waiver of right under Contract Documents without approval	4.11					Y
42. Primary interface with Contractor, WG, IUK and other bodies	4.13		Y			
43. Overview and scrutiny responsibility	5.2					Y
44. Provision of information on reasonable request of Joint Committee	6.6					Y
45. Consultation with Councils to allow diligent progress day to day	6.7					Y
46. Reimbursement of administrative costs and expenses of Joint Committee in accordance with Annual Budget	6.7					Y
47. Review of administrative costs and expenses of Joint Committee each year when draft Annual Budget prepared	6.7			Y		
48. Consideration of administrative costs and expenses of Joint Committee each year when draft Annual Budget prepared	6.8				Y	
49. Approval of administrative costs and expenses of Joint Committee each year when draft Annual Budget prepared	6.8					Y
50. Principle of reimbursement of first year costs and expenses of Joint Committee	6.10.1					Y
51. Recommendation of first year costs and expenses of Joint Committee	6.10.2			Y		
52. Setting first year costs and expenses of Joint Committee	6.10.2				Y	

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
53. Preparing a draft Annual Budget for the following Contract Year by 31 December in each Contract Year	7.1			Y		
54. Consider and recommend a draft Annual Budget for the following Contract Year by 31 December in each Contract Year	7.1				Y	
55. Approval of Annual Budget	7.1					Y
56. Approval to exceed Annual Budget (including contingency sums)	7.3					Y
57. Making available share of Annual Budget irrevocably to Lead Council	7.4					Y
58. Accountable body for the Joint Committee	7.5			Y		
59. Oversee or procure monitoring of Annual Budget for Councils' scrutiny	7.5				Y	
60. Contribute annual sum for Annual Budget spend year from spend profile	7.7					Y
61. Serve Annual Budget invoice on Councils at end of each Accounting Period	7.7		Y			
62. Payment of Annual Budget invoice each Accounting Period	7.7					Y
63. Costs of providing internal resources	7.8					Y
64. Approval of additional costs and external costs beyond Council internal resources approval (all within Annual Budget spend profile)	7.8			Project Team <£5K Project Board >£5K		
65. Approval of additional costs and external costs beyond Council internal resources approval (not included within Annual	7.9.1			Project Team		

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Budget spend profile)						
66. Has Council carried out activity as efficient use of time?	7.9.2			Y		
67. Decision on whether a Council internal resource costs are disproportionate compared to the Annual Budget spend profile	7.10			Y		
68. Prior approval of all reports for decision by Joint Committee (except if impracticable due to special meeting)	8.3.1			Y		
69. Monitor Project to ensure it remains within budget	8.3.2			Y		
70. Make available officers as necessary for purposes of the Project	9.1					Y
71. Appoint the Project Officers for the purpose of the Project	9.2		Y			
72. Provide necessary support to secure the effective achievement of the Project	10.2					Y
73. Prepare and keep up to date a draft Project Plan, work programme and resource plan for the Project	11.1	Contract Manager				
74. Present the draft Project Plan, work programme and resource plan for the Project to the Project Board	11.2			Project Team		
75. Decision on whether there is any significant change to the Project Plan, work programme and resource plan for the Project to be approved by the Joint Committee	11.2			Y		
76. Approval of the Project Plan, work programme and resource plan for the Project	11.3				Y	

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
77. Request to each Council for future budgetary provision and for resources	11.3.1				Y	
78. Cost and terms of the acquisition and/or securing of the Allocated Sites	12.1					Y
79. Decision on whether to transfer or not to transfer a interest in an Allocated Site pursuant to Withdrawal or Termination of the Project	12.2					Y
80. Transfer an interest in a Allocated Site to one of the remaining Councils for the use for the Project pursuant to Withdrawal or Termination of the Project	12.2.1				Y	
81. Liability for costs of provision of an alternative Site for the Project having equivalent operational effect	12.2.2					Y
82. Conduct a transfer of a interest in any Allocated Site at an undervalue of Market Value	12.3					Y
83. Receive any WG grant from [REDACTED] and payment to Councils of such credits or grant	13.1		Y			
84. Payment of contributions towards funding the Project's annual unitary charge payment	13.2					Y
85. Monthly Contract Payment to the Contractor	13.3		Y			
86. Responsibility for any adjustments or Deductions to the Contractor's invoice	13.6	Contract Manager				
87. Payment of proportion of the Monthly Contract Payment to Flintshire Council	13.7/ 13.8					Y
88. Ensure that there are always cleared funds paid	13.9					Y

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
89. Review payment proportions as defined in Schedule 10 (Payment Proportions) on 30 September following the Service Commencement Date and at one (1) yearly intervals thereafter	13.13					Y
90. Supply fair and objective criteria for review of payment proportions	13.13			Y		
91. Consider adjustments, reconciliations or payments to recompense for significant anomalies in Project mutual benefit	13.14			Y		
92. Power to make adjustments, reconciliations or payments to recompense for significant anomalies in Project mutual benefit	13.14		Y			
93. Apportion any payment made by the Contractor	13.15		Y			
94. Liability for any taxation or duty chargeable in the UK in respect to participation the Project	13.16					Y
95. Increase payment to negate any withholding or deduction required by law and provide any appropriate certificate as may be required by law showing the amount.	13.17					Y
96. Obtain any available relief or credit in respect of any such withholding or deduction regarding taxation and provide information reasonably required with making a claim for relief	13.18					Y
1. Prepare accounts including expenditure incurred pursuant to the Annual Budget	14.2					Y
2. Determine Accounting Period in relation to AB Accounts	14.2			Y		

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
3. Ensure true and complete entries of all relevant payments and receipts in the AB Accounts	14.3.1					Y
4. Provide the Lead Council with unaudited AB Accounts for an Accounting period with certification that such AB Accounts comply with this agreement	14.3.2					Y
5. Nominate and notify to the other Councils the name, address and telephone number of an individual responsible for ensuring that Council complies with Clause 14 of this agreement	14.3.3					Y
6. Prepare and send a reconciliation statement with either a balancing invoice or credit payment	14.3.4		Y			
7. Notify a change to the nominated individual pursuant to Clause 14	14.4					Y
8. Maintain an up to date register of the assets and committed liabilities of each Council in relation to the Joint Committee	14.6		Y			
9. Grant a non-exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its IP Material for the Project Tasks	15.2					Y
10. Indemnify any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its Intellectual Property rights	15.6					Y
11. Indemnify against any losses, damage, claims, proceedings, expenses, actions, demands, costs and liabilities in	16.1/ 16.3		Y			Y

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
connection with any damage to property; any injury to, or death of any person; and any third party actions, claims or demands						
12. Determine the extent of responsibility of responsibility in the event of a claim	16.5			Y		
13. Notify and provide details of a claim for losses, expenses, actions, demands, costs and liabilities	16.6					Y
14. Allocate any sums paid by the Contractor	16.11					Y
15. Administer all Project insurances in accordance with the provisions of the Project Agreement	16.2		Y			
16. Ensure that adequate insurance cover is effected and maintained in respect of any liabilities	16.14					Y
17. Ensure adequate insurance cover is effected and maintained in respect of any property and assets held by them for the purposes of the Joint Committee	16.15		Y	Y		
18. Provide written Withdrawal Notice	17.3					Y
19. Provide a Liability Report that is discussed by the Joint Committee	17.3		Y			Y (If nominated by JC)

SCHEDULE 2 - JOINT COMMITTEE TERMS OF REFERENCE

PART 1

TERMS OF REFERENCE

[DN: The terms of reference of the Joint Committee require review and consideration by the Councils.]

1. The terms of reference of the Joint Committee are:-
 - 1.1 to promote joint working in the delivery of the Project through:-
 - 1.1.1 facilitating constructive partnership working;
 - 1.1.2 engaging with key interested bodies and stakeholders when appropriate; and
 - 1.1.3 carrying out such other activities calculated to facilitate, or which are conducive to the successful delivery of the Project; and
 - 1.2 to ensure that the Project is developed in accordance with good industry practice, is in the best interests of all Councils and delivers value for money.
2. The key functions of the Joint Committee are to:-
 - 2.1 consider and make recommendations concerning the Councils' collective budget for the Project on an annual basis noting:
 - 2.1.1 the predicted outturn of the Councils' collective payments to the Contractor for services received under the Project Agreement as approved by the Councils;
 - 2.1.2 the profile of such payments described as Monthly Payments of Unitary Charge; and
 - 2.1.3 the draft Annual Budget prepared by the Project Board and approved by each Council;
 - 2.2 consider and make recommendations in respect of all Contract Documents in relation to the Project;
 - 2.3 to monitor and manage the risks associated with the Project
 - 2.4 address at a members' level any issues raised by the Councils' representatives on the Liaison Committee (pursuant to the Project Agreement) which require discussion; and
 - 2.5 to ratify requests for additional funding from individual Councils.
3. For the avoidance of doubt, the following matters are Matters Reserved To The Councils i.e. reserved for an individual Council decision:-
 - 3.1 approval of inter-Council partnership governance arrangements; and
 - 3.2 increase of budget over agreed Council contributions.
4. The key responsibilities of the Joint Committee include those tasks set out in Schedule 1 (Project Tasks) which are each designated as a "**Joint Committee Matter**" and in addition the following:-

- 4.1 providing strategic direction to the Project Board;
- 4.2 receiving and reviewing the Contractor's summary of its performance under the Project Agreement which is issued each quarter;
- 4.3 receiving and reviewing the Project monitoring update which is issued each year;
- 4.4 promoting partnership working between the Councils;
- 4.5 adherence to the Data Protection Policy as set out at Appendix 1 (Data Protection Policy);
- 4.6 approval of the annual Governance Statement which shall be published with the annual account at the end of each financial year;
- 4.7 consideration of the Annual Budget and recommendation of the same to the Councils for approval in accordance with Clause [];
- 4.8 preparation of statutory accounts pursuant to The Accounts and Audit (Wales) (Amendment) Regulations 2010;
- 4.9 ensuring that the Lead Council provides all financial and statistical reports on an open book basis upon request by the Councils or their internal or external auditors, permitting any such authorised persons to inspect, audit and take copies of all reports, books, accounting records, vouchers and any other documents considered relevant and seek reasonable explanations for any matter under examination; and
- 4.10 ensuring that the Lead Council's internal audit service provides an annual statement of assurance to the Councils regarding the payment process and Project monitoring arrangements which will be provided by 30 June each year.

PART 2

CONSTITUTIONAL ARRANGEMENTS

1. Subject to Clause 4.5 (Duties of the Lead Council and Other Councils), each Council shall appoint two (2) elected members of their [executive or Cabinet], both of whom shall be voting members, as their representatives to the Joint Committee.
2. Members of the Joint Committee shall be appointed in accordance with the standing orders of that Council.
3. In appointing members to the Joint Committee, each Council will include among its appointees, unless there are overriding reasons to the contrary, the member of the [Cabinet] of that Council who has portfolio responsibility for waste management functions within that Council.
4. Each member of the Joint Committee shall be empowered to have the delegated authority of his or her Council to make binding decisions in relation to the Project. In the event that any member is unable to make a decision the matter will be referred to the respective Council at an appropriate level (including but not limited to Council leader or Council [Cabinet]) and a binding decision will be made by such Council as soon as reasonably practicable and in any event within forty (40) Business Days.
5. Each member of the Joint Committee shall have responsibility for championing the Project within their own Council and for securing, as far as possible that any matter which is recommended to that Council by the Joint Committee for decision shall be considered and determined expeditiously and having due regard to the benefits to each Council of the joint procurement and implementation of the Project.
6. Each Council shall also appoint one (1) substitute member in the event that appointed members are unable or incapable of discharging their functions.
7. Each Council's substitute member shall be entitled to attend meetings of the Joint Committee but shall only be entitled to vote in the absence of his or her corresponding voting member.
8. Each Council may, at their discretion, replace their representatives appointed to the Joint Committee, provided that:-
 - (a) at all times, they have representatives appointed to the Joint Committee in accordance with the roles identified in Part 1 of this Schedule 2 (Joint Committee Terms of Reference); and
 - (b) any such replacement nominated in writing on not less than five (5) Business Days' notice shall have no lesser status or authority than that set out in Part 1 of this Schedule 2 (Joint Committee Terms of Reference) unless otherwise agreed by the Councils.
9. The Chair of the Joint Committee shall be an elected Executive or Board member of a Council appointed by the Joint Committee pursuant to paragraph 11.
10. The Vice-Chair of the Joint Committee shall be an elected executive member of a Council appointed by the Joint Committee pursuant to paragraph 11. In the absence of the Chair for any reason, the responsibilities of the Chair can be discharged by the Vice-Chair.
11. The Chair and the Vice-Chair of the Joint Committee shall be elected at the annual general meeting and appointments shall take effect until the next annual general meeting. The Chair will be nominated by annual rotation between the Councils commencing with a Flintshire Council member of the Joint Committee and the

subsequent order of rotation for the following two (2) years shall be agreed by the Joint Committee.

12. The Joint Committee shall meet as and when required to suit the needs of the Project in accordance with the Project timetable provided that there shall be a minimum of two (2) meetings per year, one (1) of which shall be specified as the annual general meeting and, subject to paragraph 13, at appropriate times and on reasonable notice (to be issued through the Project Team) to carry out the Joint Committee Matters referred to in Schedule 1 (Project Tasks). The venue for the meetings shall be agreed by the Joint Committee.
13. A printed copy of the agenda and reports for each meeting and the minutes of the previous meeting shall be despatched at least five (5) Business Days before such meeting is to be held to each representative appointed to the Joint Committee. The Chief Executive of the Lead Council shall use reasonable endeavour to procure that the agenda and all relevant papers meet this deadline. All agendas, reports and minutes in relation to the Joint Committee shall be in English.
14. The quorum necessary for a Joint Committee Meeting shall be five (5) members of the Joint Committee comprising at least one (1) member from each of the Councils from each Council (in person but not by telephone).
15. Each Council shall be entitled to invite appropriate third parties to observe Joint Committee Meetings and such third parties shall be entitled to be present in support of such Joint Committee Meetings at the discretion of the Chair of the Joint Committee. Such observers shall not have a vote. For the avoidance of doubt, the section 151 officer and/or monitoring officer for each Council shall be entitled to attend and participate in Joint Committee Meetings in a non-voting capacity.
16. Save as is inconsistent with the terms of this Agreement the Council Procedure Rules and Contract Procedure Rules of the Lead Council shall apply.
17. At meetings of the Joint Committee each elected voting member or appropriate deputy appointed pursuant to paragraph 1 above from each Council shall have one (1) vote. Decisions at meetings of the Joint Committee must be unanimous.
18. The Joint Committee shall have the powers to make decisions and recommendations within its terms of reference as set out in Part 1 of this Schedule 2 (Joint Committee Terms of Reference) but shall not have power to approve any Matter Reserved To The Councils pursuant to Clause 5.1.4 (Decision Making).
19. The Joint Committee decisions shall comply with the Core Policies of the Councils. If the Joint Committee proposes to make a decision contrary to the Core Policies then those decisions must be referred to each Council for resolution as a Matter Reserved To The Councils.
20. Reports to be submitted to the Joint Committee (including those pertaining to the Annual Budget) shall be considered by the Project Board prior to submission to the Joint Committee.
21. The Chair may summon a special meeting of the Joint Committee at any time by written notice to the Lead Council specifying the business to be considered at the special meeting.
22. A special meeting shall be summoned on the requisition in writing of any Joint Committee Members acting on behalf of his or her Council, which requisition shall specify the business to be considered at the special meeting.
23. Arrangements for holding a special meeting will be in accordance with the timetable set out in paragraph 12.

24. In the event that a special meeting is called the Lead Council shall notify all members of the Project Board as a matter of urgency.

SCHEDULE 3 - PROJECT BOARD TERMS OF REFERENCE

[DN: THE TERMS OF REFERENCE OF THE PROJECT BOARD REQUIRE REVIEW AND CONSIDERATION BY THE COUNCILS.]

1. The Project Board will manage the progress and implementation of the Project including identifying all works necessary to be carried out and instructing the internal and external financial, legal, procurement and technical advisors to carry out the same. The Project Team shall be empowered (within pre-agreed parameters) to deal direct with the Contractor and other third parties.
2. The Project Board will act as a representative for each of the Council's "Corporate Officer Management Team" described in Schedule 4 (Addresses of the Councils) to ensure consistency with individual Council objectives and visions.
3. The Project Board will consider and determine those matters allocated to it in Schedule 1 (Project Tasks).
4. The Project Board will as and when necessary report to the Joint Committee and provide advice to the Joint Committee on those matters referred to the Joint Committee as set out in Schedule 1 (Project Tasks) and Schedule 2 (Joint Committee Terms of Reference).
5. For the avoidance of doubt (as set out in Clause 8.3) the following specific functions are given to the Project Board:-
 - (a) prior approval of all reports for decision by the Joint Committee save if impracticable in the case of a special meeting;
 - (b) preparation of the draft Annual Budget;
 - (c) monitor the Project to ensure that it remains within budget;
 - (d) to provide strategic guidance to the Project to ensure that it delivers the desired outcomes for the Councils;
 - (e) to ensure that the Project and Partnership is presented positively to external stakeholders;
 - (f) to oversee the Project's progress to ensure it is delivered within agreed timescales;
 - (g) to approve the completion of each stage of the Project before sign off;
 - (h) to review and approve, as appropriate, key documents relating to the Project such as the Contract Documents;
 - (i) to ensure that the Project is sufficiently resourced in regard to finance and staffing;
 - (j) to approve the scope of work, selection, and terms of engagement of advisors;
 - (k) to approve Project reviews and ensure that action is taken against any recommendations made; and
 - (l) to agree items for presentation to Joint Committee for approval or information.

SCHEDULE 4 - ADDRESSES OF THE COUNCILS

[DN: Details taken from the First Inter-Authority Agreement. Councils to confirm any required amendments.]

RECIPIENT'S NAME	ADDRESS	FAX NO.	EMAIL	CORPORATE OFFICER MANAGEMENT TEAM
Conwy County Borough Council:-	Bodlondeb, Conwy, North Wales LL32 8DU	01492 576116	Janet.Jones@conwy.gov.uk	Executive Group
Denbighshire County Council:- Head of Corporate Governance	County Hall, Wynnstay Road, Ruthin LL15 1YN	01824 706293	Legal@denbighshire.gov.uk	Senior Leadership Team
Flintshire County Council:- Head of Legal and Democratic Services	County Hall, Mold, Flintshire CH7 6NB	01352 702494	Gareth.Legal@flintshire.gcsx.gov.uk	Corporate Management Team
Gwynedd Council:- Head of Democracy and Legal Service	Council Offices, Shirehall Street, Caernarfon, Gwynedd LL55 1SH	01286 679466	IwanGDEvans@gwynedd.gov.uk	Leadership Group
Isle of Anglesey County Council:- Corporate Director, Department of Environment and Technical Services	Council Offices, Llangefni, Anglesey LL77 7TW	01248 752132	rbxcs@anglesey.gov.uk	Corporate Management Team

SCHEDULE 5 - ANNUAL BUDGET

For the avoidance of doubt the Annual Budget is required for the Joint Committee to note the Project Board's recommendations for funding the Lead Council's obligations under this Agreement.

The Annual Budget does not include the Unitary Charge payment due under the Project Agreement as envisaged by the Final Business Case and as approved by the Councils.

The following is a non-exhaustive list of the heads of expenditure that may be expected to be incurred by the Councils in relation to the Project Tasks:

1. internal expenditure (staff costs and associated overheads);
2. internal financial support;
3. internal legal support;
4. other professional services (including asset management, architects, quantity surveyors, surveyors, procurement and planning);
5. communications;
6. external expenditure (staff costs and associated overheads);
7. Project management/technical and administrative support;
8. financial advisors;
9. technical advisors;
10. insurance advisors;
11. legal advisors;
12. other professional services (including asset management, architects, QS, surveyors, procurement, site investigation, remediation and planning);
13. waste analysis;
14. ICT;
15. communications advisors;
16. associated overheads may include such expenses as travel expenses, room hire, printing, accommodation and ICT costs; and
17. agreement to the incurring of costs and the appropriateness of sharing such costs between the Councils will be in accordance with the terms of this Agreement.

SCHEDULE 6 - ACCOUNTING PERIODS

[DN: Details to be confirmed by the Councils.]

Start of Accounting Period	End of Accounting Period
1 April	30 June
1 July	30 September
1 October	31 December
1 January	31 March

SCHEDULE 7 - LIABILITY REPORT

The Liability Report shall include (but shall not be limited to):-

	<u>Amount</u> (all figures in round pounds)
<p>Staff costs (and associated overheads) in progressing the Project:-</p> <ul style="list-style-type: none"> • consultancy and advisors fees (legal, financial, technical, insurance etc.); • internal Project management and monitoring; • internal professional advice. 	
<p>Loss of funding support from Welsh Government.</p>	
<p>Losses incurred due to:-</p> <ul style="list-style-type: none"> • loss of guaranteed Third Party Income identified in the Contractor's base case financial model; • liability on the remaining Councils to pay an increased proportion of the Unitary Charge payments due to the Contractor under the Project Agreement; • where a Council withdraws from or is terminated from this Agreement a payment in lieu of transferring an Allocated Site to a nominated Council (that is, the reasonably determined Market Value or an appropriate substitute site or sites from which the Contractor can deliver an equivalent level of service and which holds harmless the remaining Councils from additional payments to the Contractor; • loss of non-guaranteed Third Party Income; • loss of electricity revenues; and • the cost of acquiring additional 	

	<u>Amount</u> (all figures in round pounds)
LAS allowances as a consequence of the withdrawal or termination (as the case may be) by a Council.	
Any other losses, costs, claims and damages arising from the remaining Councils within the Project recommissioning alternative service provision if the Project is no longer viable and the Project Agreement is terminated.	
Costs incurred by the Lead Council as certified by the Project Section 151 Officer and as approved by the Project Board as appropriate.	
Recognition of any mitigating factors including a substitute waste source (whether an additional local authority beyond the Councils or otherwise).	

Certified as correct _____

(Signed)

(Date)

SCHEDULE 8 - SITE

Site	Site Address (the Site being more particularly identified shown edged red on the relevant Site Plan)	Land Registry Title Number(s)	Freehold/Lease hold
Deeside	Land at Deeside Industrial Park, Deeside, Flintshire	CYM316351	Freehold

SCHEDULE 9 - PAYMENT PROPORTIONS

[DN: Finance to provide details for inclusion. However, agreed principles are noted below.]

It is noted that the Schedule shall incorporate a table which identifies in respect of each of the Councils, the forecast Contract Waste tonnages and respective cost sharing percentages.]

Cost Sharing Principles in respect of Waste Treatment and Transport

1. Payments to the Contractor for the treatment and transport of Waste will be based on the actual tonnages delivered by each of the Councils, subject to not exceeding the forecast tonnages.
2. Where tonnage delivered by a Council exceeds the forecast tonnages, the Council delivering such excess tonnage shall be solely responsible for the costs associated with the treatment and transport of such tonnage.
3. Where the tonnages are below the guaranteed minimum tonnage the guaranteed minimum tonnage as applicable to each Council will be deemed to be the tonnage delivered by the relevant Council.
4. In the event that the tonnages delivered to the Contractor are below the guaranteed minimum tonnage, the Council not meeting its requirements will pay on the basis of the guaranteed minimum tonnage and this will result in an 'excess payment'.

Excess Payments

Excess payments shall be 'placed in a reserve' to be used by the Councils (at the Joint Committees discretion) to fund project expenses, or be shared on a periodic basis or at the end of the Project utilising the percentages used to allocate the tonnage bandings.

Additional Income and Windfall Gains

The Councils agree that any additional income shall be shared between each of the Councils on a pro-rata basis proportional to the actual tonnage delivered by each Council.

Mechanism to re-align Tonnage Bands

It is agreed in principle that the IAA should contain provisions to allow for a readjustment of the tonnage bands as and when required to more closely reflect any changes in proportions of Waste arising in the Partnership. An Annual Review of the tonnages shall be conducted and the Joint Committee shall decide on any necessary adjustments.

APPENDIX 1
DATA PROTECTION POLICY

[Policy to be inserted]

The Common Seal of **CONWY COUNTY**)
BOROUGH COUNCIL was)
hereunto affixed in the presence of:-)

Authorised Sealing Officer

The Common Seal of **DENBIGHSHIRE**)
COUNTY COUNCIL was)
hereunto affixed in the presence of:-)

Chairman

Authorised Signatory (Head of Legal
Services/Legal Services Manager)

The Common Seal of **FLINTSHIRE**)
COUNTY COUNCIL was)
hereunto affixed in the presence of:-)

Chairman

Head of Legal and Democratic Services

The Common Seal of **GWYNEDD**)
COUNCIL was)
hereunto affixed in the presence of:-)

Authorised Signatory

The Common Seal of **ISLE OF**)
ANGLESEY COUNTY COUNCIL was)
hereunto affixed in the presence of:-)

Authorised Signatory