

Complete Agenda

CommitteeName

MeetingDateLegal, MeetingTime

MeetingLocation



Members: **MembersExpectedShortRolesList**

Agenda

Agenda Item 1



Gareth Owens LL.B Barrister/Bargyfreithiwr
Chief Officer (Governance)
Prif Swyddog (Llywodraethu)

To:

Councillors: Eryl Williams, Aaron Shotton, Kevin Jones, Dave Cowans, Michael Priestley, David Smith, John Wynn Jones, Richard Dew and J. Arwel Roberts

CS/NG

17 June 2016

Nicola Gittins 01352 702345
nicola.gittins@flintshire.gov.uk

Dear Sir / Madam

The Meeting of the **NORTH WALES RESIDUAL WASTE JOINT COMMITTEE** will be held in the **OPTIC GLYNDWR, ST ASAPH BUSINESS PARK, ST ASAPH, LL17 0JD** on **MONDAY 27 JUNE 2016** at **10.00AM** to consider the following items.

The Committee is asked to note the change of location

****WTI will be available at the location to be called into the meeting as required****

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Evans', with a long horizontal stroke extending to the right.

Peter Evans
Democracy & Governance Manager

AGENDA

- 1 **APOLOGIES**
- 2 **DECLARATIONS OF INTEREST**

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Tel. 01352 702400 DX 708591 Mold 4
www.flintshire.gov.uk
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The Council welcomes correspondence in Welsh or English
Mae'r Cyngor yn croesawau gohebiaeth yn y Cymraeg neu'r Saesneg

- 3 **ELECTION OF CHAIRMAN AND VICE-CHAIRMAN TO THE JOINT COMMITTEE**
- 4 **APPROVAL OF PREVIOUS MINUTES**
- 5 **MATTERS ARISING FROM PREVIOUS MEETING**
- 6 **ANNUAL ACCOUNTS**
- 7 **PROGRESS REPORT**
- 8 **WASTE TRANSFER STATION NETWORK**
- 9 **SECOND INTER AUTHORITY AGREEMENT**

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 - TO CONSIDER THE EXCLUSION OF THE PRESS AND PUBLIC

The following item is considered to be exempt by virtue of Paragraph(s) 14 of Part 4 of Schedule 12A of the Local Government Act 1972 (as amended).

The contract process is still underway and would be prejudiced by making public at this stage.

- 10 **PROCUREMENT UPDATE**
- 11 **ANY OTHER BUSINESS**



NORTH WALES RESIDUAL WASTE JOINT COMMITTEE

Monday, 7 December 2015 at 2.00 pm
Optic Glyndwr, St. Asaph

PRESENT:

Councillor Eryl Williams (Chair)	Denbighshire County Council
Councillor Dave Cowans	Conwy County Borough Council
Councillor Richard Dew	Isle of Anglesey County Council
Councillor Kevin Jones	Flintshire County Council
Councillor John Wynn Jones	Gwynedd County Council
Councillor Aaron Shotton	Flintshire County Council
Councillor David Smith	Denbighshire County Council

ALSO PRESENT:

Flintshire County Council

Colin Everett (Lead Chief Executive), Gareth Owens (Monitoring Officer) and David Webster (Internal Audit Manager)

Denbighshire County Council

Steve Parker (Head of Environment)

Conwy County Borough Council

Ken Finch (Strategic Director – Democracy and Regulation) and Andrew Wilkinson (Head of Neighbourhood Services)

Gwynedd Council

Medwyn Williams (Senior Manager – Waste Treatment)

Isle of Anglesey County Council

Meirion Edwards (Lead Technical Officer)

Local Partnerships UK

Huw Roberts (Advisor)

1. **APOLOGIES**

Apologies for absence were received from Councillor Mike Priestley (Conwy County Borough Council), Councillor J. Arwel Roberts (Isle of Anglesey County Council) and Councillor Dilwyn Williams (Gwynedd County Council).

2. **DECLARATIONS OF INTEREST**

Councillor Aaron Shotton (Flintshire County Council) declared a personal interest in Minute No. 6 (Procurement update) as a result of comments he had made in the press in the past relating to the project.



3. APPROVAL OF PREVIOUS MINUTES

The minutes of the meeting of the North Wales Residual Waste Joint Committee held on the 5 June 2015 were submitted for approval.

RESOLVED - *That the minutes of the meeting of the North Wales Residual Waste Joint Committee held on 5 June 2015 be approved as a correct record.*

4. MATTERS ARISING FROM PREVIOUS MINUTES

There were no matters arising.

5. PROGRESS REPORT

Members were provided with a verbal progress report update. An Environmental Permit has been issued by Natural Resources Wales with the judicial review ending on 31 January, 2016. No issues have been raised to date.

All other issues would be covered within the procurement update item.

RESOLVED:-

That the progress report be noted.

6. FINANCE UPDATE

6a) Annual Return Year Ended 31st March 2015 – Amended version

The Joint Committee approved the Annual Return for the year ending 31 March 2015 at the meeting held on the 5 June, 2015. The amended Annual Return for 2014/15 was attached at appendix A of the report. This return was amended with approval from the Chair and was presented as the Annual Return for 2014/15.

RESOLVED:-

That the Annual Return for the year ending 31 March 2015 be approved.

6b) Draft Budget for 2015/16

Members were provided with a detailed draft Budget for 2015/16 which outlined that each Local Authority cost would be similar to the equal partnership share seen within the last financial year.

In response to concerns raised around outstanding invoices, Members were assured that the draft budget had been adjusted to better reflect the expenditure from late invoices and that the payments from Welsh Government had been expended.



RESOLVED:-

That the draft Budget for 2015/16 be approved.

7. WASTE TRANSFER STATION NETWORK

Colin Everett, Chief Executive (Flintshire County Council) gave a brief update on discussions held around two smaller waste transfer stations being set up in Conwy and Denbighshire and invited the officers from Conwy County Borough Council and Denbighshire County Council to provide an update on preferred sites.

Andrew Wilkinson (Conway County Borough Council) outlined the current preferred site which was currently in the Council's ownership. It was currently being use but the Local Authority were working towards making the site available.

Steve Parker (Denbighshire County Council) also outlined the preferred site and the costs associated with the preferred site.

In response to questions around highway costs, both Andrew Wilkinson and Steve Parker assured Members that development and highway costs would be cheaper than looking to develop a new build site as both preferred sites had appropriate highway access.

RESOLVED:-

That the update be noted.

8. EXEMPT ITEM: LOCAL GOVERNMENT ACT 1972, SECTION 100A AND SCHEDULE 12A (ACCESS TO INFORMATION)

RESOLVED- *That the Public and Press be excluded from the meeting under the provisions of Section 100A of the above Act during consideration of the following item as it involves the likely disclosure of exempt information as defined in paragraph 14 of Part 4 of Schedule 12A to the Act and that the contract process is still underway and would be prejudiced by making public at this stage.*

9. PROCUREMENT UPDATE

Colin Everett, Chief Executive (Flintshire County Council) gave a detailed presentation on the procurement position update.

Following an in-depth discussion, Members were assured that all previous technical, financial and legal-commercial issues were being closed without any concerns.

Colin Everett responded to the concerns raised around the Environment Bill, which was beyond the control of any party. He outlined the Partnership's suggested amendments to the Bill to reduce the risk. The Chairman suggested that the Joint Committee be notified of any changes to the Environment Bill.



RESOLVED:-

- a) That the content of the report be noted.
- b) That delegated authority be given to the Lead Chief Executive to proceed to Financial Close and sign the contract on behalf of the authorities budget to there being
 - No material change to the commercial position;
 - Prices being held;
 - There being no new lender-led commercial changes of significance; and
 - The compensation event terms being limited as set out by the partnership previously
- c) That the Joint Committee be notified of any changes to the Environment Bill.

10. **ANY OTHER BUSINESS**

The Joint Committee expressed their thanks to Ken Finch (Conwy County Borough Council) for his input and wished him well in his retirement.

(The meeting ended at 3.15 pm)



AGENDA ITEM NO: 6

REPORT TO: NWRWTP JOINT COMMITTEE

DATE: 27 JUNE 2016

REPORT BY: CORPORATE FINANCE MANAGER (FCC)

SUBJECT: ANNUAL RETURN YEAR ENDED 31ST MARCH 2016

1.00 **PURPOSE OF REPORT**

- 1.01 To present to Members of the Joint Committee the Annual Return Year Ended 31st March 2016 for the North Wales Residual Waste Partnership (NWRWP) for their approval.

2.00 **BACKGROUND**

- 2.01 The Accounts and Audit (Wales) Regulations require all Joint Committees to prepare year-end accounts. The Regulations were updated in 2014; as a result the type of accounts, and the accounts and audit arrangements for the Joint Committee has changed this year.
- 2.02 The Joint Committee is classed as a smaller relevant body as its gross income and expenditure is less than £2.5m in the year of account. The type of accounts that a smaller body is required to produce is an Annual Return provided by the Wales Audit Office. In 2013/14 the Joint Committee was classed as a larger body, and was required to produce a comprehensive set of accounts similar to a Councils set of accounts.
- 2.03 The Annual Return must be signed by the Responsible Finance Officer and approved by the Joint Committee before the deadline of 30th June. The audit commences after the Joint Committee has approved the Annual Return.
- 2.04 The audit must be completed and the Annual Return published by no later than 30th September. If no amendments are made to the Annual Return during the audit there will be no requirement for the Joint Committee to approve the amended Annual Return before publication.

3.00 **CONSIDERATIONS**

- 3.01 The Annual Return for 2015/16 is attached at Appendix A.



4.00 RECOMMENDATIONS

4.01 Members are requested to approve the Annual Return for the year ended 31st March 2016.

5.00 FINANCIAL IMPLICATIONS

5.01 None as a result of this report.

6.00 ANTI POVERTY IMPACT

6.01 None as a result of this report.

7.00 ENVIRONMENTAL IMPACT

7.01 None as a result of this report.

8.00 EQUALITIES IMPACT

8.01 None as a result of this report.

9.00 PERSONNEL IMPLICATIONS

9.01 None as a result of this report.

10.0 CONSULTATION REQUIRED

10.1 None as a result of this report.

11.0 CONSULTATION UNDERTAKEN

11.1 None as a result of this report.

12.1 APPENDICES

0

Appendix A – Annual Return

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985 BACKGROUND DOCUMENTS

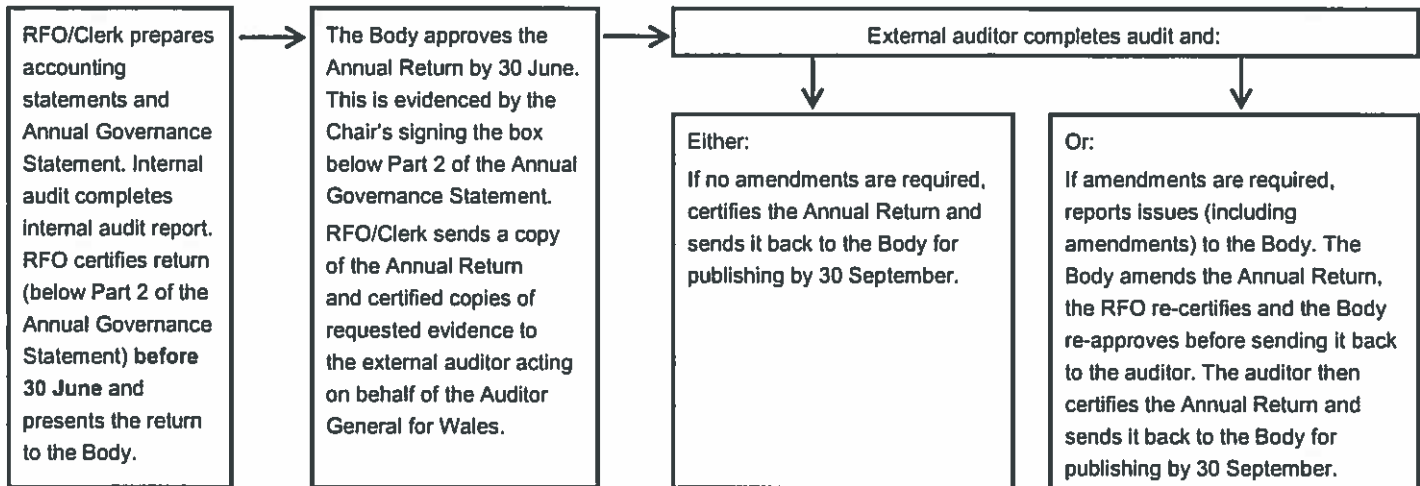
Contact Officer: Dave Ledsham
Telephone: 01352 704503
Email: dave.ledsham@flintshire.gov.uk

Smaller local government bodies in Wales Annual Return for the Year Ended 31 March 2016

Smaller local government bodies in Wales must prepare annual accounts following proper practices as set out in the One Voice Wales/SLCC publication **Governance and accountability for local councils in Wales – A Practitioners' Guide** (the Practitioners' Guide). The Practitioners' Guide states that bodies may prepare their accounts in the form of an annual return prepared by the Wales Audit Office.

The accounts and audit process

The accounts and audit arrangements follow the process as set out below.



Please complete all sections highlighted in red. Incomplete or incorrect returns may require additional external audit work and incur additional costs. Send the **original** Annual Return, together with all additional information requested, to the external auditor acting on behalf of the Auditor General for Wales. **Please note that copies of all documents provided for the purposes of the audit must be certified as true copies of the originals by the Clerk and Chair.** Unless requested, please do not send any original financial or other records to the external auditor.

Bodies should note the changes to the Annual Governance Statement. This is to be completed in full by all Bodies.

Audited and certified returns are sent back to the Body for publication or display of the accounting statements, Annual Governance Statement and the Auditor General for Wales' certificate and report.

Completion checklist

'No' answers mean that you may not have met requirements		Done?	
Initial submission to the external auditor		Yes	No
Accounts	Has the RFO certified the accounting statements and the body approved the Annual Return (as evidenced by the relevant signatures), no later than 30 June 2016?	<input type="radio"/>	<input type="radio"/>
	Do the accounts add up and does the balance carried forward from last year equal the opening balance this year?	<input type="radio"/>	<input type="radio"/>
	Do the papers to be sent to the external auditor include an explanation of significant variations, including a quantified analysis of the changes from last year to this year?	<input type="radio"/>	<input type="radio"/>
	Does the bank reconciliation as at 31 March 2016 agree to line 9?	<input type="radio"/>	<input type="radio"/>
All sections	Have all red boxes been completed and explanations provided where needed?	<input type="radio"/>	<input type="radio"/>
	Has all the information requested by the external auditor been sent with this Annual Return? Please refer to your notice of audit and any additional schedules provided by your external auditor.	<input type="radio"/>	<input type="radio"/>
Supporting evidence	Have all items and pages of supporting evidence provided to the audit been certified as a true copy of the original by the Clerk and Chair?	<input type="radio"/>	<input type="radio"/>

Accounting statements 2015-16 for:

Name of body:

FLINTSHIRE COUNTY COUNCIL

	Year ending		Notes and guidance for compilers				
	31 March 2015 (£)	31 March 2016 (£)	Please round all figures to nearest £. Do not leave any boxes blank and report £0 or nil balances. All figures must agree to the underlying financial records for the relevant year.				
Statement of income and expenditure/receipts and payments							
1. Balances brought forward	0	0	Total balances and reserves at the beginning of the year as recorded in the financial records. Must agree to line 7 of the previous year.				
2. (+) Income from local taxation/levy	0	0	Total amount of income received/receivable in the year from local taxation (precept) or levy/contribution from principal bodies.				
3. (+) Total other receipts	418,694	267,950	Total income or receipts recorded in the cashbook minus amounts included in line 2. Includes support, discretionary and revenue grants.				
4. (-) Staff costs	-167,970	-114,280	Total expenditure or payments made to and on behalf of all employees. Include salaries and wages, PAYE and NI (employees and employers), pension contributions and related expenses eg termination costs.				
5. (-) Loan interest/capital repayments	0	0	Total expenditure or payments of capital and interest made during the year on external borrowing (if any).				
6. (-) Total other payments	-250,724	-173,670	Total expenditure or payments as recorded in the cashbook minus staff costs (line 4) and loan interest/capital repayments (line 5).				
7. (=) Balances carried forward	0	0	Total balances and reserves at the end of the year. Must equal (1+2+3) – (4+5+6).				
Statement of balances							
8. (+) Debtors and stock balances	333,510	270,361	Income and expenditure accounts only: Enter the value of debts owed to the body and stock balances held at the year-end.				
9. (+) Total cash and investments	0	0	All accounts: The sum of all current and deposit bank accounts, cash holdings and investments held at 31 March. This must agree with the reconciled cashbook balance as per the bank reconciliation.				
10. (-) Creditors	-333,510	-270,361	Income and expenditure accounts only: Enter the value of monies owed by the body (except borrowing) at the year-end.				
11. (=) Balances carried forward	0	0	Total balances should equal line 7 above: Enter the total of (8+9-10).				
12. Total fixed assets and long-term assets	0	0	The original asset and investment register value of all fixed assets and any other long-term assets held as at 31 March.				
13. Total borrowing	0	0	The outstanding capital balance as at 31 March of all loans from third parties (including PWLB).				
14. Trust funds disclosure note	Yes <input type="radio"/>	No <input checked="" type="radio"/>	N/A <input type="radio"/>	Yes <input type="radio"/>	No <input checked="" type="radio"/>	N/A <input type="radio"/>	The Body acts as sole trustee for and is responsible for managing (a) trust fund(s)/assets (readers should note that the figures above do not include any trust transactions).

Annual Governance Statement (Part 1)

We acknowledge as the members of the Council/Board/Committee, our responsibility for ensuring that there is a sound system of internal control, including the preparation of the accounting statements. We confirm, to the best of our knowledge and belief, with respect to the accounting statements for the year ended 31 March 2016, that:

	Agreed?		'YES' means that the Council/Board/Committee:	PG Ref	
	Yes	No*			
1. We have approved the accounting statements which have been prepared in accordance with the requirements of the Accounts and Audit (Wales) Regulations 2014 and proper practices.	<input checked="" type="radio"/>	<input type="radio"/>	Prepared its accounting statements in the way prescribed by law.	6, 12	
2. We have maintained an adequate system of internal control, including measures designed to prevent and detect fraud and corruption, and reviewed its effectiveness.	<input checked="" type="radio"/>	<input type="radio"/>	Made proper arrangements and accepted responsibility for safeguarding the public money and resources in its charge.	6, 7	
3. We have taken all reasonable steps to assure ourselves that there are no matters of actual or potential non-compliance with laws, regulations and codes of practice that could have a significant financial effect on the ability of the Council/Board/Committee to conduct its business or on its finances.	<input checked="" type="radio"/>	<input type="radio"/>	Has only done things that it has the legal power to do and has conformed to codes of practice and standards in the way it has done so.	6	
4. We have provided proper opportunity for the exercise of electors' rights in accordance with the requirements of the Accounts and Audit (Wales) Regulations 2014.	<input checked="" type="radio"/>	<input type="radio"/>	Has given all persons interested the opportunity to inspect and to ask questions about the Body's accounts.	6, 23	
5. We have carried out an assessment of the risks facing the Council/Board/Committee and taken appropriate steps to manage those risks, including the introduction of internal controls and/or external insurance cover where required.	<input checked="" type="radio"/>	<input type="radio"/>	Considered the financial and other risks it faces in the operation of the Body and has dealt with them properly.	6, 9	
6. We have maintained an adequate and effective system of internal audit of the accounting records and control systems throughout the year and have received a report from the internal auditor.	<input checked="" type="radio"/>	<input type="radio"/>	Arranged for a competent person, independent of the financial controls and procedures, to give an objective view on whether these meet the needs of the Body.	6, 8	
7. We have considered whether any litigation, liabilities or commitments, events or transactions, occurring either during or after the year-end, have a financial impact on the Council/Board/Committee and, where appropriate, have included them on the accounting statements.	<input checked="" type="radio"/>	<input type="radio"/>	Disclosed everything it should have about its business during the year including events taking place after the year-end if relevant.	6	
8. We have taken appropriate action on all matters raised in previous reports from internal and external audit.	<input checked="" type="radio"/>	<input type="radio"/>	Considered and taken appropriate action to address issues/weaknesses brought to its attention by both the internal and external auditors.	6, 8, 23	
9. Trust funds – in our capacity as trustee, we have: <ul style="list-style-type: none"> Discharged our responsibility in relation to the accountability for the fund(s) including financial reporting and, if required, independent examination or audit. 	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Has met all of its responsibilities where it is a sole managing trustee of a local trust or trusts.	3, 6

* Please provide explanations to the external auditor on a separate sheet for each 'no' response given; and describe what action is being taken to address the weaknesses identified.

Annual Governance Statement (Part 2)

	Agreed?		'YES' means that the Council/Board/Committee:	PG Ref
	Yes	No*		
1. We calculated and approved the Council/Board/Committee's budget requirement for the 2015-16 financial year in accordance the Local Government Finance Act 1992 and proper practices [and issued the precept in accordance with Sections 39 to 42 of the Local Government Finance Act 1992.]*	<input checked="" type="radio"/>	<input type="radio"/>	Properly planned its financial activities for the year and set a budget in accordance with statutory requirements.	13
2. We have received detailed financial reports setting out the [income and expenditure* receipts and payments*] and a summary of the Council/Board/Committee's financial position on a regular [monthly* / quarterly*] basis throughout the year.	<input checked="" type="radio"/>	<input type="radio"/>	Effectively monitored its financial position, income and expenditure against that budget throughout the financial year.	13
3. We have ensured that the Council/Board/Committee's internal audit is independent of its day-to-day decision-making process and maintenance of the accounting records and have agreed appropriate terms of reference for the internal audit.	<input checked="" type="radio"/>	<input type="radio"/>	Ensured that its internal audit function is able to undertake its work without potential conflicts of interest and with sufficient scope to provide an adequate and effective service.	8

* Please delete as appropriate.

Council/Board/Committee approval and certification

The Council/Board/Committee is responsible for the preparation of the accounting statements in accordance with the requirements of the Accounts and Audit (Wales) Regulations 2014 and for the preparation of the Annual Governance Statement.

Certification by the RFO I certify that the accounting statements contained in this Annual Return presents fairly the financial position of the Council/Board/Committee, and its income and expenditure, or properly presents receipts and payments, as the case may be, for the year ended 31 March 2016.	Approval by the Council/Board/Committee I confirm that these accounting statements and Annual Governance Statement were approved by the Council/Board/Committee under minute reference: Insert minute reference and date of meeting
RFO signature: <small>signature required</small>	Chair signature: <small>signature required</small>
Name: <small>name required</small>	Name: <small>name required</small>
Date: <small>dd/mm/yyyy</small>	Date: <small>dd/mm/yyyy</small>

Council/Board/Committee re-approval and re-certification (only required if the annual return has been amended at audit)

Certification by the RFO I certify that the accounting statements contained in this Annual Return presents fairly the financial position of the Council/Board/Committee, and its income and expenditure, or properly presents receipts and payments, as the case may be, for the year ended 31 March 2016.	Approval by the Council/Board/Committee I confirm that these accounting statements and Annual Governance Statement were approved by the Council/Board/Committee under minute reference: Insert minute reference and date of meeting
RFO signature: <i>S. Jones</i>	Chair signature: <small>signature required</small>
Name: <i>GARY FERGUSON</i>	Name: <small>name required</small>
Date: <i>27/5/16</i>	Date: <small>dd/mm/yyyy</small>

Auditor General for Wales' Audit Certificate and report

The external auditor conducts the audit on behalf of, and in accordance with, guidance issued by the Auditor General for Wales. On the basis of their review of the Annual Return and supporting information, they report whether any matters that come to their attention give cause for concern that relevant legislation and regulatory requirements have not been met.

We certify that we have completed the audit of the Annual Return for the year ended 31 March 2016 of:

--

External auditor's report

[Except for the matters reported below]* On the basis of our review, in our opinion, the information contained in the Annual Return is in accordance with proper practices and no matters have come to our attention giving cause for concern that relevant legislation and regulatory requirements have not been met.

[[These matters along with]* Other matters not affecting our opinion which we draw to the attention of the body and our recommendations for improvement are included in our report to the body dated _____.]

Other matters and recommendations

On the basis of our review, we draw the Body's attention to the following matters and recommendations which do not affect our audit opinion but should be addressed by the Body.

(Continue on a separate sheet if required.)

External auditor's name:

External auditor's signature:

Date:

For and on behalf of the Auditor General for Wales

* Delete as appropriate.

Annual internal audit report to:

Name of body:

FLINTSHIRE COUNTY COUNCIL

The Council/Board/Committee's internal audit, acting independently and on the basis of an assessment of risk, has included carrying out a selective assessment of compliance with relevant procedures and controls expected to be in operation during the financial year ending 31 March 2016.

The internal audit has been carried out in accordance with the Council/Board/Committee's needs and planned coverage. On the basis of the findings in the areas examined, the internal audit conclusions are summarised in this table. Set out below are the objectives of internal control and the internal audit conclusions on whether, in all significant respects, the following control objectives were being achieved throughout the financial year to a standard adequate to meet the needs of the Council/Board/Committee.

	Agreed?				Outline of work undertaken as part of the internal audit (NB not required if detailed internal audit report presented to body)
	Yes	No*	N/A	Not covered**	
1. Appropriate books of account have been properly kept throughout the year.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Insert text
2. Financial regulations have been met, payments were supported by invoices, expenditure was approved and VAT was appropriately accounted for.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Insert text
3. The body assessed the significant risks to achieving its objectives and reviewed the adequacy of arrangements to manage these.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Insert text
4. The annual precept/levy/resource demand requirement resulted from an adequate budgetary process, progress against the budget was regularly monitored, and reserves were appropriate.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Insert text
5. Expected income was fully received, based on correct prices, properly recorded and promptly banked, and VAT was appropriately accounted for.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Insert text
6. Petty cash payments were properly supported by receipts, expenditure was approved and VAT appropriately accounted for.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Insert text
7. Salaries to employees and allowances to members were paid in accordance with minuted approvals, and PAYE and NI requirements were properly applied.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Insert text
8. Asset and investment registers were complete, accurate, and properly maintained.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Insert text

	Agreed?				Outline of work undertaken as part of the internal audit (NB not required if detailed internal audit report presented to body)
	Yes	No*	N/A	Not covered**	
9. Periodic and year-end bank account reconciliations were properly carried out.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	insert text
10. Accounting statements prepared during the year were prepared on the correct accounting basis (receipts and payments/income and expenditure), agreed with the cashbook, were supported by an adequate audit trail from underlying records, and where appropriate, debtors and creditors were properly recorded.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	insert text
11. Trust funds (including charitable trusts). The Council/Board/Committee has met its responsibilities as a trustee.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	insert text

For any risk areas identified by the Council/Board/Committee (list any other risk areas below or on separate sheets if needed) adequate controls existed:

	Agreed?				Outline of work undertaken as part of the internal audit (NB not required if detailed internal audit report presented to body)
	Yes	No*	N/A	Not covered**	
12. insert risk area	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	insert text
13. insert risk area	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	insert text
14. insert risk area	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	insert text

* If the response is 'no', please state the implications and action being taken to address any weakness in control identified (add separate sheets if needed).

** If the response is 'not covered', please state when the most recent internal audit work was done in this area and when it is next planned, or if coverage is not required, internal audit must explain why not.

Note


During the time covered NWRW did not have its own separate books of account, bank account, etc. They were all part of the Flintshire accounts. As such they were subject to the Flintshire Financial Procedure Rules and the same level of control as the rest of the Flintshire financial systems.

During 2015/16 Internal Audit reviewed Accounts Payable, Accounts Receivable and the General Ledger, however the NWRW risk register was not covered.

This Annual Internal Report relies on the overall work completed during the year.

Internal audit confirmation

I confirm that as the Council's internal auditor, I have not been involved in a management or administrative role within the body or as a member of the body during the financial years 2014-15 and 2015-16. I also confirm that there are no conflicts of interest surrounding my appointment.

Name of person who carried out the internal audit:	DWEBSTER
Signature of person who carried out the internal audit:	
Date:	26-05-2016

Guidance notes on completing the Annual Return

1. You must apply proper practices when preparing this annual return. For guidance, please read the Practitioners' Guide (**Governance and accountability for local councils: A Practitioners' Guide (Wales)**) – available from One Voice Wales and SLCC. It contains everything you need for the financial year-end and the statutory audit.
2. The Wales Audit Office Good Practice Exchange (www.audit.wales/good-practice/finance/community-council-money) provides further information on the accounts and audit process along with guidance on governance matters.
3. Make sure that the Annual Return is fully completed ie, no empty red boxes. Please avoid making any amendments to the completed return. If this is unavoidable, cross out the incorrect entries, make sure the amendments are drawn to the attention of the body, properly initialled and an explanation for them is provided to the external auditor. **Please do not use correction fluid.** Annual returns that are incomplete or contain unapproved and/or unexplained amendments or correction fluid will be returned unaudited and may incur additional costs.
4. **There are now two boxes for certification and approval by the Body. The second box is only required if the annual return has to be amended as a result of the audit. You should only complete the top box before sending the form to the auditor.**
5. Use a second pair of eyes, perhaps the Chair or a member, to review your Annual Return for completeness before sending the original form to the auditor.
6. Make sure that your accounting statements add up, that the balance carried forward from the previous year (line 7 of 2015) equals the balance brought forward in the current year (line 1 of 2016). Explain any differences between the 2015 figures on this annual return and the amounts recorded in last year's annual return.
7. Explain fully any significant variances in the accounting statements. Do not just send in a copy of your detailed accounting records instead of this explanation. The external auditor wants to know that you understand the reasons for all variances. Include a detailed analysis to support your explanation and be specific about the values of individual elements making up the variances.
8. Make sure that the copy of the bank reconciliation you send to your auditor with the Annual Return covers all your bank accounts and cash balances. If there are no reconciling items, please state this and provide evidence of the bank balances. If your Council holds any short-term investments, please note their value on the bank reconciliation. The auditor should also be able to agree your bank reconciliation to line 9 in section 1. More help on bank reconciliation is available in the Practitioners' Guide*.
9. **Every** small body is now required to send to the external auditor, information to support the assertions made in the Annual Governance Statement. Your auditor will tell you what information you need to provide. Please read the audit notice carefully to ensure you include all the information the auditor has asked for. You should send **copies** of the original records (certified by the Clerk and Chair as accurate copies) to the external auditor and not the original documents themselves.
10. Please do not send the auditor any information that you are not specifically asked for. Doing so is not helpful.
11. If the auditor has to review unsolicited information, repeat a request for information, receives an incomplete bank reconciliation or explanation of variances or receives original documents that must be returned, the auditor will incur additional costs for which they are entitled to charge additional fees.
12. **Do not complete the Auditor General for Wales' Audit Certificate and report.** The external auditor completes this on behalf of the Auditor General for Wales on completion of the audit.
13. **Please deal with all correspondence with the external auditor promptly.** This will help you to meet your statutory obligations and will minimise the cost of the audit.
14. **Please note that if completing the electronic form, you must print the form for it to be certified by the RFO and signed by the Chair before it is sent to the auditor.**



NORTH WALES RESIDUAL WASTE TREATMENT PROJECT PROGRESS REPORT

PROJECT BOARD

Date : 27th June 2016

Period: 7th December 2015 to 20 June 2016

PROJECT SUMMARY

To procure a sustainable waste management solution for the 5 local authorities in North Wales (Conwy, Denbighshire, Flintshire, Gwynedd and Isle of Anglesey) that will assist with the reduction in greenhouse gas emissions from landfill and will minimise the tonnage of waste residue sent to landfill thus ensuring that the authorities avoid Landfill Allowance Scheme (LAS) infraction penalties and meet National Waste Strategy targets.

PROJECT STATUS

Overall Project Status	
Amber	<p>Following submission of the Final Business Case to Welsh Government (WG), the Partnership has received notification of the award of the grant. The grant is valued at £5.62m annually over the contract's 25 year operational term, over £140m in total.</p> <p>Progress has continued with WTI on finalising all documentation, with only one single remaining commercial issue remaining outstanding. Agreement has been reached with WTI on this, with funders agreement the only thing remaining. WTI are working with their funders to get their agreement.</p> <p>A full update on the procurement is in item 10 on the agenda.</p> <p>Discussions re-commenced on the 2nd Inter Authority Agreement in order to finalise it ready for signing. Some minor amendments to be made for final approval of the document. Full update is in agenda item 8.</p>

Budget status



Green	Annual Accounts for 2015/16 are in agenda item 6, and the draft budget for 2016/17 is in Appendix 1 below (the budget is split between the procurement phase and the contract management phase with a summary for the full financial year).
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Status	Meaning
Green	There are no problems; all is progressing well and to plan
Amber	There are some minor/ less significant problems. Action is needed in some areas but other parts are progressing satisfactory
Red	There are significant problems and urgent and decisive action is needed.

PROJECT UPDATE – Activities due for completion by 20th June 2016, plus selected later activities.

ID	Activity	RAG status	Comments	Forecast	Actual
83					
104					
114					
125					
126					
127					
128					
129	Completion of fine tuning and clarification with WTI	Amber	See item 10 on agenda	July 2016	
130					
131	Develop contract management structure for post financial close	Green	Flintshire have begun working on Job Description etc and recruitment process will follow shortly.	September 2016	
132	Finalise the IAA2 with legal, technical and financial officer groups	Green	See item 9 on agenda	July 2016	
133					
134	Work through new mark up of Project Agreement (PA) (contract) as a	Amber	There remains one remaining commercial issue (see agenda item 10 (part 2)),	July 2015	



	result of changes to WTI's bid		however the PA document itself is otherwise very near completion.		
135	Work through financial model of WTI's revised bid	Green	This is covered in agenda item 19 (part 2).	October 2016	
136					
137					
138	Set and agree detailed Project Plan for finalising agreements with WTI	Green	Weekly updates from WTI received on work with the funders.	October 2016	On going
139	Set meetings with WTI going forward	Green	Weekly conference calls taking place	April 2016	
140	Transfer Station Network – Conwy to provide options for site	Green	Two site option now agreed by Project Board, Conwy and Denbighshire working on site plans etc. See agenda item 8.	October 2015	
141	Agreement to be reached on site for waste transfer station for Conwy and north Denbighshire	Green	See 140 above	April 2016	Complete
142	Project plan the development of the site (see 140 and 141) – e.g. design etc	Green	Both authorities well advanced in their design process.	April 2017	
143	Decide on Foreign Exchange approach	Green	Approach now clear – will be set and Financial Close	October 2016	
144	Consider areas of future collaborative working	Green	To be considered at a future Project Board.	December 2016	
145	Ensure discussions are live with WTI and other relevant parties (e.g. Northern Gateway developers, Welsh Government) and stakeholders related to the use of heat	Green	WTI have already been in discussions with WG and both Northern Gateway developers about the use heat, however the partnership can provide a vital steer to the discussions and the project.	Long term	



146	Develop Contract Management Structure	Green	The Project Board have met and discussed the contract management structure, and agreed a way forward. Flintshire have begun working on Job Description etc and recruitment process will follow shortly.	September 2016	Complete
147	Implement new contract management structure (appoint staff etc)	Green	As 146 above.	September 2016	

KEY RISKS – No change from that reported at last Project Board (22nd November 2015)



Appendix 1 Draft Budget for 2016/17 (Procurement Phase – Apr to Nov 16)

NORTH WALES RESIDUAL WASTE TREATMENT PROJECT		
Draft Budget for 2016/17 - Procurement Phase only - April - Nov 2016		
DRAFT BUDGET 2016-17		
EXPENDITURE HEADING	Draft Budget 2016-17 - Procurement phase only Apr - Nov 2016	Notes
	£	
Project Director	58,000	Based on £6k per month plus March 16 invoice
Project Director Travel etc		
Project Manager	38,000	Based on existing cost
Project Manager and travel & other expenses	1,500	
Administrative assistance		
Lead finance		
Interim finance		
Lead Technical	3,000	Based on 15/16 cost
IT/ Telephones	300	Based on 15/16 cost
Software		
Stationery/Printing/Subscriptions	25	
Translation	500	Based on at least two Joint Committee meetings
Status enquiries		
Remote document managements system	1,230	Based on £5 per user per month, plus one off £750 for dvd with all data
Advertising	150	Statement of accounts advert
Joint Working		
Procurement recharge		
Finance recharge		
Legal recharge		
Office accommodation recharge		
Venues	1,000	
Audit fees	1,000	
TOTAL PROJECT MANAGEMENT COSTS	104,705	
Technical advisors - Entec/Amec/Cofley	40,000	Based on £5k per month (average for Jan-Mar 16 was a little higher but requirement should drop - discussions had with advisors)
Tech advisors - Entec/Amec Sauce/Comms		
Legal advisors - Pinsent Mason/DLA Piper	85,000	Based on just over £10k per month (discussion had with advisors)
Financial advisors - Grant Thornton	60,000	Based on 15/16 costs and allowance for re-running sensitivities following new banks - discussions had with advisors. £30k allowed for Paymech Financial Models for partnership
Other advisors - AEA Technology/DLA Piper		
Insurance advisors - Jardine Lloyd Thompson	1,000	Insurance work required to reach close
TOTAL ADVISOR COSTS	186,000	
Potential site survey costs	55,000	Unsure if we need to retain this
Contingency - other		
Contingency - general & site clearance	15,000	
TOTAL COSTS	360,705	
WAG Contribution		
Other Income		
TOTAL INCOME	0	
NET COST	360,705	
EQUAL PARTNERSHIP SHARES	72,141	



Appendix 1 Draft Budget for 2016/17 (Procurement Phase – Nov 16 to Mar 17)

NORTH WALES RESIDUAL WASTE TREATMENT PROJECT		
Draft Budget for 2016/17 - Contract Management Phase only Dec 2016 - March 2017		
DRAFT BUDGET 2016-17		
EXPENDITURE HEADING	Draft Budget 2016-17 - Contract Management phase only Dec 16 - Mar 17	Notes
	£	
Contract Manager	21,600	Based on costs of £65k per annum (including on-costs)
Contract Manager Travel	800	
Recruitment costs	1,000	Advertising of post
Lead Authority internal recharge (governance, accounting, HR etc)	8,400	Based on £25k per annum
TOTAL CONTRACT MANAGEMENT COSTS	31,800	
On going advisor costs	10,000	Baed on an advised requirement of £30k (reduced to reflect the mid year start)
TOTAL ADVISOR COSTS	10,000	
Contingency - general & site clearance	5,000	
TOTAL COSTS	46,800	
WAG Contribution		
Other Income		
TOTAL INCOME	0	
NET COST	46,800	
EQUAL PARTNERSHIP SHARES	9,360	



Appendix 1 Draft Budget for 2016/17 (summary combined)

NORTH WALES RESIDUAL WASTE TREATMENT PROJECT		
Draft Budget for 2016-17 - combined procurement and contract management phases		
EXPENDITURE HEADING	DRAFT BUDGET 2016-17	
	Draft Budget 2016-17	Notes
	£	
Staffing costs	123,900	
Administrative costs	12,280	
TOTAL MANAGEMENT COSTS	136,180	
Advisor costs	196,000	
TOTAL ADVISOR COSTS	196,000	
Potential site survey costs	55,000	
Contingency - general & site clearance	20,000	
TOTAL COSTS	407,180	
WAG Contribution		
Other Income		
TOTAL INCOME	0	
NET COST	407,180	
EQUAL PARTNERSHIP SHARES	81,436	



REPORT TO: NWRWTP JOINT COMMITTEE

DATE: 27th JUNE 2016

REPORT BY: PROJECT MANAGER

SUBJECT: WASTE TRANSFER STATIONS REPORT

1. PURPOSE OF REPORT

- 1.1. To update the Joint Committee on progress towards securing a site(s) for a Waste Transfer Station(s) (WTS) in Conwy and / or Denbighshire.

2. BACKGROUND

- 2.1. At the outset of the procurement process, it was recognised that all authorities would need to transport their residual waste from their own authorities to wherever the treatment site was located. This would require at least one waste transfer station at each local authority. The original IAA stated (Clause 4.5) the following in relation to what would be included within the agreed common gate fee:-

“...all costs of waste reception, haulage and treatment as well as the costs of providing and/or building one or more waste reception points and transfer loading stations within each Council's administrative area. Further to the output based specification for the Project which shall be approved by the Joint Committee the Project waste will be collected and taken to a convenient point (or points) in a Council's administrative area (either for an individual Council or at a point servicing more than a single Council as a shared Project facility) for onward transfer to waste treatment and disposal facilities such that there is expected to be no material adverse impact on the waste haulage costs from collection to waste transfer station to be borne by each of the Councils.”
- 2.2. As the procurement process progressed beyond the Invitation to Submit Detailed Solutions (ISDS) stage, the partnership was left with a single bidder, Wheelabrator (WTI). Following a lengthy a rigorous evaluation process, the Joint Committee made the decision to continue with the procurement, however the original scope of the contract was amended to improve value for money for the authorities. The decision was taken to remove operation of the waste transfer stations from the scope of the contract and for individual authorities to operate their sites themselves. Haulage of waste was also removed as a core element of the contract, however was left in the contract as an option that the authorities could obligate WTI to procure the partnership's behalf should it wish.
- 2.3. Following extensive discussion within the partnership on how to share the cost of operating the waste transfer stations, the following principles were agreed on the basis that WG do not provide a grant for this cost:-



- Each authority is now responsible for their own transfer station operating costs, with no recourse to other authorities;
 - All partner authorities will contribute to the cost of a new build waste transfer station (if required). This is to be divided equally as a capital expenditure. The parcel of land provided is to revert to the donating authority if owned by them, or if funded by the partnership then the councils would jointly decide what happens to that facility at the end of the contract term and how its proceeds/assets are to be distributed.
- 2.4. The above principles were approved by the Joint Committee on 31 July 2014, and are included within the Second Inter Authority Agreement which is nearly complete for signing by the authorities just prior to signing the contract.
- 2.5. Within the Second Inter Authority Agreement, a financial cap was placed on the capital investment for any new waste transfer station. This cap was placed at £2.5m.
- 2.6. Conwy County Borough Council are (and were) the only partnership authority to not have their own waste transfer station within their boundary, therefore conducted a site search process to identify a site for a waste transfer station to be funded by the partnership.

3. CONSIDERATIONS

- 3.1. Following extensive discussions at the Project Board, it was agreed that most efficient solution was for Conwy and Denbighshire to both develop their own WTS, as finding a single suitable site to serve both authorities was not possible following Conwy's site search process.
- 3.2. In October 2015, the Project Board agreed in principle to the Partnership funding a two site option, subject to costs being within the previously agreed £2.5m cap.
- 3.3. The Project Board have received regular updates from both Conwy and Denbighshire on progress of developing their own WTS's. Below is an update on progress from both Authorities.

Denbighshire

- 3.4. Denbighshire's Design Services are working on outline plans and costings for the development of a Waste Transfer Station at Kinmel Park Depot, Bodelwyddan. Plans and figures to be available from 24th June 2016 so are not available at the time of writing, however provisional estimates the work to be in the region of £500k. It is anticipated that the work will proceed over the 2016/17 and 2017/18 financial years.

Conwy

- 3.5. The preferred site for Conwy following their site search is a Council owned site at Mochdre. The authority is currently working on plans for the development's Planning Permission, with detailed proposals being drawn up. Following planning permission



it anticipated that works will be completed within Financial Year 2017/18. Cost estimates are in the region of £1.5m.

- 3.6. As can be seen from the updates above, the sites current cost estimates sit within the £2.5m cap. The Project Board will monitor the progress of both developments closely to ensure that costs fall within the cap.
- 3.7. It should be noted that it is agreed that if a site is being developed for purposes other than transfer of residual waste only (e.g. bulking of recyclates etc as well as residual waste), then the Partnership will only cover the proportion of the cost attributable to residual waste. Conwy's intends for their site to include other services such as bulking of recyclates therefore the Partnership will only cover the costs attributable to residual waste. Further information is included in the agenda item 9 on the Inter Authority Agreement.
- 3.8. The technical officers will determine the method for cost apportionment, be that through tonnages (e.g. residual waste tonnage as a proportion of the total waste / recyclate dealt with at the site), or some other method such as an independent expert's determination if a tonnage calculation is not deemed suitable.

4. RECOMMENDATIONS

- 4.1. Note the content of this report.

5. FINANCIAL IMPLICATIONS

- 5.1. Financial implications to the project in terms of development cost of the new WTS will be investigated further as part of the further options appraisal.

6. ANTI-POVERTY IMPACT

N/A

7. ENVIRONMENTAL IMPACT

N/A

8. EQUALITIES IMPACT

N/A

9. PERSONNEL IMPLICATIONS

N/A

10. CONSULTATION REQUIRED

None.

11. CONSULTATION UNDERTAKEN

- 11.1. See main body of report.



LOCAL GOVERNMENT ACCESS TO INFORMATION ACT 1985

Background Documents:

None

Contact Officer: Steffan Owen, NWRWTP



AGENDA ITEM NO: 9

REPORT TO: NWRWTP JOINT COMMITTEE

DATE: 27 JUNE 2016

REPORT BY: PROJECT MANAGER AND LEAD LEGAL OFFICER

SUBJECT: 2nd INTER-AUTHORITY AGREEMENT

1. PURPOSE OF REPORT

- 1.1 To update the Joint Committee on progress on discussions on finalising the second Inter-Authority Agreement (IAA2).

2. BACKGROUND

- 2.1 The partnership held discussions at all governance levels during 2014 to draft the IAA2 such that it could be signed by the authorities prior to reaching Financial Close. The document was nearly complete by late summer 2014.
- 2.2 The document was not taken further until closer to Financial Close.
- 2.3 In order to finalise the document, a series of meetings were held in early February 2016 with all three officer groups (legal, financial and technical). A conference call was also held with Anglesey County Council's legal officer who had come back a with comments separately to the meetings.
- 2.4 The details of the discussions and other feedback received is noted below.

3. CONSIDERATIONS

Officer group meetings

- 3.1 As noted in 2.3 above, all three officer groups met in early February to finalise the document. The key areas of discussions are outlined below, with a list of the amendments required attached in Appendix 1 below:-
 - Waste Transfer Stations - This is covered in Clause 11.7 and relates to all five authorities contributing to the capital cost of two waste transfer stations - one in Conwy in one in Denbighshire. It was originally planned for one transfer station in Conwy but following extensive discussion at technical and Project Board level it was determined that it



NWRWTP

North Wales Residual Waste Treatment Project

would be more efficient and economical to develop 2 smaller sites (one in each county) rather than try to develop one to cover both authorities. The cap of £2.5m for the capital expenditure remains unchanged. This clause needed updating to reflect the two site option, but also needed to cover the financing arrangements.

- Mid term review and planning - A mid-term review is covered in Clause 10B, however this now needed to also cover a process for deciding to apply for a permanent planning permission.
- Pre-Treated Waste - Following intense and extensive internal dialogue and discussions with WTI, a cap has been agreed on how much waste can be treated at the facility that is residue from another external pre-treatment process. i.e. if the authorities want to send their "black bag" waste to a re-processor to treat (e.g. to separate further recyclables) and then send the residue from that process to the facility, it can do so but is capped at 5,000 tonnes. The IAA2 now needed to recognise this and specify the allocation of this "allowance" between the authorities.
- Schedule 8 (payment schedule) – This schedule needed to be updated to reflect updates to the Payment Mechanism in the main contract.
- Haulage Services – There was no reference in the document to the Haulage Services. It is therefore required to add a new clause that describes that the authorities will work together to deliver the haulage services, including drawing up a contract specification, instructing WTI to procure the haulage services contract(s) on their behalf. This should note that the authorities are not contractually bound to use WTI, and should the partnership not utilise that option with WTI, that the authorities will work together on a joint procurement of haulage services

Other feedback received

- 3.2 As well as the feedback received above, feedback was received separately by the Isle of Anglesey County Council.
- 3.3 A conference call was held on the 6th April 2016 with Anglesey's Legal Officer, Project Manager, Lead Legal Officer, Lead Technical Officer (also IACC's Technical Officer) and Pinsent Masons present.
- 3.4 Following that conference call, the IAA2 was discussed at a meeting of the partner authorities Monitoring Officers.
- 3.5 As a result of the above discussions, a small number of amendments were agreed to the document. These are highlighted in the Lead Legal Officer's report attached below in Appendix 2.



Revised version following feedback

- 3.6 Following the process above, a new revised version has now been issued to partner authority officers for a final review before it is ready for signing prior to Financial Close.
- 3.7 The timetable for reaching Financial Close is outline in item 10 on the agenda (Part 2 document).

4. RECOMMENDATIONS

- 4.1 To note the report and its content.
- 4.2. To approve the amendments to the IAA2 document as outlined in this report.

5. FINANCIAL IMPLICATIONS

- 5.1 There are financial implications and risk for all five constituent authorities as a consequence of entering into an Agreement. These have been previously reported.

6. ANTI-POVERTY IMPACT

- 6.1 None

7. ENVIRONMENTAL IMPACT

- 7.1 None

8. EQUALITIES IMPACT

- 8.1 None

9. PERSONNEL IMPLICATIONS

- 9.1 None

10. CONSULTATION REQUIRED

- 10.1 None



NWRWTP

North Wales Residual Waste Treatment Project

11. CONSULTATION UNDERTAKEN

11.1 A number of meetings have taken place of the Technical Officers' Group, Finance Officers' Group and the Legal Officers' Group to discuss the key issues raised in the draft IAA2, and at the Project Board throughout the process.

LOCAL GOVERNMENT ACCESS TO INFORMATION ACT 1985

Background Documents:

None

Contact Officer: Gareth Owens (FCC)
Steffan Owen (NWRWTP)



Appendix 1 - IAA2 additions / amendments resulting from February Officer Group Meetings

Clause	Addition / Amendment	Raised by
New clause – Planning	New clause needed to specifically cover the authorities working together to secure planning beyond 2050. This needs to allow the authorities to do so at any time. Any cost implications will be subject to the same cost sharing principles as all others as stipulated in Schedule 8.	Legal Group
10B – Mid Term review	Include a provision which acknowledged that the Partners might have a legitimate interest in utilising any extended lifespan beyond the projected 5 year extension	Legal Group
10B – Mid Term review	Decision making process for allocating any residual value of the facility (site remains in FCC's ownership) at termination.	Finance Group
Schedule 1 – Project Tasks	Add Mid Term Review to task list to ensure it's captured.	Legal Group
11.7 – Waste Transfer Station(s)	Wording to be amended to allow for 2 WTS's (although not stipulating that it must be 2).	All groups
11.7 – Waste Transfer Station(s)	Add Waste Transfer Station(s) to Task List to ensure it's captured in the governance arrangements.	Legal Group and Finance Group
11.7 – Waste Transfer Station(s)	Stipulate that the WTS's funded or part funded by the partnership must be used for the purposes of the project and not closed sold on, unless otherwise agreed by the Partnership.	Legal and Technical Groups
11.7 – Waste Transfer Station(s)	Need to clarify that the partnership will not fund ongoing maintenance and operating costs of the WTS's	Legal and Technical groups
11.7 – Waste Transfer Station(s)	Ensure that if a new WTS is used for multiple purposes (i.e. activities other than residual waste). The Partnership will only fund the proportion of the costs that relate to residual waste transfer. It was suggested that external technical consultants be brought in to review the WTS and allocate accordingly (tonnage allocation may not reflect a fair allocation of costs).	Technical Groups
11.7 – Waste Transfer Station(s)	Payment of £2.5m max – document should state that authorities building a WTS funded by the partnership (CCBC and DCC) are to fund the capital costs in the first instance, and each authority to fund their contribution in a manner they see fit, and the	Finance Group



	mechanism of payment to the authorities with the WTS's (CCBC and DCC) to be by agreement.	
11.7 – Waste Transfer Station(s)	Expenditure itself to be fully scrutinised by the technical and finance groups, and approval for the expenditure provided by the Project Board and Joint Committee.	Finance Group
Schedule 8 – Pre-treated waste	The 5ktpa of allowable pre-treated waste to be allocated on a pro rata tonnage share. (Base line survey not needed – allocation is sufficient)	Technical Group
Schedule 8 – Pre-treated waste	Trading between LA's of their share of the 5ktpa allowance is acceptable.	All groups
New Clause - Haulage Services	<p>No reference currently in the document to cover Haulage Services. Need to add a new clause that describes that the authorities will work together to deliver the haulage services, including drawing up a contract specification, instructing WTI to procure the haulage services contract(s) on their behalf.</p> <p>Needs also to recognise that the authorities are not contractually bound to use WTI, and should the partnership not utilise that option with WTI, that the authorities will work together on a joint procurement of haulage services.</p>	Technical Group
Whole document	Remove square brackets	
6.9	Update dates to reflect timescale	Technical Group
D (page 4)	“Facilities” to be “Facility”?	Technical Group
Appendix 1	Top – “Elected Councillors” should be “Executive Member	
Definitions	“Lead Finance Officer” should refer to the statutory duties of this role (e.g. preparing the statement of accounts).	



Appendix 2

16.04.15 NORTH WALES RESIDUAL WASTE TREATMENT PARTNERSHIP

1.1 The draft IAA2 was recently circulated for comments. A number of comments have been received with requests for proposed amendment. Many of the proposed amendments can be agreed as sensible and helpful improvements to the text which look to clarify the intention of the drafting – these amendments are listed in the attached appendix.

1.2 It was not possible to reach agreement on the key issue in respect of a proposed change to the position around liability and this paper sets out the issues.

2. Context

2.1 The waste contract has a total value of £500m approx.

2.3 FCC is signing the Project Agreement (PA) on behalf of all 5 councils in the partnership

2.4 IAA2 governs the relationship between the 5 partners, including setting out decision making processes, a process for dispute resolution and allocating liability in the event that either the PA or IAA2 is breached by the actions of one or more councils

3. Provisions in IAA2

3.1 Cl 2.2 provides for service of a default notice in the event that one of the councils has failed to comply with its obligations under the IAA2, setting out suggested remedial action and “any damage” that is likely to be suffered if the default is not corrected. Failure to comply with the obligations under the IAA2 makes the defaulting council liable to pay any loss which has or may be suffered as a result of such failure.

(NB there are processes for a defaulting council to dispute default notices and dispute resolution)

3.2 Cl. 2.3.4 IAA2 provides that in the event that a defaulting council is terminated (which is a decision that is reserved to Full Council and all the councils must



agree) for either:-

- not remedying a breach that is capable of remedy within 60 business days; or
- not proposing an acceptable alternative solution to a material breach that is not capable of remedy within 30 business days

then the defaulting council will be served with a Liability Report setting out the “consequential losses” including those specified in Schedule 7 (noting that the non defaulting councils have a duty (acting reasonably) to mitigate losses) that they suffer). It is noted that the contents of the Liability Report is to be prepared by the Lead Council acting reasonably; the report is then discussed and agreed by the Joint Committee prior to the report being issued to the defaulting council.

3.3 Schedule 7 (attached) sets out a number of heads of loss

4. Proposed Amendments

4.1 The following amendments are proposed:-

- 1) the liability for a defaulting council under clauses 2.2 and 2.3.4 should be limited to “direct” loss accruing to the non-defaulting parties
- 2) further detail of the types of heads of loss envisaged should be included in the Liability Report at Schedule 7
- 3) the heads of loss in Schedule 7 (where applicable) should cross refer to the relevant clauses under the PA
- 4) the losses under Schedule 7 should be limited as marked by track changes to those that are reasonable

5 Comment on Proposed Amendments

5.1 It is a fundamental principle that the full extent of any liability arising under the PA must be allocated to the defaulting council(s) so that none of the other councils lose out as a result of actions which are beyond their control

5.2 The liability clauses under IAA1 and now proposed in IAA2 are deliberately broad to put the cost associated with default at the highest end of what is permissible (without the clause being a penalty). This deterrent effect has benefited the partnership several times (most recently following the change of political leadership at FCC)



5.3 In addition there are potential losses over and above those within the PA if the partnership comes to an end; some are common to all councils and some are unique

E.g. 1 the waste project helps the councils meet their recycling targets and divert waste from landfill. If it does not proceed (or is terminated) then councils face £200 per ton landfill tax plus a £200 per ton fine to WG for every ton of waste below the recycling target

E.g. 2 Conwy and Denbighshire will receive revenue funding from WG to pay for the cost of borrowing to provide waste transfer stations. If the project terminates (and the WG funding) is lost then those councils will be liable for those borrowing costs.

5.4 Should the project be terminated the councils will either collectively or individually need to procure alternative means to dispose of their waste. The scale and cost of such procurement in officer time and advisors fees is considerable

5.5 The addition of the word “reasonable” to Schedule 7 is accepted

6 Recommendation

6.1 That IAA2 is amended as set out in the appendix to this report

6.2 That clauses 2.2 and 2.3.4–(b) (in respect of independent claims arising between the councils only) are amended to limit claims to “reasonable consequential losses”

6.3 That schedule 7 is amended by the addition of the word “reasonable” and by the further explanation of the last head of loss as shown in tracked changes

6.4 That an additional row is included in the Liability Report to incorporate any losses incurred under the Project Agreement and Contract Documents

6.5 That the IAA2 is accepted and that the Project Board is requested to endorse the document (subject to any changes from other work streams and required amendments to align the terms with the Project Agreement) with these amendments

Gareth Owens
Chief Officer Governance
Flintshire County Council



SCHEDULE 7 - LIABILITY REPORT

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

	Amount (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. 	
Loss of funding support from Welsh Government.	
<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 payments due to the Contractor under the Project Agreement; • loss of non-guaranteed Third Party Income; and • the cost of acquiring additional LAS allowances as a consequence of the withdrawal or termination (as the case may be) by a Council. 	
Any other reasonable 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.	
Reasonable costs incurred by the Lead Council	
Recognition of any mitigating factors including a substitute waste source (whether an additional local authority beyond the Councils or otherwise).	
<p>Breach of contract costs</p> <p>All other reasonable costs and losses arising out of or in connection with a breach of this</p>	



	Amount (all figures in round pounds)
<u>Agreement</u>	

Certified as correct _____

(Signed)

(Date)

Agreed Amendments to IAA2

Appendix

- 1) That the conditions of WG grant funding should be appended to IAA2
- 2) That the PA definitions will be checked to ensure they are consistent with those in IAA2 and in the case of any inconsistencies the PA will take precedence
- 3) That the last head of loss in Schedule 7 should be made more specific
- 4) The following should be amended as shown below
 - a. "decision period"
"Decision Period" means the period of fifteen (15) Business Days from the date of the agreement or determination of the amounts set out in the Liability Report, or such other ~~time~~ period as is unanimously agreed by all the Councils
 - b. "dispute" should be amended as shown below
"Dispute" means any difference or dispute between two (2) or more Councils or one or more councils and the Contractor arising out of or in connection with this Agreement and/or the Project
 - c. Clause 3.5.6
 "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 their Council or any other Council into disrepute or attract adverse publicity to their or any other Council;"
 - d. Clause 15.3
 "Each of the other Councils (acting severally but there shall be no double indemnification) 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:"



NWRWTP

North Wales Residual Waste Treatment Project

- (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

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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 in furtherance of the objectives of the North Wales Residual Waste Treatment Partnership (the "**Partnership**") and 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 Project's 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 Agreement which will set out the respective rights and obligations of each Council during the Contract Period.
- (D) The Councils have agreed that the Lead Council shall on or about the date of this Agreement enter into a contract (the "**Project Agreement**") with Parc Adfer Limited (Company No. 9100505) a private sector contractor, (the "**Contractor**") involving the design, construction, installation, commissioning, financing, operation and maintenance of the Facility 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 during the Contract Period, and to appoint Flintshire Council as Lead Council.
- (F) The Councils acknowledge that this Agreement sets out the basis on which risks and liabilities are apportioned between the Councils during the Contract Period. 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 other Contract Documents and acknowledge that all decisions relating to the Project and the operation of the Contract Documents shall be made in accordance with the terms of this Agreement and shall be implemented by the Lead Council under the Contract Documents 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 related or ancillary 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**

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 13.2 (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

"Annual Budget"	means the sum set out in Schedule 5 (Annual Budget) (represented by the list of required heads of expenditure) which represents the necessary funding for 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)
"APCR Element of the Unitary Payment"	means the amount calculated in accordance with paragraph 18 of Schedule 8 (Payment Proportions)
"Banded Element"	means the banded element(s) of the Unitary Charge within paragraph 6.3 of Schedule 4 of the Project Agreement related to processing of Contract Waste
"Band 0 Payment of the Unitary Payment"	means the amounts calculated in accordance with paragraph 13 of Schedule 8 (Payment Proportions)
"Band 1 Payment of the Unitary Payment"	means the amounts calculated in accordance with paragraph 14 of Schedule 8 (Payment Proportions)
"Band 1 Tonnage"	means the tonnage of Contracted Waste to be delivered by each Council per Contracted Year as set out in Appendix C2 (Band 1 Tonnage) to Schedule 8 (Payment Proportions)
"Band 2 Payment of the Unitary Payment"	means the amounts calculated in accordance with paragraph 15 of Schedule 8 (Payment Proportions)
"Band 2 Tonnage"	means the tonnage of Contracted Waste to be delivered by each Council per Contracted Year as set out in Appendix C3 (Band 2 Tonnage) to Schedule 8 (Payment Proportions)
"Band 3 Payment of the Unitary Payment"	means the amounts calculated in accordance with paragraph 16 of Schedule 8 (Payment Proportions)
"Band 3 Tonnage"	means the tonnage of Contracted Waste to be delivered by each Council per Contracted Year as set out in Appendix C4 (Band 3 Tonnage) to Schedule 8 (Payment Proportions)
"Base Payment Index"	means the indexation factor calculated in accordance with paragraph 21.2 of Schedule 4 of the Project Agreement
"Business Day"	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London
"CBF Account"	means the account to be set up in accordance with the Project Agreement and to which all Community Benefit Fund contribution payments will be made into

"Chair"	means the chair of the Joint Committee (duly appointed pursuant to paragraph 12 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 Institution of Wastes Management
"Commencement Date"	means the date of this Agreement
"Commissioning Payment"	means the amount calculated in accordance with paragraph 4.1 of Schedule 8 (Payment Proportions)
"Community Benefit Fund"	means the community benefit fund which the Lead Council must develop and manage in accordance with the Project 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 Deed of Appointment, the Lease, the Haulage Sub-Contract (each as defined in the Project Agreement) 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 Management Costs"	means the costs that each Council shall contribute towards the Annual Budget as detailed at paragraph 7 (Contract Management Costs) and paragraph 22 (Other Costs) of Schedule 8 (Payment Proportions)
"Contract Manager"	means the person appointed to manage the Project
"Contract Period"	has the meaning given to it in the Project Agreement
"Contractor"	has the meaning given to it in Recital (D)
"Cost Sharing Ratio"	means the ratio relating to the sharing of costs between the Councils as set out in Appendix B (Cost Sharing) of Schedule 8 (Payment Proportions)
"Counternotice"	has the meaning given in Clause 2.2.2 (Initial Breaches of this Agreement and Remediation)
"Covenantor"	has the meaning given to it in Clause 25 (Confidentiality and Announcements)

"Decision Period"	means the period of fifteen (15) Business Days from the date of the agreement or determination of the amounts set out in the Liability Report, or such other period as is unanimously agreed by all the Councils
"Deductions"	means the deductions imposed on the Contractor 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 the Bank of England
"Default Notice"	has the meaning given in Clause 2.2.1 (Initial Breaches of this Agreement and Remediation)
"Defaulter"	has the meaning given in Clause 2.3.1 (Termination of Participation of a Partner Council or Lead Council for Material or Irremediable Breaches)
"Dispute"	means any difference or dispute between two (2) or more Councils or one (1) or more Councils and the Contractor arising out of or in connection with this Agreement and/or the Project
"DPA"	means the Data Protection Act 1998
"EIR"	has the meaning given in Clause 19 (Freedom of Information and Environmental Information)
"Facility"	has the meaning given in the Project Agreement
"First Council"	has the meaning given to it in Clause 2.2.1 (Initial Breaches of this Agreement and Remediation)
"First Inter Authority Agreement"	has the meaning given to it in Recital (B)
"FoIA"	has the meaning given in Clause 19 (Freedom of Information and Environmental Information)
"Forecast Tonnage"	means the tonnage of Contract Waste forecast to be delivered by each Council as set out in Appendix C1 (Forecast Tonnage) of Schedule 8 (Payment Proportions)
"Full Indexation Factor"	means the indexation calculated in accordance with paragraph 21.3 of Schedule 4 of the Project Agreement
"Haulage Element"	means in respect of a Contract Month, all the costs incurred by the Contractor in transporting Contract Waste from Authority Designated Collection Points to the Facility in Contract Month 'm-1', in accordance with the provisions of Schedule 33 of the Project Agreement
"Haulage Element of Unitary Payment"	means the amounts calculated in accordance with paragraph 19 of Schedule 8 (Payment Proportions)

"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
"Interim Services"	means the whole of the optional services or any of them to be provided pursuant to the Project Agreement which are necessary for the Contractor to undertake in order to comply with the Interim Service Requirements, any relevant Method Statements and the other provisions of the Project Agreement
"Interim Services Payment"	means the amount calculated in accordance with paragraph 3.1 of Schedule (Payment Proportions)
"Interim Services Period"	means the period during which any Interim Services are provided to the Authority in accordance with Clause 21.3B of the Project Agreement
"Interim Services Requirements"	means the specification contained in Part A (PR5 – Interim Service Requirements) of Schedule 2 (Authority's Requirements) of the Project Agreement
"Interim Services Waste Disposal Payment"	has the meaning given in the Project Agreement
"Interim Services Waste Transport Payment"	has the meaning given in the Project Agreement
"IP Material"	means the Intellectual Property in the Material
"JC Unresolved Matter"	has the meaning given in Clause 6.4 (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)
"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 rights and 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
"Lease"	has the meaning given in the Project Agreement
"Liability Report"	means a report prepared by the Lead Council (or such other Council nominated under Clause 2.3.4(b) (Termination of Participation of a Partner Council or Lead Council for a Material or Irremediable Breaches) 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 of Participation of a Partner Council or Lead Council for a Material or Irremediable Breaches) upon termination, or Clause 16.6 (Withdrawal) upon withdrawal, including the items set out in Schedule 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
"Maintenance Payment"	shall have the meaning given in Schedule 4 (Payment Mechanism) of the Project Agreement
"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)
"Method Statements"	means the Works Method Statement and the Services Method Statements (each as defined in the Project Agreement)
"Minimum Payment"	means the minimum amount to be paid by each of the Councils in accordance with Clause 4.10 and as calculated in accordance with Schedule 8 (Payment Proportions)
"Minimum Tonnage"	means the minimum tonnage of Contracted Waste to be delivered by each Council as set out at Appendix A of Schedule 8 (Payment Proportions)
"Non-Defaulting Councils"	has the meaning given in Clause 2.3.1 (Termination of Participation of a Partner Council or Lead Council for Material or Irremediable Breaches)

"Non Service Period"	means the period from the Commencement Date to the Services Commencement Date, including the Commissioning Period, any Interim Services Period and any period following the Expiry Date or Termination Date (each as defined in the Project Agreement)
"Notice of Acceptance"	has the meaning given in Clause 2.2.3 (Initial Breaches of this Agreement and Remediation)
"Notice of Dispute"	has the meaning given in Clause 2.2.3 (Initial Breaches of this Agreement and Remediation)
"Other Council"	has the meaning given to it in Clause 2.2.1 (Initial Breaches of this Agreement and Remediation)
"Partner Council"	means a Council other than the Lead Council
"Partnership"	has the meaning given to it in Recital (A)
"Payment Period"	means each Month during the Contract Period
"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 (Performance and Improvement Plan);
"Personal Data"	means personal data as defined in the DPA
"PB Unresolved Matter"	has the meaning given in Clause 8.7 (Project Board)
"Pre-Treated Waste"	has the meaning given in the Project Agreement
"Project"	has the meaning given in the Project Agreement
"Project Agreement"	has the meaning given to it in Recital (D)
"Project Board"	has the meaning given to it in Clause 8.1 (Project Board)
"Project Board Meeting"	means a meeting of the Project Board duly convened in accordance with Clause 8 (Project Board)
"Project Officers"	has the meaning given to it in Clause 9 (Project Officers)
"Project Tasks"	has the meaning given to it in Clause 4.1 (Duties of the Lead Council and other Councils)
"Readiness Date"	has the meaning given in the Project Agreement
"Site"	means the area edged red on the Site Plan

"Site Plan"	means the plan of the Site set out in Part 3 of Schedule 7 (Site Information) of the Project Agreement;
"Termination Sum"	has the meaning given to it in the Project Agreement
"Transfer Management Payment"	means £6,250 (being £75,000 divided by 12)
"Transfer 1"	means the transfer by which the Site shall be transferred to the new Lead Council, which transfer shall be in the form of the draft transfer annexed to this Agreement at Part 1 of Appendix 2 (Transfer 1)
"Transfer 2"	means the transfer by which the Site shall be transferred to Flintshire County Council which transfer shall be in the form of the draft transfer annexed to this Agreement at Part 2 of Appendix 2 (Transfer 2)
"Unitary Payment"	means the amount calculated in accordance with paragraph 6 of Schedule 4 of the Project Agreement
"Vice-Chair"	means the vice-chair of the Joint Committee (duly appointed pursuant to paragraph 12 of Part 2 of Schedule 2 (Joint Committee Terms of Reference)); and
"Withdrawal Notice"	has the meaning given to it in Clause 16.3 (Withdrawal)
"WTS"	has the meaning given to it in Clause 11.7 (New Waste Transfer Station)

1.2 Interpretation

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

- 1.2.1 each gender includes all genders;
- 1.2.2 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;
- 1.2.3 the singular includes the plural and vice versa;
- 1.2.4 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;
- 1.2.5 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.6 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;
- 1.2.7 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;

- 1.2.8 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.9 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;
- 1.2.10 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;
- 1.2.11 words preceding "**include**", "**includes**", "**including**" and "**included**" shall be construed without limitation by the words which follow those words;
- 1.2.12 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
- 1.2.13 in this Agreement, save where otherwise provided, references to amounts expressed to be "**indexed**" are references to such amounts, multiplied by:

Index₁

Index₂

- 1.2.14 where "**Index₁**" is the average of the values published for RPIx for the period October to December immediately preceding the relevant calculation date and "**Index₂**" is the value of RPIX for the period October to December 2011 being 238.63

1.3 **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 and 2.1.3, 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 been terminated pursuant to Clause 2.3 (Termination of Participation of a Partner Council or Lead Council for Material or Irremediable Breaches); or

- (c) the date falling six (6) months after the expiry or earlier termination of the Project Agreement, or such later date as the obligations and liabilities of the Lead Council pursuant to the Project Agreement have been discharged in full.
- 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 Notwithstanding the provisions of Clause 2.1.1, this Agreement shall continue in full force and effect until any decommissioning arrangements have been finalised and completed.
- 2.1.4 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 Initial Breaches of this Agreement and Remediation

- 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 fifteen (15) Business Days (or such longer period as agreed between the Councils (acting reasonably)), within which to serve on the Chief Executive of the First Council who served the Default Notice a counternotice (the “**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 Councils (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 in accordance with the timescales set out in the Counternotice, and shall be liable for any additional losses incurred by the First Council in the event that such proposal(s) are not implemented in accordance with such timescales.
- 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).
- 2.2.6 Where a breach by a Council is irremediable or a Council continues to breach its obligations under this Agreement then the other Councils may consider terminating the participation of that Council in accordance with

Clause 2.3 (Termination of Participation of a Partner Council or Lead Council for a Material or Irremediable Breaches).

2.3 Termination of Participation of a Partner Council or Lead Council for Material or Irremediable Breaches

- 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:-
- (a) 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; or
 - (b) in the case of a material breach which is incapable of remedy, fails to propose and implement an alternative solution which is acceptable to the Non-Defaulting Councils within thirty (30) Business Days (or such other period as agreed by the Councils) of being notified of each breach in writing by the Non-Defaulting Councils.
- 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 respect of a Council in accordance with this Clause 2 (Commencement, Duration and Termination) or a Council withdraws pursuant to Clause 16 (Withdrawal), save for the obligations set out in this Clause 2 (Commencement, Duration and Termination), Clause 11 (Sites and Decommissioning), Clause 14 (Intellectual Property), Clause 15 (Liability of the Councils), Clause 17 (Dispute Resolution), Clause 19 (Freedom of Information and Environmental Information), Clause 23 (Councils' Obligations Following Expiry or Earlier Termination), Clause 25 (Confidentiality and Announcements), Clause 27 (Notices), Clause 28 (Governing Law) and any other provision which is expressed to survive termination or withdrawal which is required to give effect to such termination or withdrawal or the consequence of such termination or withdrawal, that Council shall be released from their respective obligations described in this Agreement.
- 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 for Material or Irremediable Breaches) such Defaulter shall be liable to the Non-Defaulting Council or Councils for their reasonable consequential loss as set out in a Liability Report issued to the Defaulter within fifteen (15) Business 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) where a Defaulter causes the early termination of the Project Agreement, such Defaulter shall be liable to the other Councils in accordance with Clause 23 (Councils' Obligations Following Expiry or Earlier Termination of the Project Agreement) and the Liability Report shall reflect such additional liabilities;
- (d) any failure by the Joint Committee to agree the amounts payable as set out in the Liability Report shall be referred under Clause 17 (Dispute Resolution) as a dispute for resolution; and
- (e) any amounts payable by a Defaulter set out in a Liability Report shall be paid by the Defaulter within ninety (90) Business Days following agreement of the Liability Report by the Joint Committee or determined pursuant to the dispute procedure under Clause 17 (Dispute Resolution) save in respect of any payment due to the Contractor under the Project Agreement, which shall be paid by the Defaulter no later than ten (10) Business Days before such payment is due to be paid by the Lead Council to the Contractor.

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 for Material or Irremediable Breaches), 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 to the new Lead Council as selected by the remaining Councils; and

2.4.2 comply with the obligations set out at Clause 11 (Sites and Decommissioning) if applicable.

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;

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 their Council or any other Council into disrepute or attract adverse publicity to their or 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 (Wales) Measure 2011.

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 will be the Lead Council for the carrying out of the administrative and representative functions required in respect of the Project (following, where relevant, any approvals required in accordance with this Agreement) (including but not limited to those functions specified in Schedule 1 (Project Tasks)) (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 other entities pursuant to Clause 5 (Decision Making).
- 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; and/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 cannot direct the Lead Council to act in a manner which would put it in breach or default of the Contract Documents;
 - 4.4.3 acting 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 Partnership Board (and co-ordination of the ten (10) Council representatives, being two (2) representatives from each of the Councils, who are appointed to the Partnership Board for the purposes of Schedule 18 (Liaison Procedure) of the Project Agreement);
 - 4.4.6 acting as the employing or seconder 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 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 Welsh Government 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 of Participation of a Partner Council or Lead Council for Material or Irremediable Breaches) 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 indemnify the Lead Council against any costs not accounted for in the Annual Budget, including but not limited to any redundancy and/or pension costs. It is acknowledged that these costs shall be shared between each of the Councils on a pro-rata basis proportional to the actual tonnage delivered by each Council or as otherwise agreed by the Joint Committee taking into account any individual liability of the Councils.
- 4.7 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.
- 4.8 The Contract Manager shall:
- 4.8.1 be employed by or seconded to the Lead Council and report to the Project Board;
 - 4.8.2 conduct all day to day business for the Project to satisfy the Lead Council's obligations to the Contractor under the Project Agreement and other Contract Documents;
 - 4.8.3 potentially have staff reporting to him or her who may be seconded from the other Councils (not being the Lead Council); and

- 4.8.4 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.
- 4.9 Liability for breach of the Contract Manager's obligations under this Agreement shall rest with the Lead Council, unless such breach arises as a consequence of the Contract Manager acting in accordance with an instruction of the Project Board, the Joint Committee or other Councils (in response to a Matter Reserved to the Councils).
- 4.10 The Councils acknowledge and agree that under the terms of the Project Agreement there is an obligation on the Lead Council from the Readiness Date to deliver to the Contractor Contract Waste which has been collected by it and the other Councils. The Councils further acknowledge that 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 Contract Year, such Council shall still be liable for its Minimum Payment as calculated in accordance with paragraph 13.1, 13.2, 13.3, 13.4 and 13.5 respectively of Schedule 8 (Payment Proportions) to the extent caused by its failure to deliver its share of Contract Waste.
- 4.11 The Councils further acknowledge that in each Contract Year, the Lead Council shall have the right to deliver or procure the delivery of, up to a maximum of five thousand (5,000) tonnes of Pre-Treated Waste. Accordingly, each of the Councils' entitlement to deliver a share of the five thousand (5,000) tonnes of Pre-Treated Waste shall be on a pro-rata basis, in respect of the tonnage delivered by each Council in accordance with the percentage split identified in Appendix B of Schedule 8 (Payment Proportions) per Contract Year. Pursuant to the terms of the Project Agreement, any Pre-Treated Waste that is delivered to the Contractor in excess of five thousand (5,000) tonnes in a Contract Year may be rejected by the Contractor.
- 4.12 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 Schedule 8 (Payment Proportions) they shall be collectively liable to the Contractor for the Minimum Tonnage guarantee payments.
- 4.13 Each Council warrants to the other Councils that it shall observe and comply with the terms of each of the Contract Documents and this Agreement (and shall not by way of any act or omission cause the Lead Council to breach the terms of any Contract Document) 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 causing a breach of any of the Contract Documents and this Agreement.
- 4.14 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.
- 4.15 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.

- 4.16 Each Council in entering into and/or approving the entry into of 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.
- 4.17 For the duration of this Agreement, the Lead Council shall act as the primary interface with the Contractor, Welsh Government and any other body necessary to carry out the Project Tasks in accordance with the terms of this Agreement.
- 4.18 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 Welsh Government guidance and any other applicable legislation.

5. **DECISION MAKING**

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 and in each case, the Councils acknowledge that the responsibility for decision making in respect of certain Project Tasks is identified in Schedule 1 (Project Tasks):-

- 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 4.8 (Duties of Lead Council and Other Councils) but shall not include any decision which could reasonably be expected to have local and/or political significance to any of the Councils and/or in respect of any decision to which Clauses 5.1.2, 5.1.3 or 5.1.4 apply, in which case the decision shall be elevated to the Project Board, provided always that the Contract Manager may refer any matter to the Project Board if he/she so decides;
- 5.1.2 **"Project Board Matter"** - being a matter which is to be decided upon (pursuant to Clause 8 (Project Board), Schedule 3 (Project Board Terms of Reference)) or be a matter referred to the Project Board by the Contract Manager at a quorate meeting of the Project Board by those present and entitled to vote. Any decision made by the Project Board in relation to a Project Board Matter shall be binding on all of the Councils. Any decision to be made on a matter to which Clauses 5.1.3 or 5.1.4 apply shall be elevated to the Joint Committee, provided always that the Project Board can refer any matter 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 6 (Joint Committee), Schedule 2 (Joint Committee Terms of Reference) to vote 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 shall be binding on all of the Councils. Any decision to be made on a matter to which Clause 5.1.4 applies shall be referred by the Joint Committee as a Matter Reserved To The Councils. The Joint Committee may determine that any Joint Committee 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) which shall include (but not be limited to) any decision which has (or is reasonably expected to have) an annual financial impact on the Project above the Annual Budget 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.

- 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.
- 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 Facility; 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 (Decision Making).
- 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.
- 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 Chair 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 Chair 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 2016-2017 (which will precede the preparation of the first Annual Budget and be a transitional Contract Year) are as set out in Appendix 4 (Annual Budget 2016- 2017).
- 6.10 When acting 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, as provided for in Clause 5 (Decision Making).

7. **ANNUAL BUDGET**

- 7.1 The Joint Committee shall by not later than September 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 Performance and Improvement Plan prepared pursuant to Clause 10.1 (Performance and Improvement Plan), 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 During the Non Service Period, the Councils agree that each Council shall contribute towards the Annual Budget on an equal basis in accordance with Part A (Non Service Period Cost Allocation) of Schedule 8 (Payment Proportions). From the first Accounting Period in the Services Period until expiry or termination of this Agreement, the Councils shall contribute towards the Annual Budget on a pro rata basis in respect of the tonnage delivered by each Council in accordance with Appendix B of Schedule 8 (Payment Proportions).
- 7.4 Each of the Councils shall irrevocably make available to the Lead Council their share of the agreed Annual Budget. 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 13.5 (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 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 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.
- 7.7 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 7.9, be borne by the Council providing that internal resource unless such costs have received prior written approval from the Contract Manager (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 Contract Manager 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 7.8 below.
- 7.8 The Councils hereby agree that:-
- 7.8.1 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
- 7.8.2 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.
- 7.9 The Councils hereby agree that if one of the Councils believes it is likely to incur disproportionate internal resource costs in relation to the Project (compared to the Project spend profile set out at Schedule 5 (Annual Budget)) pursuant to Clause 7.7 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 management of the Project and of the Contract Manager, and the implementation and monitoring of those Project Tasks specified as being a function of the Project Board, in each case 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 (Decision Making).

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, the results of which shall be reported to the Joint Committee on an annual basis;

(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 (with the necessary powers to act as required) to the Project Board. The Chair 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 of each Council. 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 unless appointed as the senior officer representative in accordance with Clause 8.4 above.

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 (Decision Making) 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.

- 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 reasonably 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 one or more of 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. **PERFORMANCE AND IMPROVEMENT PLAN**

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

- 10.2 No later than 30 June in any Contract Year, the Contract Manager shall present to the Joint Committee a draft Performance and Improvement Plan for the following Contract Year, including any resource requirements for the Project along with the draft Annual Budget submitted in accordance with Clause 7.1 (Annual Budget) to the Project Board

to enable the Project Board to be made aware of any significant changes (including the required consideration and review of the rail option) which they may refer for approval and recommendation to the Joint Committee including any anticipated Authority Changes under the Project Agreement.

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 monthly (pm 2.5) air quality monitoring undertaken for the Contract Period. The costs associated with such additional monitoring will be shared by the Councils in accordance with paragraph 20 (PM2.5 Costs) of Schedule 8 (Payment Proportions). Any variation to this shall be approved by all the Councils as a Matter Reserved to the Councils.

10B **INTERIM SERVICES**

10B.1 The Councils acknowledge that pursuant to Clause 21B (Interim Services) of the Project Agreement, the Contractor is obliged to provide the Interim Services throughout the Interim Services Period.

10B.2 The Councils agree that on or before the date which falls eighteen (18) Months prior to the Planned Readiness Date, they shall determine the following:-

10B.2.1 if they wish all or part of the Interim Services to be provided or procured by the Contractor;

10B.2.2 the extent of the Interim Services that they wish to be so provided or procured and any performance standards that they believe should be implemented;

10B.2.3 the date on which such Interim Services are to commence; and

10B.2.4 if they wish the provision or procurement of the Interim Services to continue until the earlier to occur of the Termination Date and the Readiness Date.

10B.3 Each Council shall be responsible for payment of their proportion of the Interim Services Payment in accordance with paragraph 3 of Schedule 8 (Payment Proportions).

10C **MID-TERM REVIEW**

10C.1 The Councils agree that a mid-term review of the Project shall take place no later than fifteen (15) years following Service Commencement. The Councils shall conduct the mid-term review to determine and reach agreement in respect of the following:-

10C.1.1 the operational life of the Facility and whether to extend the Expiry Date by a period of up to five (5) years as per Clause 23.1, 23.2 and 23.3 (Extension);

10C.1.2 how to manage and distribute any residual value of the Facility upon expiry or early termination of the Project (for the avoidance of doubt, excluding the value of the Site, which shall be retained by Flintshire Council in accordance with Clause 11 (Sites and Decommissioning)); and

10C.1.3 arrangements that are appropriate in respect of the continuing operation or otherwise of the Facility upon expiry or early termination of the Project, in accordance with Clause 23.4 (After Project Agreement Expiry or Earlier Termination) and Clause 11.3 (Arrangements on Expiry or Early Termination).

11. **SITES AND DECOMMISSIONING**

Arrangements on Expiry or Early Termination

11.1 Subject to Clause 11.3, the Councils acknowledge that, upon the expiry or termination of the Project Agreement the Site shall be retained by Flintshire Council.

11.2 In the event that Flintshire Council (or a subsequent Lead Council following the earlier operation of this Clause) is terminated or withdraws from the Project (pursuant to Clause 2.3 (Termination of Participation of a Partner Council or Lead Council for Material or Irremediable Breaches) or Clause 16 (Withdrawal) of this Agreement) then the Site will transfer to the new Lead Council for the duration of the Project and upon expiry of the Project, the then Lead Council shall ensure that the Site is transferred back to Flintshire Council (in each case in accordance with Clauses 11.3 and 11.4).

11.3 The Councils acknowledge that on early termination of the Project Agreement, they shall, prior to the termination of this Agreement, seek to agree such arrangements as are appropriate in respect of the continuing operation or otherwise of the Facility. The Councils agree that if an early termination of the Project Agreement occurs after the Readiness Date, then the Councils will agree such alternative contractual arrangements (at all times having regard to the circumstances of the termination) so as to enable the continued operation of the Facility for the remainder of the twenty-five (25) years, as if the Project Agreement had not terminated. If, however, early termination of the Project Agreement occurs prior to the Readiness Date, then the Councils shall agree alternative arrangements in respect of the Site and the Councils shall be equally liable for any associated costs. If the Councils fail to agree upon any alternative arrangements within sixty (60) Business Days (or such longer period as agreed by the Councils (acting reasonably)) following the early termination of the Project Agreement, then the Site shall be decommissioned in accordance with Clause 11.6 (Decommissioning).

11.4 **Transfer to New Lead Council**

11.4.1 The Councils shall, where the current Lead Council is a Defaulter pursuant to Clause 2.3 (Termination of Participation of a Partner Council or Lead Council for Material or Irremediable Breaches) or has given notice to withdraw pursuant to Clause 16 (Withdrawal), nominate one of the remaining Councils to take on the role as the new Lead Council for the purposes of the Project in the event that the current Lead Council is terminated or withdraws. Upon such termination or withdrawal, the new Lead Council will take a transfer of the Site from the current Lead Council and shall notify Flintshire Council in writing of the identity of such nominee.

11.4.2 In accordance with Clause 11.4.1

(a) the current Lead Council and the new Lead Council shall enter into Transfer 1; and

(b) the new Lead Council shall enter into a deed of covenant in substantially the same form as that attached to this Agreement at Appendix 3 (Deed of Covenant).

11.4.3 Following completion of Transfer 1, the new Lead Council shall:

- (a) apply to register Transfer 1 at the Land Registry without delay;
- (b) deal with any requisitions raised by the Land Registry promptly and properly; and
- (c) send Flintshire Council official copies of the title within five (5) Business Days of completion and registration.

11.4.4 The current Lead Council shall use reasonable endeavours to assist the new Lead Council in complying with the obligations set out in this Clause 11.4.

11.5 **Transfer to Flintshire Council**

In the event that Transfer 1 has been completed during the Contract Period, the following provisions shall apply on the Expiry Date:

11.5.1 on that date which is five (5) Business Days after the Expiry Date:

- (a) the Lead Council and Flintshire Council shall enter into Transfer 2; and
- (b) Flintshire Council shall enter into a deed of covenant in substantially the same form as that attached to this Agreement at Appendix 3 (Deed of Covenant).

11.5.2 Following completion of Transfer 2, Flintshire Council shall:

- (a) apply to register Transfer 2 at the Land Registry without delay;
- (b) deal with any requisitions raised by the Land Registry promptly and properly; and
- (c) send the Lead Council official copies of the title within five (5) Business Days of completion of the registration.

11.5.3 The Lead Council shall use reasonable endeavours to assist Flintshire Council in complying with the obligations set out in Clause 11.5 above.

11.6 **Decommissioning**

Where the Facility is to be decommissioned following termination or expiry of the Project Agreement, the Lead Council shall enter into appropriate arrangements in respect of such decommissioning and the costs of such decommissioning will be split equally between the Councils, unless Flintshire Council (in its absolute discretion but subject to any planning permission restrictions) elects in writing no later than twelve (12) months prior to expiry and in respect of an early termination as soon as reasonably practicable, not to undertake decommissioning at the time of expiry or early termination of the Project, in which case Flintshire Council shall be solely liable for any future decommissioning costs.

11.7 **New Waste Transfer Station**

The Councils acknowledge and agree that a new waste transfer station (the "WTS") is intended to be built by or on behalf of Conwy Council for the purposes of providing Conwy Council and Denbighshire Council with a new facility for the bulking of Contract Waste prior to its onward transport to the Facility. The Councils agree that the capital costs incurred in relation to the site acquisition (if not already owned by Conwy Council) and construction of such WTS (including all such necessary ancillary works and associated costs) shall be funded by the Councils on an equal basis up to a cap of two million, five hundred thousand pounds (£2,500,000). If the new WTS is built on

a site that is owned by Conwy Council, then, subject to Clause 11.3, upon expiry or early termination of the Project the WTS 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 of the Project the Councils agree to discuss and seek to determine appropriate arrangements in respect of the continued use or disposal of the WTS. For the avoidance of doubt it is acknowledged and agreed by the Councils that the ongoing operational costs associated with the new WTS are outside the scope of this Agreement.

11.8 **Title Matters**

The Councils acknowledge that any title matters that arise during the Contract Period in respect of the Site shall be the shared responsibility of each of the Councils and to the extent that the Lead Council is liable for any costs in respect of any such title matters, then these costs shall be shared between each of the Councils on a pro-rata basis proportional to the actual tonnage delivered by each Council.

11.9 **Planning Permission**

The Councils acknowledge that to the extent that the Lead Council is liable pursuant to the terms of the Project Agreement for any costs associated with obtaining any required planning permission and/or consents in respect of the Site, then these costs shall be shared equally between each of the Councils, to the extent that such costs arise during the Non-Service Period. Any such costs that arise during the Service Period shall be apportioned between the Councils on a pro rata basis in respect of the tonnage delivered by each Council in accordance with Appendix B of Schedule 8 (Payment Proportions).

12. **PAYMENTS**

Incoming payment to the Lead Council of Welsh Government Funding and other sums

12.1 Any Welsh Government Funding 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 tonnage delivered by each of the Councils in accordance with Appendix B of Schedule 8 (Payment Proportions), the Lead Council making such payments to the other Councils in accordance with the timeframe indicated at Appendix E of Schedule 8 (Payment Proportions). In the event that the Lead Council fails to pay a Council within the 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 For the avoidance of doubt, the Welsh Government Funding shall include provision for Council costs in respect of the management of Contract Waste prior to its haulage and Treatment (i.e. the costs of operating the relevant waste transfer stations).

12.2A The Councils acknowledge the conditions of the Welsh Government Funding as set out at Appendix 5 (Welsh Government Funding Conditions).

Invoices from Contractor

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 payments due under the Project Agreement 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 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.
- 12.6 Each Council shall pay its proportion of the payment that is owed to the Contractor (each a "**Payment Proportion**") in accordance with paragraph 27 (Payments to the Lead Council) of Schedule 8 (Payment Proportions).
- 12.7 In the event that a Council fails to pay its Payment Proportion to the Lead Council within the period specified in paragraph 27 of Schedule 8 (Payment Proportions), that Council shall be liable to pay interest to the Lead Council at the Default Interest Rate, calculated from the due date until (but excluding) the actual date of payment.
- 12.8 The Councils shall ensure that there are always cleared funds paid in accordance with their respective share of contributions calculated in accordance with Schedule 8 (Payment Proportions) 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.
- 12.9 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.
- 12.10 The Councils agree that Flintshire Council as Lead Council shall (with the agreement of the Partner Councils) 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)).
- 12.11 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 the Partner Councils (such agreement to include an agreement as to how each Council's respective Payment Proportion shall be amended as a result of such set-off).
- 12.12 Subject to Clause 12.13 the Councils shall review their Payment Proportions for the items set out in paragraph 27 (Payments to Lead Council) of Schedule 8 (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 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.
- 12.13 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 the mutual benefit of the Project 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

- 12.14 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 paragraph 20 of Part B (Service Period Cost Allocation) of Schedule 8 (Payment Proportions) or otherwise) shall be apportioned between the relevant Councils on a pro-rata basis in respect of the actual tonnage delivered by each Council unless such payment (or a part of such payment) relates specifically to a loss incurred by an individual Council (or Councils), in which case the relevant Council(s) shall be entitled to such payment (or relevant part of such payment).
- 12.15 The Lead Council shall, where payments apportioned to a Council pursuant to Clause 12.14 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.
- 12.16 The Councils acknowledge that any residual amounts that have not been paid out to the relevant Council in accordance with Clause 12.15 above, shall upon expiry or termination of this Agreement be paid to the relevant Council or where the relevant Council is terminated or withdraws from this Agreement, then any amounts due shall be taken into account and set-off against the liabilities of that Council pursuant to the Liability Report.

Taxation

- 12.17 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.
- 12.18 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.
- 12.19 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.
- 12.20 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.

Set-Off

- 12.21 The Lead Council may retain or set-off any amount owed to it by a Partner Council under this Agreement which has fallen due and payable against any amount due to the respective Partner Council under this Agreement.

Community Benefit Fund

- 12.22 [The Councils acknowledge that pursuant to the Project Agreement, the Lead Council has an obligation to contribute one hundred and eighty thousand pounds (£180,000) per Contract Year, towards the Community Benefit Fund by way of a payment into the CBF Account. The Councils shall be responsible for payment of their proportion in accordance with paragraph 21 (Community Benefit Fund) of Schedule 8 (Payment Proportions).]

13. ACCOUNTS

Accounts to reconcile Annual Budget

- 13.1 Clauses 13.2 to 13.5 shall only apply to Conwy Council, Denbighshire Council, Gwynedd Council and Isle of Anglesey Council, and only where Clause 7.8 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 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, 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 13 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.
- 13.4 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.
- 13.5 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

- 13.6 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.
- 13.7 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.
- 13.8 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.
- 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 caused by that Council arising out of any dispute or proceedings brought by a third party alleging infringement of its Intellectual Property rights.
- 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 (including breach of this Agreement) 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 unless the Lead Council was acting in accordance with an instruction of the Project Board, Joint Committee or other Councils (in response to a Matter Reserved to the Councils).

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 but there shall be no double indemnification) 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 caused by the indemnifying party or from negligence or other act, omission or default (including breach of this Agreement) 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 shall not be responsible or be obliged to indemnify the other Councils (including the Lead Council) to the extent that the indemnified Council recovers the relevant costs or losses under such policy of insurance (or would have recovered had it used reasonable endeavours to do so) (save that the indemnifying Council 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 of the Lead Council to the Contractor in respect of any indemnity or other provision contained within the Project Agreement (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 the Required 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 of Participation of a Partner Council or Lead Council for a Material or Irremediable Breaches) 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 fifteen (15) Business 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. Any failure by the Joint Committee to agree the amounts payable as set out in the Liability Report shall be referred under Clause 17 (Dispute Resolution) as a dispute for resolution.
- 16.4 Within the Decision Period the relevant 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 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 following agreement of the Liability Report by the Joint Committee or determined pursuant to the dispute procedure under Clause 17 (Dispute Resolution) and shall comply with its obligation to contribute to the Project up to the date of its 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 for a period for six (6) months 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 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 11 (Sites and Decommissioning).
- 16.10 Any Council to which the Site is transferred pursuant to Clause 11.3 (Transfer to New Lead Council) acknowledges and agrees that upon expiry of the Project the Site shall be transferred back to Flintshire Council (at no cost to Flintshire Council.) in accordance with Clause 11.4 (Transfer 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 and Wales (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;
- 18.2.3 shall comply with the data protection policy at Appendix 1 (Data Protection Policy) as may be updated or amended from time to time as agreed by the Councils; and
- 18.2.4 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 and Contractor Related Parties 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 Project Board, the Joint Committee or the Councils (in respect of a Matter Reserved To The Councils) (as applicable) the Councils decide to support a proposed variation under the Project Agreement (or where the same is required as a result of a Qualifying Change in Law), then Lead Council shall seek an Authority Change or agree a Contractor Change (as applicable) with the Contractor in the Project Agreement, and:

20.3.1 where the proposed Authority Change is agreed by 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 Ratio set out at Appendix B (Cost Sharing) of Schedule 8 (Payment Proportions);

20.3.2 where the proposed Authority Change is agreed by 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;

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; and

20.3.5 where the proposed Change is a Contractor Change which would result in a cost saving, the Councils shall agree as part of the consideration of such Contractor Change the proportionate sharing of such cost saving between the Councils.

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 where agreed by all the Councils.

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 39A (Title Disruption Event), Clause 57 (Uninsurability), Clause 67 (Termination for Contractor Default), Clause 69 (Termination on Force Majeure) or Clause 71 (Termination on Corrupt Gifts and Fraud) 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 Contract Period 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 (Option to Extend the Contract Period) 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 thirty-six (36) months prior to the Expiry Date in accordance with Clause 3.3 of the Project Agreement.

After Project Agreement Expiry or Earlier Termination

23.4 The Councils agree that following expiry or early 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 Facility in accordance with Clause 11 (Sites and Decommissioning). The Councils acknowledge however that on expiry of the Project in line with the Expiry Date under the Project Agreement, there is no obligation on Flintshire Council to utilise the Site for any continued arrangements with the 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 The Councils acknowledge that the Lease shall terminate upon a termination of the Project Agreement.

Termination Payments

23.6 The Councils shall be liable (and shall indemnify each other):

23.6.1 for equal proportions of the Termination Sum payable to the Contractor following an early termination of the Project Agreement where such termination occurs during the Works Period;

23.6.2 for a proportion of the Termination Sum calculated on a pro rata basis in respect of the actual tonnage delivered by each of the Councils where such termination occurs during the Services Period;

save in respect of any Termination Sum payable in accordance with:

23.6.3 Clause 66 (Compensation on Termination for Authority Default) of the Project Agreement, or

23.6.4 Clause 4.4 (Relevant Discharge Terms) of the Project Agreement; and

23.6.5 Schedule 28 (Relevant Discharge Terms) of the Project Agreement,

in which case the Councils agree that the Council or Councils whose acts or omissions gave rise to the termination shall be liable for a greater proportion (or all) of the Termination Sum as agreed or determined by the Joint Committee, to reflect the respective liability of the Council or Councils (as the case may be).

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 10.12 (Termination) and Part 5 of Schedule 17 (Compensation on Termination) of the Project Agreement;

23.7.2 Clause 39A.8 (Title Disruption Event) and Part 5 of Schedule 17 (Compensation on Termination) of the Project Agreement;

23.7.3 Clause 57 (Uninsurability) and Part 5 of Schedule 17 (Compensation on Termination) of the Project Agreement;

23.7.4 Clause 65 (Termination for Authority Default) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;

23.7.5 Clause 67 (Termination for Contractor Default) and Part 3 of Schedule 17 (Compensation on Termination) of the Project Agreement;

23.7.6 Clause 69 (Termination on Force Majeure) and Part 5 of Schedule 17 (Compensation on Termination) of the Project Agreement;

- 23.7.7 Clause 71 (Termination on Corrupt Gifts and Fraud) and Part 4 of Schedule 17 (Compensation on Termination) of the Project Agreement;
- 23.7.8 Clause 73 (Voluntary Termination by the Authority) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;
- 23.7.9 Clause 4.4 (Unenforceability of Contract) and Schedule 28 (Relevant Discharge Terms);
- 23.7.10 Any other provision within the Project Agreement that affects liability on termination of the Project Agreement; and
- 23.7.11 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 The Authority's Policies as set out at Schedule 13 (Authority's Policies) to the Project Agreement shall apply in relation to the operation of the Project Agreement within the Administrative Area.

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 The Councils acknowledge that nothing in the Contract Documents shall be deemed confidential unless expressly stated so in those Contract Documents.

25.3 Each Council (the "**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.

25.4 The obligation set out in Clause 25.1 shall not relate to information which:-

25.4.1 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

25.4.2 any disclosure to enable a determination to be made under Clause 17 (Dispute Resolution);

25.4.3 is required to be disclosed by law; or

25.4.4 was already in the possession of the Covenanter (without restrictions as to its use) on the date of receipt; or

25.4.5 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

- 25.4.6 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.
- 25.5 Where disclosure is permitted under Clauses 25.4.3, 25.4.4 or 25.4.6, 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.
- 25.6 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.
- 25.7 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 and any non-contractual obligations arising out of or in connection with it 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 the Default Interest Rate.

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 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 times 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**

Without prejudice to the remedies and contractual rights of the Lead Council in respect of a risk, liability or obligation expressly provided in this Agreement as being a risk, liability or obligation of one or more of the Councils, nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain, the Councils in any other capacity, nor shall the exercise by the Councils of their duties, powers and functions in any other capacity lead to any liability under this Agreement on the part of the Councils to the Lead Council.

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

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Issue Default Notice for Council breach of Agreement	2.2.1					Y
Respond to Default Notice with Counternotice proposing remediation of Default Notice matters	2.2.2					Y
Issue of Notice of Acceptance and/or Notice of Dispute concerning Counternotice proposals to remediate beaches of Agreement	2.2.3					Y
Implement Notice of Acceptance	2.2.4					Y
Issue of written notice of termination of Agreement by Non-Defaulting Councils to Defaulter	2.3.1					Y
Agree to terminate Agreement	2.3.2					Y
Liability for losses caused due to termination by a Defaulter	2.3.4					Y
All necessary consents obtained	3.3					Y
Share data and knowledge relevant to the Project	3.4					Y
Conduct relationship in accordance with stated principles	3.5					Y
Agreement that Flintshire Council shall be Lead Council	4.1					Y
Recognition of existence of Joint Committee and compliance with decisions delegated to Joint Committee	4.2					Y

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Deciding detailed scope of Lead Council role	4.3.1				Y	
Deciding administrative and representative functions of the Lead Council	4.3.2				Y	
Communicate representative functions to Contractor	4.3.2		Y			
Consultation and reporting requirements between Lead Council and Joint Committee	4.3.3				Y	
Act on behalf of Partnership in management and supervision of Project	4.4.1		Y			
Acting under direction of Joint Committee	4.4.2		Y			
Act on behalf of the interests of the Partnership	4.4.3		Y			
Liaising with Contractor and Contractor's Representatives	4.4.4		Y			
Participating in Partnership Board under Project Agreement	4.4.5		Y			
Act as employing authority for Lead Council staff or supervisor of Councils' seconded staff	4.4.6		Y			
Act as point of contact for Partner Councils for the purposes of managing Project	4.4.7		Y			
Providing additional resources and office facilities	4.4.8		Y			
Responsibility for liaison and communication with Welsh Government and co-ordination of communication and public relations	4.4.9		Y			
Managing application of Annual Budget for Core Project Team and reporting to Project Board	4.4.11		Y			
Reporting on expenditure to Joint Committee	4.4.11		Y			

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Having powers to enter into contracts with consultants	4.4.12		Y			
Appointing a replacement Lead Council if the Lead Council defaults or withdraws from the Agreement	4.5				Y	
Performing much of Lead Council role	4.7	Y				
Commitment to a Minimum Tonnage guarantee	4.10					Y
No competing procurement to the Project unless outside the terms of the Agreement	4.12					Y
Warranty to comply with the Contract Documents (and indemnity in respect of loss)	4.13					Y
Co-operate in good faith	4.14					Y
No exercise or waiver of right under Contract Documents without approval	4.15					Y
Primary interface with Contractor, Welsh Government and other bodies	4.17		Y			
Overview and scrutiny responsibility (where necessary)	5.2					Y
Provision of information on reasonable request of Joint Committee	6.6					Y
Consultation with Councils to allow diligent progress day to day	6.7					Y
Reimbursement of administrative costs and expenses of Joint Committee in accordance with Annual Budget	6.8					Y
Review of administrative costs and expenses of Joint Committee each year when draft Annual Budget prepared	6.8			Y		

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Consideration of administrative costs and expenses of Joint Committee each year when draft Annual Budget prepared	6.8				Y	
Approval of administrative costs and expenses of Joint Committee each year when draft Annual Budget prepared	6.8					Y
Preparing a draft Annual Budget for the following Contract Year	7.1			Y		
Consider and recommend a draft Annual Budget for the following Contract Year by 31 December in each Contract Year	7.1				Y	
Approval of Annual Budget	7.1					Y
Approval to exceed Annual Budget (including contingency sums)	7.4					Y
Making available share of Annual Budget irrevocably to Lead Council	7.4					Y
Accountable body for the Joint Committee	7.5			Y		
Oversee or procure monitoring of Annual Budget for Councils' scrutiny	7.5				Y	
Serve Annual Budget invoice on Councils at end of each Accounting Period	7.6		Y			
Payment of Annual Budget invoice each Accounting Period	7.6					Y
Costs of providing internal resources	7.7					Y
Decision on whether a Council internal resource costs are disproportionate compared to the Annual Budget spend profile	7.9			Y		
Prior approval of all reports for decision by Joint Committee (except if impracticable due to special meeting)	8.3.1			Y		

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Monitoring of Annual Budget to ensure it remains within budget	8.3.2			Y		
Determine from time to time the necessity of Project Officers	9.1				Y	
Make available officers as necessary for purposes of the Project	9.2					Y
Appoint the Project Officers for the purpose of the Project where necessary as requested by the Joint Committee	9.3		Y			
Prepare Performance and Improvement Plan for approval by Joint Committee	10.1	Y				
Present to the Joint Committee a draft Performance and Improvement Plan no later than 30 June in any Contract Year	10.2	Y				
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	10.2			Y		
Approval of the Performance and Improvement Plan	10.3				Y	
Request to each Council for future budgetary provision and for resources	10.3.1				Y	
Seek to agree arrangements in respect of the Site following an early termination of the Project Agreement	11.3					Y
Observation and compliance with the terms of the Lease / not causing Lead Council to breach Lease	11.8					Y
Receive any Welsh Government Funding from and make payment to the other Councils of such credits or contribution	12.1		Y			
Monthly Unitary Payment to the Contractor	12.3		Y			

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Responsibility for any adjustments or Deductions to the Contractor's invoice	12.5	Y				
Payment of proportion of the Monthly Contract Payment to Flintshire Council	12.6					Y
Ensure that there are always cleared funds paid	12.8					Y
Review Payment Proportions on 30 September following the Service Commencement Date and at one (1) yearly intervals thereafter	12.12					Y
Power to make adjustments, reconciliations or payments to recompense for significant anomalies in Project mutual benefit	12.13		Y	Y		
Apportion any payment made by the Contractor	12.14		Y			
Prepare accounts including expenditure incurred pursuant to the Annual Budget	13.2					Y
Determine Accounting Period in relation to AB Accounts	13.2			Y		
Ensure true and complete entries of all relevant payments and receipts in the AB Accounts	13.3.1					Y
Provide the Lead Council with unaudited AB Accounts for an Accounting Period with certification that such AB Accounts comply with this agreement	13.3.2					Y
Nominate and notify to the other Councils the name, address and telephone number of an individual responsible for ensuring that Council complies with Clause 13 of this Agreement	13.3.3					Y

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Prepare and send a reconciliation statement with either a balancing invoice or credit payment	13.3.4		Y			
Notify a change to the nominated individual pursuant to Clause 13	13.5					Y
Maintain an up to date register of the assets and committed liabilities of each Council in relation to the Joint Committee	13.7		Y			
Grant a non-exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its IP Material for the Project Tasks	14.2					Y
Indemnify any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its Intellectual Property rights	14.6					Y
Indemnify against any losses, damage, claims, proceedings, expenses, actions, demands, costs and liabilities in connection with any damage to property; any injury to, or death of any person; and any third party actions, claims or demands	15.1/ 15.3		Y			Y
Determine the extent of responsibility and how the amount should be divided in the event of a claim	15.5			Y		
Notify and provide details of a claim for losses, expenses, actions, demands, costs and liabilities	15.6					Y
Administer all Required Insurances in accordance with the provisions of the Project Agreement	15.11		Y			

TASK	CLAUSE/ SCHEDULE	CONTRACT MANAGER MATTER	LEAD COUNCIL MATTER	PROJECT BOARD MATTER	JOINT COMMITTEE MATTER	COUNCILS' MATTER/MATTER RESERVED TO THE COUNCILS' CABINETS
Ensure that adequate insurance cover is effected and maintained in respect of any liabilities	15.12					Y
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	15.13		Y	Y		
Provide written Withdrawal Notice	16.3					Y
Provide a Liability Report that is discussed by the Joint Committee	16.3		Y			Y (If nominated by JC)
To determine the proportion of the Termination Sum to be paid by each Council taking into account each Council's respective liability.	23.6				Y	
Any decision which has (or is reasonably expected to have) an annual financial impact on the Project above the Annual Budget.	n/a					Y

SCHEDULE 2 - JOINT COMMITTEE TERMS OF REFERENCE

PART 1

TERMS OF REFERENCE

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; 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 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 Partnership Board or Contract Management Board (pursuant to the Project Agreement) which require discussion; and
 - 2.5 ratify requests for additional funding related to the resources for the Project.
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;
 - 3.2 increase of budget over agreed Council contributions; and
 - 3.3 any matter specified as such in Schedule 1 (Project Tasks).
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 ensuring adherence to the Data Protection Policy as set out at Appendix 1 (Data Protection Policy) (as amended or updated from time to time);
- 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 7 (Annual Budget);
- 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 agreeing the programme of work to be carried out by the Lead Council's internal audit service, ensuring that the Lead Council's internal audit service provides as and when necessary a statement of assurance to the Councils regarding the payment process and Project monitoring arrangements.

PART 2

CONSTITUTIONAL ARRANGEMENTS

1. The membership of the Joint Committee shall comprise of ten (10) elected members appointed in accordance with this Schedule 2.
2. Each Council shall appoint two (2) elected members of their Executive as members of the Joint Committee, both of whom, subject to the following shall be voting members. For the avoidance of doubt, each Council shall only have one (1) counted vote on any matter before the Joint Committee.
3. Members of the Joint Committee shall be appointed in accordance with the standing orders of that Council.
4. 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 Executive of that Council who has portfolio responsibility for waste management functions within that Council.
5. 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 Executive) and a binding decision will be made by such Council as soon as reasonably practicable and in any event within forty (40) Business Days.
6. 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.
7. Each Council shall also appoint one (1) substitute member in the event that appointed members are unable or incapable of discharging their functions.
8. 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.
9. 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.
10. The Chair of the Joint Committee shall be an elected member of the Joint Committee appointed pursuant to paragraph 12.
11. The Vice-Chair of the Joint Committee shall be an elected member of the Joint Committee appointed pursuant to paragraph 12.
12. 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.

13. 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 Board) 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.
14. 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 endeavours 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 and Welsh.
15. 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 (in person or by remote attendance where permitted by and in accordance with the Lead Authority's procedure rules for committees).
16. 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.
17. Save as is inconsistent with the terms of this Agreement the Lead Council's procedure rules for governing committees and awarding contracts shall apply.
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 Authority's Policies. If the Joint Committee proposes to make a decision contrary to the Authority's 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 13.
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

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 Contract Manager 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 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

RECIPIENT'S NAME	ADDRESS	FAX NO.	EMAIL	CORPORATE OFFICER MANAGEMENT TEAM
Conwy County Borough Council:-	Bodlondeb, Conwy, North Wales LL32 8DU	01492 576116	Delyth.e.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	Strategic Leadership 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:- Head of Function/Council Business/Monitoring Officer	Council Offices, Llangefni, Anglesey LL77 7TW	01248 752134	rwjcs@anglesey.gov.uk	Strategic Leadership 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.

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

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)
Staff costs (and associated overheads) in progressing the Project:- <ul style="list-style-type: none"> • consultancy and advisors fees (legal, financial, technical, insurance etc.); • internal project management and monitoring; • internal professional advice. 	
Loss of funding support from Welsh Government.	
Losses incurred due to:- <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 payments due to the Contractor under the Project Agreement; • loss of non-guaranteed Third Party Income; and • the cost of acquiring additional LAS allowances as a consequence of the withdrawal or termination (as the case may be) by a Council. 	
Any other reasonable 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.	
Reasonable costs incurred by the Lead Council.	
Any losses incurred under the Project Agreement and Contract Documents.	
Recognition of any mitigating factors including a substitute waste source (whether an additional local authority beyond the Councils or otherwise).	
All other reasonable costs and losses arising out of or in connection with a breach of this Agreement.	

Certified as correct _____

(Signed)

(Date)

SCHEDULE 8 - PAYMENT PROPORTIONS

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Appendix C5 – Maximum Tonnage

Appendix D – Outgoing Payments

Appendix E – Incoming Payments

1. **DEFINITIONS**

1.1 Defined terms within this Schedule 8 (Payment Proportions) shall have the meaning specified in Clause 1 (Definitions and Interpretation) of this Agreement or in the Project Agreement, as appropriate.

2. **INTRODUCTION AND INTERPRETATION**

2.1 This Schedule 8 (Payment Proportions) is divided into the following parts:

- Part A – Non Service Period cost allocation
- Part B – Service Period cost allocation

2.2 The key principles generally applicable in relation to the allocation of costs and income between the Councils are:

- Non Service Period costs will be shared equally between the Councils with the exception of Interim Services Payments and Commissioning Payments, which will be allocated based on each Councils usage (unless otherwise specified in this Agreement).
- Service Period costs and income will be split between the Councils pro rata to the tonnages delivered or forecast to be delivered by each Council.

PART A – NON SERVICE PERIOD COST ALLOCATION

3. **INTERIM ARRANGEMENTS**

Payments to the Contractor for the Interim Services will be based on each Councils actual usage of the Interim Services.

3.1 **Interim Services Payments**

$$ISP_m (A,C,D,F,G) = ISWTP_{m-1} (A,C,D,F,G) + (TMP_m (A,C,D,F,G) * I_5) + (ISWDP_{m-1} (A,C,D,F,G)) * (1 + ISM) - ISNAD_m (A,C,D,F,G) - ISPSD_m (A,C,D,F,G) + ISPTC_m (A,C,D,F,G)$$

Where:

ISP _m (A,C,D,F,G)	the Interim Services Payment for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
ISWTP _{m-1} (A,C,D,F,G)	the Interim Services Waste Transport Payment in Contract Month 'm-1' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
TMP _m (A,C,D,F,G)	for each Contract Month 'm' during the Interim Services Period the Transport Management Payment in Contract Month 'm' (A,C,D,F,G) for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
I ₅	the Interim Services Payment Indexation Factor for Contract Year 'y'
ISWDP _{m-1} (A,C,D,F,G)	the Interim Services Waste Disposal Payment in Contract Month 'm-1' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively

ISM	the premium of 10%
ISNAD _m (A,C,D,F,G)	the Interim Services Non-Acceptance Deduction calculated in accordance with paragraph 3.3
ISPSD _m (A,C,D,F,G)	the Interim Services Performance Standard Deductions calculated in accordance with paragraph 3.4
ISPTC _m (A,C,D,F,G)	the Maintenance Payment

3.1.1 In accordance with the terms of the Project Agreement, the Contractor shall be responsible for, and will not be recompensed for, any additional costs incurred in the treatment/disposal of Contract Waste during the Interim Services Period which are not covered by the Interim Services Payment.

3.2 Interim Services Indexation

3.2.1 The Transport Management Payment will be indexed by I5 on the relevant Indexation Date.

3.3 Interim Services Non-Acceptance Deduction

3.3.1 Where, during the Interim Services Period, the Contractor has Not Accepted Contract Waste, the Interim Services Non Acceptance Deduction (ISNAD) shall be calculated and applied as follows and will be payable by the Contractor subject to the Councils using reasonable and practical endeavours in the circumstances to minimise and mitigate such costs:

$$\text{ISNAD}_{m(A,C,D,F,G)} = \text{ISNADR} * \text{ISCWNA}_{m(A,C,D,F,G)}$$

Where:

$$\text{ISNADR} = \text{ALGF}_{(A,C,D,F,G)} - (\text{LFGF} * \text{I2})$$

And further where:

ISNAD _m (A,C,D,F,G)	the Interim Services Non-Acceptance Deduction for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
ISNADR	the Interim Services Non-Acceptance Deduction Rate per tonne
ALGF (A,C,D,F,G)	the actual demonstrable landfill gate fee cost per tonne incurred by the Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively, having used reasonable and practicable endeavours in the circumstances to minimise and mitigate such cost, in respect of each tonne of ISCWNA _{m-1}
LFGF	the Landfill Gate Fee
ISCWNA _m (A,C,D,F,G)	the tonnage of Contract Waste Not Accepted in Contract Month "m-1" for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
I2	the Full Indexation Factor

3.4 Interim Services Performance Standard Deductions

- 3.4.1 The Councils acknowledge that, as Performance Standards will be agreed as part of the scoping of the Interim Services in accordance with the Project Agreement, it is only then that the Interim Services Performance Standard Deductions can be formulated and agreed.
- 3.4.2 The Interim Services Performance Standard Deductions in respect of Contract Month 'm' shall be calculated in accordance with the Performance Measurement Framework (as contained within Part B of Schedule 2 (Authority's Requirements) of the Project Agreement) and shall be applied in respect of Performance Standard Deductions incurred in Contract Month 'm-1'. In no circumstances shall such Deductions exceed the Interim Services Performance Standard Deduction Cap.
- 3.4.3 The Councils acknowledge that, Interim Services Performance Standard Deductions shall not accrue towards the Contractor Default thresholds in limb (q) of such definition.

3.5 Contract Month following the end of the Interim Service Period

- 3.5.1 Each Councils payment for the final Contract Month of the Interim Services Period will be added to the first payment in respect of the Commissioning Period.

4. COMMISSIONING ARRANGEMENTS

4.1 Commissioning Payment

- 4.1.1 The Commissioning Payment for each relevant Payment Period during the Commissioning Period shall be calculated in accordance with paragraph 4.1.2.
- 4.1.2 The Commissioning Payment (CP) for each Contract Month 'm' shall be:

$$CP_{m(A,C,D,F,G)} = CGFC_{m(A,C,D,F,G)} + CPTC_{m(A,C,D,F,G)} + CTHC_{m(A,C,D,F,G)} + (TMP_{m(A,C,D,F,G)} * I_4) - CNAD_{m(A,C,D,F,G)} - CPSD_{m(A,C,D,F,G)} - CTMAN_{m(A,C,D,F,G)} + AHWP_{m(A,C,D,F,G)} + AWP_{m(A,C,D,F,G)} +/- ISP_{(A,C,D,F,G)}$$

Where:

CP_m (A,C,D,F,G)	the Commissioning Payment for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
$CGFC_m$ (A,C,D,F,G)	the Commissioning Gate Fee Charge for Contract Month 'm' for Isle of Anglesey 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively, equal to: (CGF * CW_{m-1} * I_4); where CGF equals the Commissioning Gate Fee; and $CW_{m-1(A,C,D,F,G)}$ equals the tonnage of Contracted Waste in Contract Month 'm-1' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively. In respect of the first Contract Month of the Commissioning Period only, $CW_{m-1(A,C,D,F,G)}$ shall be deemed to be 1,080 tonnes
I_4	the Commissioning Payment Indexation Factor for Contract Year 'y'

CPTC _m (A,C,D,F,G)	the Commissioning Pass Through Costs for Contract Month 'm' calculated in accordance with paragraph 4.3 for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
CTHC _m (A,C,D,F,G)	the Commissioning Transport Haulage Charge in Contract Month 'm-1' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
TMP _m (A,C,D,F,G)	the Transport Management Payment for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
CNAD _m (A,C,D,F,G)	the Commissioning Non-Acceptance Deduction for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively, calculated in accordance with paragraph 4.4
CPSD _m (A,C,D,F,G)	the Commissioning Performance Standard Deductions for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively, calculated in accordance with paragraph 4.5
CTMAN _m (A,C,D,F,G)	the Commissioning Transport Mileage Adjustment for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively, calculated in accordance with paragraph 4.6
AHWP _m (A,C,D,F,G)	the Ad Hoc Waste Payment for Contract Month "m" for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively.
AWP _m (A,C,D,F,G)	the Additional Waste Payment for Contract Month "m" for Isle of Anglesey 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively.
ISP (A,C,D,F,G)	the amount payable for the provision of Interim Services in respect of the final Contract Month of the Interim Services Period for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively, calculated in accordance with paragraph 3.1

4.1.3 In accordance with the terms of the Project Agreement, the Contractor shall be responsible for, and will not be recompensed for, any additional costs incurred in the treatment/disposal of Contract Waste during the Commissioning Period which are not covered by the Commissioning Payment.

4.2 Commissioning Gate Fee indexation

4.2.1 The Commissioning Payment Indexation Factor for Contract Year 'y' represents the increase or decrease in the Index over the period since the setting of the Index_{base} at the Price Reference Date as shown below and shall be calculated as follows:

$$I_4 = (\text{Index}_y) / (\text{Index}_{\text{base}})$$

Where:

I ₄	the Commissioning Payment Indexation Factor for the relevant Contract Year
Index _y	the average of the values published for the Index for the three (3) Month period immediately preceding the calendar month prior to the Readiness Date
Index _{base}	means the average of the values published for the Index for the period October to December immediately preceding the Price Reference Date being, 238.03

4.2.2 The Commissioning Payment Indexation Factor shall be applied from the Readiness Date and each anniversary thereafter.

4.3 Commissioning Pass Through Costs

$$CPTC_{m(A,C,D,F,G)} = NNDR_{m(A,C,D,F,G)} + MP_{m(A,C,D,F,G)}$$

Where:

CPTC _{m(A,C,D,F,G)}	the Commissioning Pass Through Costs for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
NNDR _{m(A,C,D,F,G)}	for each Contract Month 'm' during the first ninety (90) days of the Commissioning Period the NNDR incurred by the Contractor for any Contract Month 'm-1' for the Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G'. The NNDR for the relevant month will be divided between the Partner Councils proportionate to the Commissioning Waste delivered during that month. For the avoidance of doubt, the Commissioning Pass Through Costs include all NNDR _m related to the first ninety (90) days of the Commissioning Period, even if such payments are made by the Contractor outside such ninety (90) day period
MP _{m(A,C,D,F,G)}	the Maintenance Payment which Flintshire Council shall be required to confirm to the Contractor on the fifth (5th) Business Day of each Payment Period. This amount shall be divided between the Partner Councils proportionate to the Commissioning Waste delivered during that month

4.4 Commissioning Non-Acceptance Deduction

4.4.1 Where, during the Commissioning Period, the Contractor does Not Accept Contract Waste, the Commissioning Non-Acceptance Deduction (CNAD) shall be calculated and applied as follows, subject to the Authority using reasonable and practical endeavours in the circumstances to minimise and mitigate such costs:

$$CNAD_{m(A,C,D,F,G)} = (CNADR * CWNA_{m(A,C,D,F,G)}) + CTMAN_{m(A,C,D,F,G)}$$

Where:

CNAD _m	the Commissioning Non-Acceptance Deduction for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D',
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(A,C,D,F,G)	Flintshire Council 'F' and Gwynedd Council 'G' respectively
CNADR (A,C,D,F,G)	<p>the Commissioning Non-Acceptance Deduction Rate per tonne for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively, being:</p> $CD_{(A,C,D,F,G)} - (CGF * I_4)$ <p>where:</p> <p>CD is the demonstrable direct costs for the treatment and/or disposal of Contract Waste Not Accepted converted to a cost per tonne for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively (excluding all costs relating to the matters referred to in the calculation of the Transport Administration Charge and the Commissioning Transport Mileage Adjustment), subject to each relevant Authority using reasonable and practical endeavours in the circumstances to minimise and mitigate such costs; and</p> <p>CGF is the Commissioning Gate Fee.</p>
I ₄	the Commissioning Payment Indexation Factor for Contract Year 'y'
CWNA _m (A,C,D,F,G)	for each Contract Month 'm' in the Commissioning Period the tonnage of Contract Waste Not Accepted in Contract Month 'm-1' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
CTMAN _m (A,C,D,F,G)	is the Commissioning Transport Mileage Adjustment calculated in accordance with paragraph 4.6.2 in respect of Contract Month 'm-1' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively in the Commissioning Period, subject to paragraph 4.6.

4.5 Commissioning Performance Standard Deductions

- 4.5.1 The Commissioning Performance Standard Deductions (CPSD) in respect of Contract Month 'm' shall be calculated in accordance with the Performance Measurement Framework (as contained within the Payment Mechanism) and shall apply in respect of Performance Standard Deductions incurred in Contract Month 'm-1'. In no circumstances shall such Deductions exceed the Commissioning Performance Standard Deduction Cap.
- 4.5.2 For the avoidance of doubt, Commissioning Performance Standard Deductions shall not accrue towards the Contractor Default thresholds in limb (q) of such definition.

4.6 Commissioning Transport Mileage Adjustment

- 4.6.1 The Commissioning Transport Mileage Adjustment (CTMAN) in respect of Contract Waste delivered directly by or on behalf of the Authorities to a Contingency Delivery Point following the implementation of the Contingency Plans during the Commissioning Period for Contract Month 'm' shall be calculated in accordance with the following, and such Commissioning Transport Mileage Adjustment shall not apply to any Contract Waste Not Accepted as referred to in paragraph 4.4 above in respect of which Commissioning Non-Acceptance Deductions shall be applied.

4.6.2 The total Commissioning Transport Mileage Adjustment for delivery of Contract Waste to a Contingent Delivery Point, in respect of limb (b) of the definition of a Delivery Event (TMAC_m) for Contract Month, 'm' shall be calculated as:

$$CTMAC_{m(A,C,D,F,G)} = \sum CTMAC_{jm-1}$$

Where:

$$CTMAC_{jm-1} = (\sum_j MAC_j + TAC_{DE} * I_2) * XM/TM$$

And where:

CTMAC _m (A,C,D,F,G)	the Commissioning Transport Mileage Adjustments for Additional Mileage relating to delivery of Contract Waste to a Contingency Delivery Point as calculated for Contract Month 'm' for Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
$\sum_j CTMAC_{jm-1}$	the sum of the Commissioning Transport Mileage Adjustment relating to delivery of Contract Waste to a Contingency Delivery Point for Additional Mileage in respect of each journey 'j' in respect of each Delivery Event within a Contract Month 'm-1'
MAC _j	the Mileage Adjustment Cost for Additional Mileage in respect of all journeys 'j' in respect of each Delivery Event occurring within a Contract Month
TAC _{DE}	the Transport Administration Charge in respect of the Delivery Event. For the avoidance of doubt this charge is only levied once on the first occurrence of the relevant Delivery Event
XM	the Additional Mileage incurred in the month 'm' attributable to Council 'X', being Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively
TM	the total Additional Mileage incurred in the month 'm', being the sum of the Additional Mileage incurred in respect of Isle of Anglesey Council 'A', Conwy Council 'C', Denbighshire Council 'D', Flintshire Council 'F' and Gwynedd Council 'G' respectively

5. COSTS IN RELATION TO EXISTING COUNCIL OWNED ASSETS

5.1 Any costs to be incurred in order to prepare, operate and/or maintain any assets owned by the Councils to meet the requirements of the Project shall be borne by the relevant Councils and shall not be subject to any sharing and/or allocation.

6. DEVELOPMENT COSTS FOR NEW PARTNERSHIP ASSETS AND ASSOCIATED COSTS

6.1 Any costs incurred to develop and build any new Partnership assets and any associated capital expenditure reasonably incurred will be shared equally by the Councils.

6.2 Each Councils share shall be equal to:

$$ADCS = NPAC * E\%$$

where

ADCS	a Council's development cost share
NPAC	new Partnership assets development costs
E%	means equal share being 20.00%

6.3 The income from the sale of the assets at the expiry or termination of the Project shall be shared in a similar manner.

6.4 Where land has been provided by a Council to allow the development of a new Partnership asset then such land shall be returned to the relevant Council and will not form part of the development costs apportioned pursuant to paragraph 6.2.

6.5 Where the development cost of the asset includes the cost of the land as such having been provided jointly by the Councils then the Councils shall jointly agree how to dispose of the asset at the expiry or termination of the Project and share any proceeds or costs arising from such disposal.

7. CONTRACT MANAGEMENT COSTS

7.1 Contract Management Costs will be shared equally by the Councils.

7.2 Each Council's share shall be equal to 20% of the Contract Management Costs incurred in any period.

7.3 Each Councils share shall be equal to:

$$CCMCS = CMC * E\%$$

where

CCMCS	a Council's Contract Management Cost share
CMC	Contract Management Cost
E%	means equal share being 20.00%

8. DECOMMISSIONING & SITE RECLAMATION COSTS

8.1 Subject to paragraph 8.3, decommissioning and site reclamation costs incurred upon expiry or termination of the Project Agreement to return the Site to its original state shall be shared equally by the Councils.

8.2 Each Council's share shall be equal to:

$$CDRCS = DSRC * E\%$$

where

CDRCS	a Council's decommissioning and site reclamation cost share
DSRC	decommissioning and site reclamation costs

E%	means equal share being 20.00%
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8.3 Where at the time of expiry or early termination of the Project Agreement Flintshire Council proposes to continue using the Facility in accordance with Clause 11.6 then Flintshire Council shall be solely liable and responsible for any future decommissioning and reclamation costs. In such an event paragraph 8.2 shall not apply.

9. **PROCEEDS FROM DISPOSAL OF ASSETS**

9.1 Where the decommissioning of the Facility includes a sale of the assets or the Facility is sold to a new operator then any proceeds received pursuant to such sale shall be shared equally by Councils.

9.2 Each Council's share shall be equal to:

$$CSPSA = PSA * E\%$$

where

CSPSA	a Council's share of proceeds from sale of assets or the Facility
PSA	proceeds from sale of assets or the Facility
E%	means equal share being 20.00%

PART B – SERVICE PERIOD COST ALLOCATION

10. GENERAL PRINCIPLES IN RELATION TO COST ALLOCATIONS BASED ON TONNAGE

- 10.1 Payments to the Contractor for the Treatment of Contract Waste will be based on the actual tonnages delivered by each of the Councils subject to the guaranteed Minimum Tonnage.
- 10.2 Payments to the Contractor for the Haulage Services will be based on the actual tonnages delivered by each of the Councils, subject to not exceeding the Forecast Tonnages in Appendix C1.
- 10.3 Where tonnage delivered by a Council exceeds the Forecast Tonnages in Appendix C1, the Council delivering such excess tonnage shall be solely responsible for the costs associated with the transport of such tonnage.
- 10.4 Where a Council fails to deliver the guaranteed Minimum Tonnage, the guaranteed Minimum Tonnage will be deemed to have been delivered for the purposes of calculating the treatment of waste payments. Payments made in such instances will result in an 'excess payment' and will be placed in a reserve account.

11. PRINCIPLES FOR DEALING WITH EXCESS PAYMENTS AND ADDITIONAL INCOME AND WINDFALL GAINS

- 11.1 Excess payments shall be 'placed in a reserve' to be used by the Councils (at the Joint Committee's discretion) and subject to review and agreement by the Joint Committee such excess shall be used in the manner deemed appropriate at the time including but not limited to being utilised to fund project expenses, or being shared on a periodic basis upon expiry or termination of the Project, utilising the percentages used to allocate the tonnage bandings as set out in Appendix B.
- 11.2 The reserve shall be subject to periodic reviews with the first review being no later than the end of the first full year of the Service Period.
- 11.3 The Councils agree that any additional income shall be shared between each of the Councils on a pro-rata basis proportional to the cumulative actual tonnage delivered by each Council.

12. MECHANISM TO REALIGN TONNAGE BANDS (INCLUDING MINIMUM TONNAGE LEVELS)

- 12.1 The Councils may subject to mutual agreement notwithstanding the bandings set out in this Schedule 8 agree to a realignment of the tonnage banding among themselves.
- 12.2 A Council is not precluded from exchanging (by mutual agreement with the relevant Councils) its tonnage allocation with another Council, provided that any such arrangement shall ensure that there is no price impact on other Councils.

13. TREATMENT COST PAYMENTS – BAND 0 ELEMENT OF THE UNITARY PAYMENT

13.1 Calculation of the Band 0 Element of the Unitary Payment - Anglesey

The Band 0 Element of the Unitary Payment (B0P) for any Contract Month 'm' for the Isle of Anglesey Council shall be calculated in accordance with the following formula:

$$BOP_{Am} = B0T_{Am} * B0R_y * I_1$$

where

BOP _{Am}	the Band 0 Element of the Unitary Payment for Contract Month 'm' for Isle of Anglesey Council
BOT _{Am}	the tonnage delivered in Contract Month 'm' for Isle of Anglesey Council in respect of Band 0 Tonnage
BOR _y	the Band 0 Rate for Contract Year 'y'
I ₁	the Base Payment Index for Contract Year 'y'

13.2 Calculation of the Band 0 Element of the Unitary Payment – Conwy

The Band 0 Element of the Unitary Payment (B0P) for any Contract Month 'm' for the Conwy Council shall be calculated in accordance with the following formula:

$$BOP_{Cm} = BOT_{Cm} * BOR_y * I_1$$

where

BOP _{Cm}	the Band 0 Element of the Unitary Payment for Contract Month 'm' for Conwy Council
BOT _{Cm}	the tonnage delivered in Contract Month 'm' for Conwy Council in respect of Band 0 Tonnage
BOR _y	the Band 0 Rate for Contract Year 'y'
I ₁	the Base Payment Index for Contract Year 'y'

13.3 Calculation of the Band 0 Element of the Unitary Payment – Denbighshire

The Band 0 Element of the Unitary Payment (B0P) for any Contract Month 'm' for the Denbighshire Council shall be calculated in accordance with the following formula:

$$BOP_{Dm} = BOT_{Dm} * BOR_y * I_1$$

where

BOP _{Dm}	the Band 0 of the Unitary Payment for Contract Month 'm' for Denbighshire Council
BOT _{Dm}	the tonnage delivered in Contract Month 'm' for Denbighshire Council in respect of Band 0 Tonnage
BOR _y	the Band 0 Rate for Contract Year 'y'
I ₁	the Base Payment Index for Contract Year 'y'

13.4 Calculation of the Band 0 Element of the Unitary Payment - Flintshire

The Band 0 Element of the Unitary Payment (B0P) for any Contract Month 'm' for the Flintshire Council shall be calculated in accordance with the following formula:

$$BOP_{Fm} = BOT_{Fm} * BOR_y * I_1$$

where

BOP_{Fm}	the Band 0 of the Unitary Payment for Contract Month 'm' for Flintshire Council
BOT_{Fm}	the tonnage delivered in Contract Month 'm' for Flintshire Council in respect of Band 0 Tonnage
BOR_y	the Band 0 Rate for Contract Year 'y'
I_1	the Base Payment Index for Contract Year 'y'

13.5 Calculation of the Band 0 Element of the Unitary Payment - Gwynedd

The Band 0 Element of the Unitary Payment (B0P) for any Contract Month 'm' for the Gwynedd Council shall be calculated in accordance with the following formula:

$$BOP_{Gm} = BOT_{Gm} * BOR_y * I_1$$

where

BOP_{Gm}	the Band 0 of the Unitary Payment for Contract Month 'm' for Gwynedd Council
BOT_{Gm}	the tonnage delivered in Contract Month 'm' for Gwynedd Council in respect of Band 0 Tonnage
BOR_y	the Band 0 Rate for Contract Year 'y'
I_1	the Base Payment Index for Contract Year 'y'

For the avoidance of doubt, in respect of paragraphs 13.1 to 13.5:

- All Contracted Waste accepted on a cumulative basis in a Contract Year is Minimum Tonnage until the limit as set out in Appendix A is reached on a cumulative basis in a Contract Year.
- Once the limit of Minimum Tonnage (Appendix A) is reached on a cumulative basis in a Contract Year, $BOP_{(Am, Cm, Dm, Fm, Gm)}$ will equal zero for all subsequent months in the Contract Year.

14. TREATMENT COST PAYMENTS – BAND 1 ELEMENT OF THE UNITARY PAYMENT

14.1 The Band 1 Element of the Unitary Payment is only applicable where the actual tonnage delivered by a Council is in excess of its guaranteed Minimum Tonnage.

14.2 Band 1 Element of the Unitary Payment for Band 1 Tonnage - Anglesey

The Band 1 Element of the Unitary Payment payable for tonnage falling in Band 1 ($B1P_A$) for any Contract Month 'm' for the Isle of Anglesey Council shall be calculated in accordance with the following formula:

$$B1P_{1Am} = B1T_{AT1m} * B1R_y * I_2$$

where

B1P _{Am}	the Band 1 Element of the Unitary Payment for tonnage falling in Band 1 for Contract Month 'm' for Isle of Anglesey Council
B1T _{AT1m}	actual tonnage delivered in month 'm' by Isle of Anglesey Council payable at the Band 1 Rate for Band 1 for the bandings as set out in Appendix C2
B1R _y	the Band 1 Rate for Band 1 for Contract Year 'y'
I ₂	the Full Indexation Factor for Contract Year 'y'

14.3 **Band 1 Element of the Unitary Payment for Band 1 Tonnage - Conwy**

The Band 1 Element of the Unitary Payment payable for tonnage falling in Band 1 (B1P_C) for any Contract Month 'm' for Conwy Council shall be calculated in accordance with the following formula:

$$B1P_C = B1T_{Cm} * B1R_y * I_2$$

where

B1P _{Cm}	the Band 1 of the Unitary Payment for tonnage falling in Band 1 for Contract Month 'm' for Conwy Council
B1T _{Cm}	actual tonnage delivered in month 'm' by Conwy Council payable at the Band 1 Rate for Band 1 for the bandings as set out in Appendix C2
B1R _y	the Band 1 Rate for Band 1 for Contract Year 'y'
I ₂	the Full Indexation Factor for Contract Year 'y'

14.4 **Band 1 Element of the Unitary Payment for Band 1 tonnage - Denbighshire**

The Band 1 Element of the Unitary Payment payable for tonnage falling in Band 1 (B1P_D) for any Contract Month 'm' for Denbighshire Council shall be calculated in accordance with the following formula:

$$B1P_{Dm} = B1T_{Dm} * B1R_y * I_2$$

where

B1P _{Dm}	the Band 1 of the Unitary Payment for tonnage falling in Band 1 for Contract Month 'm' for Denbighshire Council
B1T _{Dm}	actual tonnage delivered in month 'm' by Denbighshire Council payable at the Band 1 Rate for Band 1 for the bandings as set out in Appendix C2

B1R _y	the Band 1 Rate for Band 1 for Contract Year 'y'
I ₂	the Full Indexation Factor for Contract Year 'y'

14.5 Band 1 Element of the Unitary Payment for Band 1 Tonnage - Flintshire

The Band 1 Element of the Unitary Payment payable for tonnage falling in Band 1 (B1P_F) for any Contract Month 'm' for Flintshire Council shall be calculated in accordance with the following formula:

$$B1P_{Fm} = B1T_{Fm} * B1R_y * I_2$$

where

B1P _{Fm}	the Band 1 of the Unitary Payment for tonnage falling in Band 1 for Contract Month 'm' for Flintshire Council
B1T _{Fm}	actual tonnage delivered in month 'm' by Flintshire Council payable at the Band 1 Rate for Band 1 for the bandings as set out in Appendix C2
R1R _y	the Band 1 Rate for Band 1 for Contract Year 'y'
I ₂	the Full Indexation Factor for Contract Year 'y'

14.6 Band 1 Element of the Unitary Payment for Band 1 Tonnage - Gwynedd

The Band 1 Element of the Unitary Payment payable for tonnage falling in Band 1 (B1P_G) for any Contract Month 'm' for Gwynedd Council shall be calculated in accordance with the following formula:

$$B1P_{Gm} = B1T_{Gm} * B1R_y * I_2$$

where

B1P _{Gm}	the Band 1 of the Unitary Payment for tonnage falling in Band 1 for Contract Month 'm' for Gwynedd Council
B1T _{Gm}	actual tonnage delivered in month 'm' by Gwynedd Council payable at the Band 1 Rate for Band 1 for the bandings as set out in Appendix C2
B1R _y	the Band 1 Rate for Band 1 for Contract Year 'y'
I ₂	the Full Indexation Factor for Contract Year 'y'

- For the avoidance of doubt, in respect of paragraphs 14.2 to 14.6:-
- All Contracted Waste accepted on a cumulative basis in a Contract Year is Band 0 Tonnage until the limit as set out in Appendix A is reached on a cumulative basis in a Contract Year.

- All Contracted Waste accepted on a cumulative basis in a Contract Year in excess of the Band 0 Tonnage limit as set out in Appendix A is Band 1 Tonnage until the limit as set out in Appendix C2 is reached on a cumulative basis in a Contract Year.
- Once the cumulative tonnage of Contracted Waste in a Contract Year is equal to or exceeds the higher limit of Band 1 Tonnage, $B1P_{(Am, Cm, Dm, Fm, Gm)}$ will equal zero for the rest of Contract Month 'm' and all subsequent Months in such Contract Year, and the subsequent tonnage of Contracted Waste for the rest of that Contract Month and the remaining Contract Months in that Contract Year shall be charged at the appropriate higher band rate.

15. TREATMENT COST PAYMENTS – BAND 2 ELEMENT OF THE UNITARY PAYMENT

15.1 The Band 2 Element of the Unitary Payment ($B2P_A$) is only applicable where the actual tonnage delivered by a Council is in excess of the Band 0 and Band 1 tonnage as set out in Appendix C1.

15.2 Band 2 Element of the Unitary Payment for Band 2 Tonnage - Anglesey

The Band 2 Element of the Unitary Payment payable for tonnage falling in Band 2 ($B2P_A$) for any Contract Month 'm' for the Isle of Anglesey Council shall be calculated in accordance with the following formula:

$$B2P_{Am} = B2T_{Am} * B2R_y * I_2$$

where

$B2P_{Am}$	the Band 2 Element of the Unitary Payment for tonnage falling in Band 2 for Contract Month 'm' for Isle of Anglesey Council
$B2T_{Am}$	actual tonnage delivered in month 'm' by Isle of Anglesey Council payable at the Band 2 Rate
$B2R_y$	the Rate for Band 2 for Contract Year 'y'
I_2	the Full Indexation Factor for Contract Year 'y'

15.3 Band 2 Element of the Unitary Payment for Band 2 Tonnage - Conwy

The Band 2 Element of the Unitary Payment payable for tonnage falling in Band 2 ($B2P_C$) for any Contract Month 'm' for Conwy Council shall be calculated in accordance with the following formula:

$$B2P_{Cm} = B2T_{Cm} * B2R_y * I_2$$

where

$B2P_{Cm}$	the Band 2 Element of the Unitary Payment for tonnage falling in Band 2 for Contract Month 'm' for Conwy Council
$B2T_{Cm}$	actual tonnage delivered in month 'm' by Conwy Council payable at the Band 2 Rate
$B2R_y$	the Rate for Band 2 for Contract Year 'y'

I_2	the Full Indexation Factor for Contract Year 'y'
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15.4 Band 2 Element of the Unitary Payment for Band 2 Tonnage - Denbighshire

The Band 2 Element of the Unitary Payment payable for tonnage falling in Band 2 ($B2P_D$) for any Contract Month 'm' for Denbighshire Council shall be calculated in accordance with the following formula:

$$B2P_{Dm} = B2T_{Dm} * B2R_y * I_2$$

where

$B2P_{Dm}$	the Band 2 Element of the Unitary Payment for tonnage falling in Band 2 for Contract Month 'm' for Denbighshire Council
$B2T_{Dm}$	actual tonnage delivered in month 'm' by Denbighshire Council payable at the Band 2 Rate
$B2R_y$	the Rate for Band 2 for Contract Year 'y'
I_2	the Full Indexation Factor for Contract Year 'y'

15.5 Band 2 Element of the Unitary Payment for Band 2 Tonnage - Flintshire

The Band 2 Element of the Unitary Payment payable for tonnage falling in Band 2 ($B2P_F$) for any Contract Month 'm' for Flintshire Council shall be calculated in accordance with the following formula:

$$B2P_{Fm} = B2T_{Fm} * B2R_y * I_2$$

where

$B2P_{Fm}$	the Band 2 Element of the Unitary Payment for tonnage falling in Band 2 for Contract Month 'm' for Flintshire Council
$B2T_{Fm}$	actual tonnage delivered in month 'm' by Flintshire Council payable at the Band 2 Rate
$B2R_y$	the Rate for Band 2 for Contract Year 'y'
I_2	the Full Indexation Factor for Contract Year 'y'

15.6 Band 2 Element of the Unitary Payment for Band 2 Tonnage - Gwynedd

The Band 2 Element of the Unitary Payment payable for tonnage falling in Band 2 ($B2P_G$) for any Contract Month 'm' for Gwynedd Council shall be calculated in accordance with the following formula:

$$B2P_{Gm} = B2T_{Gm} * B2R_y * I_2$$

where

B2P _{Gm}	the Band 2 Element of the Unitary Payment for tonnage falling in Band 2 for Contract Month 'm' for Gwynedd Council
B2T _{Gm}	actual tonnage delivered in month 'm' by Gwynedd Council payable at the Band 2 Rate
B2R _y	the Rate for Band 2 for Contract Year 'y'
I ₂	the Full Indexation Factor for Contract Year 'y'

For the avoidance of doubt, in respect of paragraphs 15.2 to paragraph 15.6:-

- All Contracted Waste accepted on a cumulative basis in a Contract Year is Band 0 Tonnage until the limit as set out in Appendix A is reached on a cumulative basis in a Contract Year.
- All Contracted Waste accepted on a cumulative basis in a Contract Year in excess of the Band 0 Tonnage limit as set out in Appendix A is Band 1 Tonnage until the limit as set out in Appendix C2 is reached on a cumulative basis in a Contract Year.
- All Contracted Waste accepted on a cumulative basis in a Contract Year in excess of the Band 1 Tonnage limit is Band 2 Tonnage until the limit as set out in Appendix C3 is reached on a cumulative basis in a Contract Year.
- Once the cumulative tonnage of Contracted Waste in a Contract Year is equal to or exceeds the higher limit of Band 2 Tonnage, B2P (A_m, C_m, F_m, D_m, G_m) will equal zero for the rest of Contract Month 'm' and all subsequent Months in such Contract Year, and the subsequent tonnage of Contracted Waste for the rest of that Contract Month and the remaining Contract Months in that Contract Year shall be charged at the appropriate higher band rate.

16. TREATMENT COST PAYMENTS – BAND 3 ELEMENT OF THE UNITARY PAYMENT

16.1 Tonnage delivered by a Council in excess of the combined Band 0, Band 1 and Band 2 limit will be charged at the prevailing Third Party Waste price and payable by the relevant Council and include any breakage costs applied.

17. LANDFILL COST PAYMENTS

17.1 The Landfill Payments shall be apportioned in accordance with the following formula:

$$LCP_{xm} = LP_m * X_{AT1m} / TTD_m$$

where

LCP _{xm}	Landfill cost payments for Council 'x' for Contract Month 'm'
LP _m	Landfill Payment incurred for Contract Month 'm'
X _{AT1m}	the actual tonnage delivered for Council 'X' in Contract Month 'm' where X = A or C or D or F or G
TTD _m	Total tonnage delivered in Contract Month 'm' being the sum of

	A _{AT1m} , C _{AT1m} , D _{AT1m} , F _{AT1m} and G _{AT1m}
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18. **APCR ELEMENT OF THE UNITARY PAYMENT**

18.1 APCR payments shall be apportioned in accordance with the following formula:

$$APCRE_{xm} = APCRE_m * X_{AT1m}/TTD_m$$

where

APCRE _{xm}	the APCR Element of the Unitary Payment for Council 'x' for Contract Month 'm'
APCRE _m	the APCR Element of the Unitary Payment for Contract Month 'm'
X _{AT1m}	the actual tonnage delivered for Council 'X' in Contract Month 'm' where X = A or C or D or F or G
TTD _m	Total tonnage delivered in Contract Month 'm' being the sum of A _{AT1m} , C _{AT1m} , D _{AT1m} , F _{AT1m} and G _{AT1m}

19. **HAULAGE ELEMENT OF THE UNITARY PAYMENT**

19.1 This paragraph shall apply where Haulage Services are being provided by the Contractor pursuant to Clause 21A (Haulage Services) and Schedule 33 (Haulage Services) of the Project Agreement.

19.2 The Haulage Element of the Unitary Payment for each Council shall be payable by the Councils pro rata to tonnage delivered provided the tonnage delivered by a Council is not in excess of the Forecast Tonnage set out in Appendix C1.

19.3 Where a Council has tonnage delivered in excess of the Forecast Tonnage set out in Appendix C1 it will be solely responsible for paying the costs associated with the delivery of such tonnage to the Facility.

20. **PM2.5 COSTS**

20.1 Where PM2.5 costs are incurred they shall be shared between each of the Councils on a pro-rata basis proportional to the cumulative actual tonnage delivered by each Council.

20.2 PM2.5 Costs shall be apportioned in accordance with the following formula:

$$PM2.5_{xm} = CPM2.5_m * \text{Max}(X_{MT/12}, X_{AT1m}) /TTD_m$$

where

PM2.5 _{xm}	The payment for PM2.5 for Council 'X' for Contract Month 'm' where X = A, or C or D or F or G
CPM2.5 _m	the demonstrable costs incurred by the Contractor in relation to PM 2.5 monitoring in Contract Month 'm'

$X_{MT/12}$	means the Minimum Tonnage for Council 'X' divided by 12 where X = A, or C or D or F or G
X_{AT1m}	the actual tonnage delivered for Council 'X' in Contract Month 'm' where X = A or C or D or F or G
TTD_m	Total tonnage delivered in Contract Month 'm' being the sum of $\text{Max}(A_{MT/12}, A_{AT1m})$ and $\text{Max}(C_{MT/12}, C_{AT1m})$ and $\text{Max}(D_{MT/12}, D_{AT1m})$ and $\text{Max}(F_{MT/12}, F_{AT1m})$ and $\text{Max}(G_{MT/12}, G_{AT1m})$

21. COMMUNITY BENEFIT FUND

21.1 The Community Benefit Fund will comprise of payments made by the Contractor in to the CBF Account and any contributions from the Councils.

21.2 The total funds available under the Community Benefit Fund will be apportioned in accordance with the following formula:

$$CBF_{xy} = CBF_{y-1} * \text{Max}(X_{MT}, X_{AT\ y-1}) / TTD_{y-1}$$

where

CBF_{xy}	Other Costs for Council 'X' for Contract Year 'y' where X = A, or C or D or F or G
CBF_{y-1}	Community Fund Benefit Balance for Contract Year 'y-1'
X_{MT}	means the Minimum Tonnage for Council 'X' where X = A, or C or D or F or G
X_{ATy-1}	the actual tonnage delivered for Council 'X' in Contract Year 'y-1' where X = A or C or D or F or G
TTD_{y-1}	Total tonnage delivered in Contract Year 'y-1' being the sum of $\text{Max}(A_{MT}, A_{ATy-1})$ and $\text{Max}(C_{MT}, C_{AT\ y-1})$ and $\text{Max}(D_{MT}, D_{AT\ y-1})$ and $\text{Max}(F_{MT}, F_{AT\ y-1})$ and $\text{Max}(G_{MT}, G_{AT\ y-1})$

22. OTHER COSTS

22.1 Other costs to be shared include, (but are not limited to):

- Contract Management Costs; and
- any other cost (the "**Other Costs**").

22.2 Other Costs shall be apportioned in accordance with the following formula:

$$OC_{xy} = OCI_{y-1} * \text{Max}(X_{MT}, X_{ATy}) / TTD_{y-1}$$

where

OC _{xy}	Other Costs for Council 'X' for Contract Year 'y' where X = A, or C or D or F or G
OCI _{y-1}	Other Costs incurred for Contract Month 'm'
X _{MT}	means the Minimum Tonnage for Council 'X' where X = A, or C or D or F or G
X _{AT y-1}	the actual tonnage delivered for Council 'X' in Contract Year 'y-1' where X = A or C or D or F or G
TTD _{y-1}	Total tonnage delivered in Contract Year 'y-1' being the sum of Max(A _{MT} , A _{ATy-1}) and Max(C _{MT} , C _{AT y-1}) and Max(D _{MT} , D _{AT y-1}) and Max(F _{MT} , F _{AT y-1}) and Max(G _{MT} , G _{AT y-1})

22.3 In the absence of any other specific arrangements to apportion any costs not specifically set out in this schedule the formula in the paragraph 22.2 shall apply.

23. **ADDITIONAL INCOME**

23.1 Additional income includes, but is not limited to, Substitute Waste income, Gain Share, and Third Party Income Share.

23.2 Additional income shall be apportioned in accordance with the following formula:

$$AIS_{xm} = AI_m * \sum_n^0 X_{AT} / \sum_n^0 X_{TTD}$$

where

AIS _{xm}	Additional income share for Council 'x' for Contract Month 'm'
AI _m	Additional income for Contract Month 'm'
$\sum_n^0 X_{AT}$	sum of the total actual tonnage delivered for Council 'X' from Contract Month '0' to Contract Month 'n' where X = A or C or D or F or G

$\sum_n^0 X_{TTD}$	sum of the total tonnage actual delivered by the Councils from Contract Month '0' to Contract Month 'n'
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24. EXCESS PAYMENTS

24.1 Excess payments arising from a Council being required to pay on the basis of the guaranteed Minimum Tonnage despite not delivering it shall be placed in a reserve and managed by the Joint Committee. Where such a reserve is distributed the following proportions shall apply for each of the Councils.

$$EPRS_{yx} = EPR_y * X\%$$

$EPRS_y$	Excess payments reserve share for Council 'x' for Contract Year 'y'
EPR_y	Excess payments reserve for Contract Year 'y'
$X\%$	% applicable for Council 'X' being one of the following: A%, C%, D%, F% or G% as set out in Appendix B (Cost Sharing).

25. WELSH GOVERNMENT FUNDING

25.1 The Welsh Government Funding shall be apportioned in accordance with the following formula:

$$WG_{xm} = WGC_m * X\%$$

where

WG_{xm}	Welsh Government receipt for Council 'x' for Contract Month 'm'
WGC_m	Welsh Government Funding for Contract Month 'm'
$X\%$	% applicable for Council 'X' being one of the following: A%, C%, D%, F% or G% as set out in Appendix B.

26. RECONCILIATION

26.1 At year end a full reconciliation shall be performed to ensure that any variations in tonnages during the year that have resulted in payments being made in a higher band are accounted for.

27. PAYMENTS TO LEAD COUNCIL

27.1 In order to ensure that sufficient funds are available to pay the Contractor on time and avoiding any issues arising from delayed payments all Councils will be required to pay the Banded Element of the Unitary Payment ten (10) days (as per Appendix D (Outgoing Payments)) prior to the payment being required to be made to the Contractor in accordance with the Project Agreement.

- 27.2 Where Haulage Services are being provided by the Contractor pursuant to Clause 21A (Haulage Services) and Schedule 33 (Haulage Services) of the Project Agreement all Councils will pay the Haulage Element of the Unitary Payment into an account, to be managed by the Lead Council for the purposes of paying the Contractor, no later than ten (10) days prior to the payment being required to be made to the Contractor in accordance with the Project Agreement (as per Appendix D (Outgoing Payments)).
- 27.3 All Councils will pay the PM2.5 Costs into an account, to be managed by the Lead Council for the purposes of paying the Contractor, no later than ten (10) days prior to the payment being required to be made to the Contractor in accordance with the Project Agreement (as per Appendix D (Outgoing Payments)).
- 27.4 All Councils will pay the Other Costs into an account, to be managed by the Lead Council for the purposes of paying the Contractor, no later than ten (10) days prior to the payment being required to be made to the Contractor in accordance with the Project Agreement (as per Appendix D (Outgoing Payments)).
- 27.5 Other payments required, for example including (but not limited to) Additional Waste, Additional Hours, Ad Hoc Waste, in order to ensure that sufficient funds are available to pay the Contractor on time and avoiding any issues arising from delayed payments all Councils will be required to pay the other payments ten (10) days (as per Appendix D (Outgoing Payments)) prior to the payment being required to be made to the Contractor in accordance with the Project Agreement.
- 28. PAYMENTS BY LEAD COUNCIL**
- 28.1 The Lead Council shall pay the other Councils the Additional Income within ten (10) days of receipt from the Contractor as per Appendix E (Incoming Payments).
- 28.2 The Lead Council shall pay the other Councils the Excess Income within ten (10) days of receipt from the Contractor as per Appendix E (Incoming Payments).
- 28.3 The Lead Council shall pay the other Councils the Welsh Government Funding within ten (10) days of receipt from the Welsh Government as per Appendix E (Incoming Payments).
- 28.4 The Lead Council shall pay the other Councils the payments under the Project Agreement within ten (10) days of receipt from the Contractor as per Appendix E (Incoming Payments).
- 28.5 Deductions will be redistributed as applicable to the Councils. Any such redistribution will be apportioned proportionate to the Councils that have been aggrieved by any such action.

Appendix A – Minimum Tonnage

	Anglesey A _{GMT}	Conwy C _{GMT}	Denbighs hire D _{GMT}	Flintshire F _{GMT}	Gwynedd G _{GMT}	Total
Minimum Tonnage of Contracted Waste per Contract Year or pro rated when a Contract Year is less than twelve	13,615	17,904	12,089	25,267	21,124	90,000

(12) months						
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Appendix B – Cost Sharing

	Anglesey A%	Conwy C%	Denbighshire D%	Flintshire F%	Gwynedd G%	Total
Cost Sharing Ratio	15.13%	19.89%	13.43%	28.07%	23.47%	100.00%

The Cost Sharing ratio for each Council is based on the agreed predicted proportion of the usage of the Facility by each Council.

The agreed predicted proportion of usage for each Council is as follows:

Appendix C1 – Forecast Tonnage

Forecast Tonnage	Anglesey A_{FT}	Conwy C_{FT}	Denbighshire D_{FT}	Flintshire F_{FT}	Gwynedd G_{FT}	Total
April 2017 - March 2018	17,233	23,916	15,403	31,314	27,530	115,396
April 2018 - March 2019	17,308	23,892	15,427	31,399	27,502	115,529
April 2019 - March 2020	17,383	23,868	15,450	31,487	27,475	115,663
April 2020 - March 2021	16,919	23,845	15,472	31,577	27,447	115,259
April 2021 - March 2022	16,991	23,821	15,493	31,668	27,420	115,392
April 2022 - March 2023	17,051	23,797	15,514	31,762	27,392	115,516
April 2023 - March 2024	17,112	23,773	15,533	31,858	27,365	115,641
April 2024 - March 2025	17,173	22,942	15,477	31,956	27,338	114,886
April 2025 - March 2026	17,233	22,920	15,495	32,056	27,310	115,015
April 2026 - March 2027	17,293	22,897	15,513	32,159	27,283	115,145
April 2027 - March 2028	17,353	22,874	15,530	32,263	27,256	115,275

April 2028 - March 2029	17,413	22,851	15,546	32,370	27,228	115,408
April 2029 - March 2030	17,472	22,828	15,562	32,479	27,201	115,542
April 2030 - March 2031	17,532	22,805	15,577	32,590	27,174	115,678
April 2031 - March 2032	17,592	22,782	15,591	32,703	27,147	115,815
April 2032 - March 2033	17,651	22,760	15,605	32,819	27,120	115,955
April 2033 - March 2034	17,712	22,737	15,619	32,937	27,092	116,096
April 2034 - March 2035	17,772	22,714	15,631	33,057	27,065	116,240
April 2035 - March 2036	17,832	22,691	15,643	33,180	27,038	116,385
April 2036 - March 2037	17,893	22,669	15,655	33,305	27,011	116,533
April 2037 - March 2038	17,954	22,646	15,666	33,433	26,984	116,683
April 2038 - March 2039	18,015	22,623	15,677	33,562	26,957	116,835
April 2039 - March 2040	18,076	22,601	15,687	33,695	26,930	116,989
April 2040 - March 2041	18,138	22,578	15,697	33,830	26,903	117,145
April 2041 - March 2042	18,199	22,556	15,706	33,965	26,877	117,302
Total	527,487	697,541	474,440	976,697	824,373	3,500,538

Appendix C2 – Band 1 Tonnage

Marginal Tonnage (Band 1)	Anglesey	Conwy	Denbighshire	Flintshire	Gwynedd	Total
	AMT1	CMT1	DMT1	FMT1	GMT1	
April 2017 - March 2018	3,842	5,052	3,411	7,130	5,961	25,396
April 2018 - March 2019	3,862	5,079	3,429	7,167	5,992	25,529

April 2019 - March 2020	3,882	5,105	3,447	7,205	6,023	25,662
April 2020 - March 2021	3,821	5,025	3,393	7,091	5,929	25,259
April 2021 - March 2022	3,841	5,051	3,411	7,129	5,960	25,392
April 2022 - March 2023	3,860	5,076	3,427	7,164	5,989	25,516
April 2023 - March 2024	3,879	5,101	3,444	7,199	6,018	25,641
April 2024 - March 2025	3,765	4,951	3,343	6,987	5,841	24,887
April 2025 - March 2026	3,784	4,976	3,360	7,023	5,871	25,014
April 2026 - March 2027	3,804	5,002	3,377	7,059	5,902	25,144
April 2027 - March 2028	3,824	5,028	3,395	7,096	5,933	25,276
April 2028 - March 2029	3,844	5,055	3,413	7,133	5,964	25,409
April 2029 - March 2030	3,864	5,081	3,431	7,171	5,995	25,542
April 2030 - March 2031	3,884	5,108	3,449	7,209	6,027	25,677
April 2031 - March 2032	3,905	5,136	3,468	7,248	6,059	25,816
April 2032 - March 2033	3,926	5,163	3,486	7,287	6,092	25,954
April 2033 - March 2034	3,948	5,192	3,505	7,327	6,125	26,097
April 2034 - March 2035	3,969	5,220	3,525	7,367	6,159	26,240
April 2035 - March 2036	3,992	5,249	3,544	7,408	6,193	26,386
April 2036 - March 2037	4,014	5,278	3,564	7,449	6,228	26,533
April 2037 - March 2038	4,037	5,308	3,584	7,491	6,263	26,683
April 2038 - March	4,059	5,338	3,604	7,534	6,299	26,834

2039						
April 2039 - March 2040	4,083	5,369	3,625	7,577	6,335	26,989
April 2040 - March 2041	4,106	5,400	3,646	7,621	6,371	27,144
April 2041 - March 2042	4,130	5,431	3,667	7,665	6,408	27,301

Appendix C3 – Band 2 Tonnage

Marginal Tonnage (Band 2)	Anglesey	Conwy	Denbighshire	Flintshire	Gwynedd	Total
	AMT2	CMT2	DMT2	FMT2	GMT2	
April 2017 - March 2018	2,581	3,395	2,292	4,791	4,005	17,064
April 2018 - March 2019	2,561	3,368	2,274	4,753	3,974	16,930
April 2019 - March 2020	2,541	3,341	2,256	4,716	3,942	16,796
April 2020 - March 2021	2,602	3,422	2,310	4,829	4,037	17,200
April 2021 - March 2022	2,582	3,395	2,292	4,791	4,006	17,066
April 2022 - March 2023	2,563	3,371	2,276	4,757	3,977	16,944
April 2023 - March 2024	2,544	3,346	2,259	4,722	3,947	16,818
April 2024 - March 2025	2,658	3,496	2,360	4,934	4,125	17,573
April 2025 - March 2026	2,639	3,470	2,343	4,898	4,094	17,444
April 2026 - March 2027	2,619	3,444	2,326	4,861	4,064	17,314
April 2027 - March 2028	2,599	3,418	2,308	4,824	4,033	17,182
April 2028 - March 2029	2,579	3,392	2,290	4,787	4,002	17,050
April 2029 - March	2,559	3,365	2,272	4,749	3,971	16,916

2030						
April 2030 - March 2031	2,539	3,338	2,254	4,711	3,939	16,781
April 2031 - March 2032	2,518	3,311	2,236	4,673	3,906	16,644
April 2032 - March 2033	2,497	3,283	2,217	4,634	3,874	16,505
April 2033 - March 2034	2,475	3,255	2,198	4,594	3,841	16,363
April 2034 - March 2035	2,454	3,227	2,179	4,554	3,807	16,221
April 2035 - March 2036	2,432	3,198	2,159	4,513	3,773	16,075
April 2036 - March 2037	2,409	3,168	2,139	4,471	3,738	15,925
April 2037 - March 2038	2,387	3,138	2,119	4,429	3,703	15,776
April 2038 - March 2039	2,364	3,108	2,099	4,386	3,667	15,624
April 2039 - March 2040	2,340	3,078	2,078	4,343	3,631	15,470
April 2040 - March 2041	2,317	3,046	2,057	4,299	3,594	15,313
April 2041 - March 2042	2,293	3,015	2,036	4,255	3,558	15,157

Appendix C4 – Band 3 Tonnage

The Councils are not forecasting any Band 3 Tonnage during the Contract Period. Any Band 3 Tonnage arising will be charged at the prevailing per tonne rate charged for Third Party Waste.

Appendix C5 – Maximum Tonnage

The Maximum Tonnage in any Contract Year is set out in the table below. Maximum Tonnage is measured on a cumulative basis, and therefore does not restrict on a Council by Council basis. The Maximum Tonnage does not vary from year to year. Maximum Tonnage is pro-rated in any part years.

Maximum Tonnage	Total
Maximum Tonnage in any Contract Year (April – March)	150,000

Appendix D – Outgoing Payments

Payments due from Councils to the Lead Council
Band 0 Payment of the Unitary Payment 10 days prior to payment being required to be made to the Contractor under the Project Agreement
Band 1 Payment of the Unitary Payment 10 days prior to payment being required to be made to the Contractor under the Project Agreement
Band 2 Payment of the Unitary Payment 10 days prior to payment being required to be made to the Contractor under the Project Agreement
Band 3 Payment of the Unitary Payment 10 days prior to payment being required to be made to the Contractor under the Project Agreement
Payment of Other Amounts 10 days prior to payment being required to be made to the Contractor under the Project Agreement
Haulage Element 10 days prior to payment being required to be made to the Contractor under the Project Agreement
PM 2.5 Costs 10 days prior to payment being required to be made to the Contractor under the Project Agreement

Appendix E – Incoming Payments

Payments due to Councils from the Lead Council
Additional Income 10 days after receipt from Contractor
Excess Income 10 days after receipt from Contractor
Welsh Government Funding 10 days after receipt from Welsh Government
Payments under the Project Agreement 10 days after receipt from Contractor

APPENDIX 1

DATA PROTECTION POLICY

STATEMENT OF DATA PROTECTION POLICY & PRACTICE – NORTH WALES RESIDUAL WASTE JOINT COMMITTEE

1. INTRODUCTION

1.1 The North Wales Residual Waste Joint Committee comprises two elected Councillors from each of the following North Wales authorities:-

- Conwy County Borough Council
- Denbighshire County Council
- Flintshire County Council
- Gwynedd County Council
- Isle of Anglesey County Council

1.2 Flintshire County Council is the lead authority and has entered into an inter-authority agreement with the other four authorities which sets out the constitution of the Joint Committee and its decision making powers. In addition to the Data Protection policies in place for each constituent authority it has been decided to have a Data Protection policy for the Joint Committee.

1.3 The Joint Committee is supported by a project team of officers who use a stakeholder management database to track and manage communications and engagements with stakeholders and the public. The Joint Committee also processes personal information in relation to procurement processes whereby the employment details of two members of staff likely to be affected is passed to bidding companies for pricing purposes. These examples of the processing of personal information have led to the need for this Statement of Data Protection Policy & Practice.

1.4 The processing of personal information is regulated by the Data Protection Act 1998 (the "**Act**") and the Joint Committee regards the lawful and correct treatment of personal information as very important to its successful operation and in maintaining confidence between it and those with whom it carries out business.

2. THE PRINCIPLES OF DATA PROTECTION

2.1 The Act stipulates that anyone processing personal data must comply with Eight Principles of good practice. These Principles are legally enforceable.

2.2 The Principles require that personal information:

- 2.2.1 Shall be processed fairly and lawfully and in particular, shall not be processed unless specific conditions are met;
- 2.2.2 Shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or those purposes;
- 2.2.3 Shall be adequate, relevant and not excessive in relation to the purpose or purposes for which it is processed;
- 2.2.4 Shall be accurate and where necessary, kept up to date;
- 2.2.5 Shall not be kept for longer than is necessary for that purpose or those purposes;

- 2.2.6 Shall be processed in accordance with the rights of data subjects under the Act;
- 2.2.7 Shall be kept secure i.e. protected by an appropriate degree of security;
- 2.2.8 Shall not be transferred to a country or territory outside the European Union Area, unless that country or territory ensures an adequate level of data protection.

3. **PROCESSING OF PERSONAL INFORMATION**

- 3.1 The Joint Committee will through the Project Manager and Project Team ensure that personal information is processed in accordance with the Act and the 8 principles in paragraph 2.2.
- 3.2 As the lead authority is Flintshire the Joint Committee is covered by Flintshire's notification to the Information Commissioner's office. The corporate Data Protection procedures applying in Flintshire will also apply to the Joint Committee covering such matters as subject access requests, violent warning markers and Data Protection complaints.
- 3.3 The responsibility for ensuring compliance rests with the Project Manager. Where advice is needed on Data Protection matters it can be obtained from the relevant officers in Flintshire's Legal & Democratic Services department. Guidance is available on Flintshire's Infonet as well as on the website of the Information Commissioner's office.

APPENDIX 2

PART 1

TRANSFER 1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

	<p>1 Title number(s) of the property:</p> <p>CYM316351</p>
	<p>2 Property:</p> <p>Land lying to the south side of Weighbridge Road, Deeside Industrial Park, Deeside</p>
	<p>3 Date:</p>
	<p>4 Transferor:</p> <p>[FLINTSHIRE COUNTY COUNCIL]</p> <p>For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix:</p> <p>For overseas companies (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
	<p>5 Transferee for entry in the register:</p> <p>[]</p> <p>For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix: []</p> <p>For overseas companies (a) Territory of incorporation:</p>

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

11 Additional provisions

11.1 In this Transfer the following terms have the following meanings:

"Letting Documents" means all (if any) leases, tenancies, licences or other occupational agreements or arrangements so far as they remain in force and affect the Property upon whatever terms existing on or before the date hereof whether created formally or informally and in the case of any lease or tenancy any statutory continuation, extension or holding over by the tenant

11.2 INDEMNITY

11.2.1 For the purposes of giving the Transferor a full and sufficient indemnity but not further or otherwise, the Transferee covenants with the Transferor that as from the date of this Transfer the Transferee will observe and perform the matters contained or referred to in the registers of the above title (other than financial charges) so far as they relate to the Property, subsist and are enforceable and will keep the Transferor indemnified against all future actions, proceedings, costs, claims demands and liabilities in respect of them.

11.2.2 The Transferee covenants with the Transferor that the Transferee will observe and perform the covenants and obligations on the part of the landlord contained or referred to in the Letting Documents and will indemnify and keep the Transferor fully and effectively indemnified against all actions, claims, demands, losses, costs, damages and liabilities that may be suffered or incurred by the Transferor in respect of any future breach or non-observance or non-performance of those covenants and conditions.

11.2.3 No covenant implied in this transfer shall render the Transferor liable for any matter to which the sale of the Property hereby transferred is expressly made subject to in this Transfer.

11.3 LEASES

The Property is transferred subject to but with the benefit of the Letting Documents.

11.4 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

	12 Execution
	<p>EXECUTED as a Deed (but not) delivered until dated)) by affixing) the Common Seal of FLINTSHIRE COUNTY COUNCIL in the presence of:-</p> <p style="text-align: right;">Chair</p> <p style="text-align: right;">Principal Solicitor</p>
	<p>EXECUTED as a Deed (but not) delivered until dated)) by affixing) the Common Seal of [] in the presence of:-</p> <p style="text-align: right;">Chair</p> <p style="text-align: right;">Principal Solicitor</p>
	<p>EXECUTED as a Deed) (but not) delivered until dated)) by affixing the Common Seal of [] in the presence of:-</p> <p style="text-align: right;">Director</p> <p style="text-align: right;">Director/Secretary</p>
	<p>EXECUTED as a Deed) (but not delivered) until dated) by) []) acting by two Directors or) a Director and the Secretary:-</p>

Director	
Director/Secretary	
<p>SIGNED as a Deed) (but not delivered until dated) by) []) as attorney for and on behalf of) []) in the presence of:-)</p>	
Signature of witness:	
Name of witness:	
Address:	
Occupation:	

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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PART 2
TRANSFER 2

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example and adjoining 2 Acacia Avenue'.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 83 of the Land Registration Rules 2003.

1	Title number(s) of the property: CYM316351
2	Property: Land lying to the south side of Weighbridge Road, Deeside Industrial Park, Deeside
3	Date:
4	Transferor: [] For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix: [] For overseas companies (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
5	Transferee for entry in the register: FLINTSHIRE COUNTY COUNCIL For UK incorporated companies/LLPs Registered number of company or limited liability partnership including any prefix: For overseas companies (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

6	<p>Transferee's intended address(es) for service for entry in the register:</p> <p style="padding-left: 40px;">County Hall, Mold, Flintshire CH7 6NR</p>
7	The transferor transfers the property to the transferee
8	<p>Consideration</p> <p><input checked="" type="checkbox"/> The transferor has received from the transferee for the property the following sum (in words and figures):</p> <p style="padding-left: 40px;">ONE POUND (£1)</p> <p><input type="checkbox"/> The transfer is not for money or anything that has a monetary value</p> <p><input type="checkbox"/> Insert other receipt as appropriate:</p>
9	<p>The transferor transfers with</p> <p><input checked="" type="checkbox"/> full title guarantee</p> <p><input type="checkbox"/> limited title guarantee</p> <p>9.1 The covenants implied by section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 (the "Act") are varied by the deletion of the words "at his own cost" and the substitution of the words "at the cost of the Transferee".</p> <p>9.2 In addition to not being liable for the matters and things referred to in section 6(1) or (2) of the Act, the Transferor shall not be liable under the covenants implied by virtue of section 2(1)(a) or section 3 of the Act in respect of matters of public record or in respect of instruments or matters of which the Transferee is deemed to have actual notice by section 198 of the Law of Property Act 1925, to which this Transfer is made subject.</p>
10	<p>Declaration of trust. The transferee is more than one person and</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as joint tenants</p> <p><input type="checkbox"/> they are to hold the property on trust for themselves as tenants in common in equal shares</p> <p><input type="checkbox"/> they are to hold the property on trust:</p>
11	Additional provisions

11. 1 In this Transfer the following terms have the following meanings:

"Letting Documents" means all (if any) leases, tenancies, licences or other occupational agreements or arrangements so far as they remain in force and affect the Property upon whatever terms existing on or before the date hereof whether created formally or informally and in the case of any lease or tenancy any statutory continuation, extension or holding over by the tenant

11.2 INDEMNITY

11.2.1 For the purposes of giving the Transferor a full and sufficient indemnity but not further or otherwise, the Transferee covenants with the Transferor that as from the date of this Transfer the Transferee will observe and perform the matters contained or referred to in the registers of the above title (other than financial charges) so far as they relate to the Property, subsist and are enforceable and will keep the Transferor indemnified against all future actions, proceedings, costs, claims demands and liabilities in respect of them.

11.2.2 The Transferee covenants with the Transferor that the Transferee will observe and perform the covenants and obligations on the part of the landlord contained or referred to in the Letting Documents and will indemnify and keep the Transferor fully and effectively indemnified against all actions, claims, demands, losses, costs, damages and liabilities that may be suffered or incurred by the Transferor in respect of any future breach or non-observance or non-performance of those covenants and conditions.

11.2.3 No covenant implied in this transfer shall render the Transferor liable for any matter to which the sale of the Property hereby transferred is expressly made subject to in this Transfer.

11.3 LEASES

The Property is transferred subject to but with the benefit of the Letting Documents.

11.4 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

12 Execution

EXECUTED as a Deed (but not delivered until dated))
 by affixing)
 the Common Seal of)
 []
 in the presence of:-
 Chair
 Principal Solicitor

EXECUTED as a Deed (but not delivered until dated))
 by affixing)
 the Common Seal of)
 []
 in the presence of:-
 Director
 Director/Secretary

EXECUTED as a Deed (but not delivered until dated) by)
 [])
 acting by two Directors or a Director)
 and the Secretary:-)
 Director
 Director/ Secretary

SIGNED as a Deed (but not delivered until dated) by)
 [])
 as attorney for and on behalf of)
 [])
 in the presence of:-)

Signature of witness:

Name of witness:

Address:

Occupation:

EXECUTED as a Deed (but not)
delivered until dated))
by affixing)
the Common Seal of
FLINTSHIRE COUNTY COUNCIL
in the presence of:-
Chair
Principal Solicitor

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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**APPENDIX 3
DEED OF COVENANT**

DATED _____ []

(1) []

(2) NATIONAL GRID ELECTRICITY TRANSMISSION PLC

DEED OF COVENANT
relating to land on the south side of Weighbridge Road,
Deeside Industrial Park, Deeside

THIS DEED OF COVENANT IS made on
BETWEEN:-

- (1) [] of [] (the "**Covenantor**"); and
- (2) **NATIONAL GRID ELECTRICITY TRANSMISSION PLC** (No 02366977) of 1-3 Strand, London WC2N 5EH (the "**Covenantee**")

WHEREAS:-

- (A) By Clause 5.1 of a transfer dated 7 March 2013 made between (1) Flintshire County Council ("**Flintshire**") and (2) the Covenantee (the "**Transfer**"), Flintshire covenanted with the Covenantee on any disposal of the Retained Land (as defined in the Transfer) to procure that the disponee covenants with the Covenantee or their successors in title to the Property (as defined in the Transfer) to comply with Clauses 12.4.1.1, 12.4.1.2 and 12.4.1.5 of the Transfer.
- (B) The Covenantor has agreed to purchase the Retained Land and the parties to this Deed have agreed to enter into this deed accordingly.

IT IS AGREED as follows:-

1. The Covenantor on behalf of itself and its successors in title covenant with the Covenantee and the Covenantee's successors in title to the Property to observe and perform the covenants contained in Clauses 12.4.1.1, 12.4.1.2 and 12.4.1.5 of the Transfer from the date of this Deed as though that covenant was set out in full in this Deed.
2. The Covenantor shall only remain liable under this Deed until it has parted with all its estate, right, title and interest in the Retained Land.
3. A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

EXECUTED as a **DEED** (but not)
delivered until dated)
by affixing)
the Common Seal of)
[]
in the presence of:-

Chair

Principal Solicitor

APPENDIX 4 - ANNUAL BUDGET 2016-2017

APPENDIX 5

WELSH GOVERNMENT FUNDING CONDITIONS



**Llywodraeth Cymru
Welsh Government**

Yr Adran Cyfoeth Naturiol
Department for Natural Resources
Colin Everett
Senior Responsible Owner
North Wales Residual Waste Treatment Project
County Hall
Mold
Flintshire
CH7 6NW

Ein Cyf/Our Ref: FBC Approval
4 February 2016

Dear Colin

Award of Funding in relation to the Project known as North Wales Residual Waste Treatment Project (the "Project")

1. Award of Funding

We are pleased to inform you that your application for funding support included in your Full Business Case ("FBC") dated 27 November 2015 and submitted to the Waste Procurement Programme Office ("WPPO") on 27 November 2015 has been successful and the funding indicated below (the "Funding") is awarded to you as a contribution towards the ongoing cost of the Project under the Contract:

Gate Fee contribution £5,620,258 pa, from Service Commencement, for a maximum period of 25 years, to be payable in quarterly instalments in arrears until expiry or early termination of the Contract. Service Commencement is currently forecast to start in June 2019.

The Funding shall only be used for the Purposes and shall cease upon termination of the Contract, either through effluxion of time or early determination.

2. Statutory Authority

This award of Funding is made on and subject to the Conditions and under the authority of the Minister for Natural Resources, one of the Welsh Ministers, acting pursuant to sections 70 and 71(1) of the Government of Wales Act 2006.

3. Interpreting these Conditions

Unless otherwise indicated in this paragraph 3 capitalised terms shall have the meaning ascribed to them in the Contract. Any reference in these Conditions to:

- (a) 'you', 'your' is to Flintshire County Council, County Hall, Mold, Flintshire, CH7 6NW
- (b) 'we', 'us', 'our' is to the Welsh Ministers;
- (c) 'Application' is to your application set out in the FBC;
- (d) 'Welsh Government Official' is to

Jasper Roberts
Welsh
Government
Cathays
Park
Cardiff, CF10 3NQ

Tel: 029 20 823833

[Email: jasperroberts@wales.gsi.gov.uk](mailto:jasperroberts@wales.gsi.gov.uk)

or such other Welsh Government official as we may from time to time notify to you.

- (e) 'Senior Responsible Owner' or 'SRO' is to

Colin Everett
Senior Responsible Owner
North Wales Residual Waste Treatment Project
County Hall
Mold
Flintshire
CH7 6NW

Tel: 01352 702101

[Email: chietexecutive@flintshire.gov.uk](mailto:chietexecutive@flintshire.gov.uk)

or such other official as you may from time to time notify to us.

- (f) 'Conditions' is to the terms and conditions set out in this letter and shall include the Special Conditions and terms set out in Schedules A and C;
- (g) 'Contract' is to the contract proposed to be entered into by you a copy of which was provided to us with your Application;
- (h) 'Purposes' is to the purposes set out in the Application;
- (i) 'Schedule' is to the Schedules attached to this letter;
- (j) 'State Aid Rules' is to the rules set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union (or in those Articles that may succeed Articles 107 to 109), secondary legislation such as frameworks, guidelines and block exemptions produced by the European Commission derived from Articles 107 to 109, case law of the European Courts and decisions of the European Commission regarding the application of Articles 107 to 109.
- (k) Reference to any legislation will include all amendments to and substitutions and re-enactments of that legislation in force from time to time.

4. Initial Obligations

- a. On the basis set out in paragraph 4(f) below, you must not enter into the Contract without the consent of the Welsh Government, such consent not to be unreasonably withheld or delayed;
- b. you must, within not greater than 1 Business Day following financial close of the Contract, notify the WPPO that financial close has taken place, and provide to the WPPO, in electronic format, signed copies of the contract phase Inter Authority Agreement (IAA) or Joint Working Agreement (JWA);
- c. you must, within not greater than 5 Business Days of the date of issue of the Local Government Contract Act Certificate(s), provide the WPPO with a copy of each Certificate issued in relation to the Contract;
- d. you must, within not greater than 20 Business Days of the date of financial close, provide to the WPPO, in electronic format, copies of the Contract, all supporting contract documentation (including, without limitation sub-contracts and funding documents); and an updated Project Data Template (as set out in Appendix B of the FBC);
- e. you may not, without our prior written approval (such approval not to be unreasonably withheld or delayed), between the date of this letter and financial close of the Contract, agree to or make any change to:
 - i. the nature, scope and purpose of the Project as set out in the Application; and/or
 - ii. any other departure from **the** Application.
- f. if changes are made to the Contract or to any documents referred to in the Application between the date of this letter and financial close of the Contract, you must notify WPPO of any such changes and shall not enter into the Contract without the prior approval of WPPO (such approval not to be unreasonably withheld or delayed. We reserve the right to review any such changes and, dependent upon the nature of the change, and in our absolute discretion, to withdraw the Funding, or to reassess the level of Funding for the Project pursuant to paragraph 8(d) below.
- g. Failure to gain our prior written approval to any change or departure from the position set out in the Application will release us from our obligations under this letter.
- h. Notwithstanding any other provision of this letter, the Funding will not be issued until receipt of written confirmation from you that Service Commencement has taken place, in accordance with the Contract.
- i. The letter from us dated 26 July 2012, and headed (Financial Support Payment Arrangements from Welsh Government), sets out the profile of the Funding payments. This letter is included in Schedule B.

5. Your general obligations to us

You must:

- a. use the Funding only in relation to the Purposes.
- b. safeguard the Funding against fraud generally and, in particular, fraud on the part of your management, employees and/or suppliers and you shall notify us immediately if you have reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- c. comply with all applicable laws or regulations or official directives whether derived from domestic, **EU** or international law.
- d. put in place and maintain adequate public liability and employers' liability insurance with a reputable insurance company to cover against the risks which may arise in connection with any property or any activity undertaken in delivery of the Purposes. We reserve the right to require you to submit for inspection any relevant documents relating to this insurance.
- e. co-operate fully with the Welsh Government Official and with any other employee of the Welsh Government or consultant appointed by us to monitor your use of the Funding and your compliance with these Conditions.

6. How to claim the Funding

- a. Once you have confirmed acceptance of the Conditions, the Funding will be payable to you in accordance with the relevant provisions of this letter referred to in paragraph 4(1) above.
- b. We will aim to pay all valid claims as soon as possible and typically within 20 Business Days.
- c. We are under no obligation to pay any claims for payment, which are not in accordance with this paragraph 6, even if this results in the maximum amount of Funding not being paid to you.

7. Representations and Warranties

You represent and warrant that:

- a. you have the power to enter into and to perform the obligations set out in these Conditions and you have taken all necessary action to authorise the entry into and performance of the obligations under these Conditions;
- b. no litigation or arbitration is current or pending or, so far as you are aware, threatened, which have or could have an adverse effect on your ability to perform and comply with any of these Conditions;
- c. full disclosure has been made to us before the date of this letter of all material facts or circumstances which need to be disclosed to enable us to obtain a true and correct view of your business and affairs (both current and prospective) or which ought to be provided to any person who is considering providing funding to you.

8. Breach of Conditions, occurrence of Notification Events and their respective consequences

- a. The following events shall be "Notification Events" and each a "Notification Event":

- i. repayment of any part of the Funding is required under European Law (whether under State Aid Rules or otherwise);
 - ii. we have made an overpayment of Funding to you;
 - iii. any representation or warranty made in Condition 8 is incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect;
 - iv. any event occurs or circumstances arise (including any Insolvency Event¹) which in our opinion gives reasonable grounds for believing that you may not, or may be unable, to perform or comply with any of your obligations under these Conditions.
- b. You must notify us immediately if a Notification Event has occurred or is likely to occur but we also reserve the right to notify you where we believe a Notification Event has occurred or is likely to occur.
- c. We will seek to discuss the Notification Event with you and to agree a course of action to be taken to address the Notification Event and in doing so we will consider both the seriousness of the Notification Event and whether or not it can be remedied.
- d. If:
 - i. any of the Conditions are breached; or
 - ii. the Contract is terminated, or
 - iii. following consideration of any revised FBC pursuant to paragraph 4(e) above, and if the Welsh Government Official considers it appropriate that we should be released from our obligations under this letter we may, in our absolute discretion, reconsider the allocation of Funding to the Project. Such reconsideration will be based on the Welsh Government Criteria, as contained in Appendix A of the WPPO's FBC template, against which the allocation of Funding was made and any other circumstances existing at the time of the reconsideration.
- e. We may, as a result of reconsideration referred to in paragraph 8(d) above, and acting reasonably, take any of the following actions:
 - i. where appropriate, withdraw the offer of Funding in this Letter;
 - ii. reassess the level of Funding;
 - suspend the Funding until the issue is rectified;
 - iv. impose additional or varied conditions to the Funding;
 - v. seek repayment of Funding already paid; or
 - vi. confirm the level of Funding with no alterations.

¹Insolvency Events are defined in the Contract.

9. Information Requirements

You must:

- a. provide us with such documents, information and reports which we may reasonably require from time to time in order for us to monitor your compliance with the Conditions.
- b. meet with the Welsh Government Official and such of our representatives as we shall from time to time reasonably require.
- c. ensure that the SRO (or other such person as we may agree) attends all meetings with the Welsh Government Official.

10. Audit Requirements

a. You must:

- i. maintain clear accounting records identifying all income and expenditure in relation to the Purposes;
 - ii. without charge, permit any officer or officers of the Welsh Government, Wales Audit Office or European Commission at any reasonable time and on reasonable notice being given to you to visit your premises and/or to inspect any of your activities and/or to examine and take copies of your books of account and such other documents or records as in such officer's reasonable view may relate in any way to your use of the Funding. This undertaking is without prejudice and subject to any other statutory rights and powers exercisable by the Welsh Government, Wales Audit Office or the European Commission or any officer, servant or agent of any of the above;
 - iii. retain this letter and all original documents relating to the Funding until the date that is 6 years after termination of the Contract.
- b. Under paragraph 17 of Schedule 8 to the Government of Wales Act 2006 the Auditor General for Wales has extensive rights of access to documents and information relating to monies provided by the Welsh Government. He and his officials have the power to require relevant persons who control or hold documents to give any assistance, information and explanation that they may require; and to require those persons to attend before them for such a purpose. The Auditor General and his staff may exercise this right at all reasonable times.

11. Third Party Obligations

- a. Nothing in the Conditions shall impose any liability on us in respect of any liability incurred by you to any third party (including, without limit, employees and contractors).
- b. You shall indemnify us against any liabilities, claims, proceedings, demands, losses, costs and expenses suffered or incurred by us directly or indirectly arising as a result of or in connection with any failure by you to perform fully or in part any obligation you may have to a third party.

12. Intellectual Property Rights

- a. Nothing in these Conditions shall prevent transfer to us of any rights to which we are entitled in relation to any intellectual property created by you as a result of the Purposes.
- b. You must acknowledge our support on all publicity, press releases and marketing material produced in relation to the Purposes. Such acknowledgement must be in a form approved by us and must comply with the Welsh Government's branding guidelines.
- c. You agree that for the duration of the Period and for 5 years thereafter we can include details about your organisation and business, the Funding and the Purposes in Welsh Government promotional materials.

13. Access to Information

- a. You acknowledge that we are subject to the requirements of the Code of Practice on Public Access to Information published by the Welsh Government (the "Code"), the Freedom of information Act 2000 (the "FOIA"), the Environmental Information Regulations 2004 (the "EIR") and the Data Protection Act 1998 (the "DPA").
- b. You acknowledge that we are responsible for determining in our absolute discretion whether:
 - i. to disclose any information which we have obtained under or in connection with the Funding to the extent that we are required to disclose such information to a person making a disclosure request under the FOIA or the EIR; and/or
 - ii. any information is exempt from disclosure under the Code, the FOIA or the EIR.
- c. You must comply with your obligations under the DPA in respect of any personal data held in relation to the Purposes.

14. Fees

Any legal fees or costs of whatever nature incurred by you in connection with this letter shall be borne solely by you.

15. Notices

- a. All notices given under these Conditions must be in writing (this does not include email but may include a letter attached to an email) and must prominently display the following heading: Notice in relation to North Wales Residual Waste Treatment Project.
- b. The address and contact details for the purposes of serving notice under these Conditions are as follows
 - i. You: the person to whom this letter is addressed at the address indicated above (or such alternative address notified by you to us from time to time) or his successor in title;

- ii. Us: the Welsh Government Official at the address stated above.
- c. A notice will be deemed to have been properly given as follows:-
- i. Prepaid first class post: on the second working day after the date of posting.
 - ii. By hand: upon delivery to the address or the next working day if after 4pm.
 - iii. By email attachment: upon transmission or the next working day if after 4pm.

16. Equal Opportunities

You must apply a policy of equal opportunities as employers, as users of volunteers, and as providers of services, regardless of race, gender/gender identification, sexual orientation, religion and belief, age or any disability.

17. Welsh Language

You must meet the linguistic needs of the community or clientele for whom the Purposes are undertaken in line with any published guidance from the Welsh Language Board.

18. Sustainability

Your use of the Funding must (where reasonably practicable) meet the Welsh Government's current agenda for sustainable development and the environment.

19. Welsh Ministers' Functions

You acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. You agree that nothing contained or implied in , or arising under or in connection with, these Conditions shall in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise, or refrain from exercising, any of their functions in any particular way.

20. General

- a. If at any time any of these Conditions is deemed to be or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- b. No failure or delay on our part to exercise any power, right or remedy under these Conditions shall operate as a waiver of any such power, right or remedy or preclude its further exercise or the exercise of any other power, right or remedy. The powers, rights or remedies hereby provided are cumulative and not exclusive of any powers, rights or remedies provided by law.
- c. Any amendment or variation of these Conditions must be in writing and signed by us and you in the same manner as this letter.

- d. You may not assign or otherwise dispose of in any way your rights, benefits, obligations or duties under these Conditions.
- e. Any Condition, which by implication needs to continue in force and effect beyond the end of the Funding period contemplated by this letter, shall so enure.
- f. The award of the Funding is to you alone and no one else is entitled to make any claim in respect of the Funding or seek to rely on or enforce any of these Conditions.
- g. These Conditions shall be governed by and construed in accordance with the laws of Wales and England as applied in Wales and the parties hereto submit to the exclusive jurisdiction of the courts of Wales and England.

21. How to accept this offer of Funding

If you have any queries in relation to this award of Funding or the Conditions please contact the Welsh Government Official who will be happy to assist you.

Please return the copy of this letter to us duly signed to signify your acceptance of the award of Funding and these Conditions within not greater than 5 Business Days of the date upon which you are entitled to so do following any required internal approvals.

Yours sincerely,

A handwritten signature in cursive script that reads "Jasper Roberts".

Signed by Jasper Roberts
under authority of the Minister for Natural
Resources, one of the Welsh Ministers.

We hereby accept the award of Funding set out in this letter entitled "FBC Approval", dated 4 February 2016 and the Conditions relating to the Funding.

_____ Signature

_____ Name
An authorised signatory of Flintshire County Council

_____ Date

_____ Signature

_____ Name
An authorised signatory of Flintshire County Council

Date

Schedule A

Special Conditions

You shall:

1. not enter into the Contract unless and until a Deed of Variation has been entered into between Tata Steel UK Ltd, Flintshire County Council and the Contractor, relating to restrictive covenants affecting the site, owned by Flintshire County Council which is being leased to the Contractor and which will be the site of the new facility;
2. ensure that all Partnership Authorities are fully aware of the potential for, and quantum of, compensation payable by the Authorities if any person, having the right to claim for breach of any of **the** restrictive covenants referred to in 1 above, makes such a claim that results in termination of the Contract in accordance with its relevant terms; and that all Partnership Authorities have agreed that such quantum of compensation is reasonable in the circumstances; and that they each understand and accept their respective liability to contribute to such payment; and that Welsh Government will not, in any circumstances, be liable to contribute to any such compensation payments;
3. as soon as practicable after the date of this letter, contact Value Wales in order to provide the Welsh Government with details of Community Benefits that will be delivered as a result of the Project; and, comply with any reporting requirements made known to you relating to Community Benefits that will be delivered as a result of the Project from time to time;
4. comply with the Special Conditions relating to Energy Efficiency of the Facility set out in Schedule C;
5. not, without the Welsh Government Official's (WGO) prior written approval (such approval not to be unreasonably withheld or delayed), agree to or make any material changes to the terms of the Contract or any other changes which represent a departure from the Contract entered into at financial close;
6. notify the WGO of any proposed material changes to the proposed services, including as a result of a Change (including any Change in Law). In the event of a proposed change, and if so required by the WGO, you shall submit a Variation Business Case to the WGO and must not proceed with the proposed change until receipt of the WGO's written approval (such approval not to be unreasonably withheld or delayed);
7. notify the WGO of any material delay in the Project's Service Commencement Date, whether such delay is a consequence of issues of Consent, procurement, or any other issue within or without your control, including (without limitation) you or Contractor Default under the Contract. In cases of delay beyond the latest to occur Longstop Date in the Contract, you must, if so required by the Welsh Government, submit a Variation Business Case to the Welsh Government;
8. prior to exercising any right to terminate the contract, discuss all relevant issues with the Welsh Government;
9. not exercise any option relating to the reversion of the facility (if any) without the Welsh Government's prior written approval;

10. provide to the WGO all information that **the** WGO from time to time reasonably requests in relation to the Project and act proactively and in good faith in providing the WGO with information relevant to the Welsh Government's involvement with the Project.

11. We reserve the right to meet with you, to review progress of the Project at no more than 2 yearly intervals (commencing at the date of issue of this letter). The purpose of the meeting will be to discuss the progress of the Project and ensure that it remains in line with the Application and the Conditions. You shall ensure that the meeting will be attended by the Senior Responsible Owner, and/or appropriately qualified and suitably informed authority personnel, capable of dealing with all matters to be discussed at the meeting pursuant to an agreed agenda.

Copy of Payment Profile Letter

Adran yr Amgylchedd a Cynaliadwyedd
Department for Environment and Sustainability



Llywodraeth Cymru
Welsh Government

Project Managers
Residual Waste Programme

Parc Cathays 1 Cathays Park
Caerdydd 1 Cardiff
C-F10 3N0

Ein cyf / Our ref: Financial
Support Payments
Dyddiad / Date: 26/07/2012

Dear Project Manager

Financial Support Payment Arrangements from Welsh Government

This letter confirms the timing of Welsh Government funding support to local authorities for the treatment of local authority municipal residual waste in line with the approved Full Business Case (FBC).

Payments will be made to the Lead Authority.

The Welsh Government will provide funding support as

fo'lows: Revenue contribution

The revenue contribution will be paid as agreed in the FBC Approval Letter, on a quarterly basis in arrears with the Sustainable Waste Management Grant (SWMG) for the duration of the contract.

Payments will be made at the end of June, September, December and March. Revenue contributions will be paid on a pro-rata basis for the first and foal quarters, dependent upon the Services Commencement Date and the date of contract expiry or early termination.

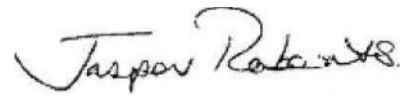
I hope this provides clarity on the matter but if you have any further questions please do not hesitate to contact the Programme Office.

Jasner.Roliersta'oales.osi
GOV.uk 02920 823833

Cathays Park/Parc Cathays
Cardrffi/Caerdydd
CF10 3NO

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Yours sincerely

A handwritten signature in black ink that reads "Jasper Roberts". The signature is written in a cursive, slightly slanted style.

JASPER ROBERTS
Waste Infrastructure Programme
SRO Waste and Resource
Efficiency Division

Schedule C

Special Conditions relating to Energy Efficiency of the Facility

1. You must take all steps available to you under the Contract to require the Contractor to secure and maintain R1 status in respect of the Facility.
2. You must notify the Welsh Government Official (WGO) when the Facility is first certified by the Relevant Authority as a recovery, rather than disposal, operation signified by the award of R1 status (which, in this appendix shall mean R1 or its successor standard from time to time); and, within 5 Business Days of your receipt of the same, provide to the WGO a copy of the R1 certificate issued by the Relevant Authority.
3. You must provide to the WGO a copy of each subsequent certificate confirming that the Facility qualifies as a recovery (rather than disposal) operation throughout the term of the Contract.
4. When, in order to comply with your obligations pursuant to these Special Conditions, you appoint a technical advisor to the project (PTA) the relevant appointment must include a duty of care to the Welsh Government as well as to the appointing authority.
5. If at any time during the term of the Contract the Facility is designated as a disposal, rather than recovery, operation in that it fails to initially achieve or maintain R1 status; or during operations you become aware that the Facility may lose its R1 status, you must, within 10 Business Days of becoming aware of such an event or failure, notify the WGO in writing including with such notification:
 - a. details of why the Facility failed to achieve/maintain R1 status, or may lose its R1 status;
 - b. whether the failure is capable of rectification;
 - c. what steps the Project has taken under the Contract;
 - d. if the failure is capable of rectification, if a rectification plan is being/has been prepared;
 - e. if a rectification plan has been prepared and agreed or determined under the Contract Dispute Resolution Procedure:
 - i. written assurance from the PTA that, if the works set out in the rectification plan are carried out, R1 status can be reasonably expected to be maintained, achieved or restored (as appropriate); and
 - ii. details of the timetable to complete the necessary works.
 - f. if a rectification plan has yet to be produced, details of when it will be completed and confirmation that the **PTA** will review the relevant plan and provide an opinion of the plan to you within 15 Business Days of the Project's receipt of the plan; and that assurance will be provided to the WGO as soon as practicable in the same terms indicated in paragraph (f) above.

6. The Welsh Government accepts that it is possible that if R1 efficiency is restored following rectification work, there could be a delay before formal R1 status is restored following certification by Natural Resources Wales. You are therefore required to provide the WGO with:
 - a. written confirmation, within [5] Business Days of completion of all necessary works and subsequent testing, from the PTA that the facility is operating at the relevant efficiency level following carrying out of the rectification works; and subsequently
 - b. a copy of the certificate issued by the Relevant Authority within the 5 Business Days of receipt by you.
7. Subject to your compliance with the Special Condition set out in paragraphs 1 to 6 (inclusive); and subject to the appropriate assurance from the PTA (pursuant to Special Condition 5 (e) (i)) that, if carried out, the rectification works can be reasonably expected to secure or restore R1 status, Welsh Government funding support for the Project will not be withdrawn.
8. If notification is made to the WGO pursuant to paragraph 5 above, the WGO will agree with you a long stop date (based on the proposed rectification timetable referred to in paragraph (e) (ii) above) (the "Rectification Longstop Date"). If by the Rectification Longstop Date, notification pursuant to paragraph 6 above has not been received by the WGO, you will meet with the WGO to review the position. Following any such review, if it is apparent to the Welsh Government (acting reasonably) that R1 status will not be restored within such period as is reasonable (taking into account all relevant factors giving rise to the loss of or failure to secure R1 status and taking into account whether or not:
 - a. you have exercised and enforced your rights against the Contractor in relation to R1 status under the Contract; and/or
 - b. the Contractor has resourced and carried out the rectification works in accordance with the rectification plan and timetable provided to the WGO pursuant to paragraph 5)

the Welsh Government shall have the right to withdraw future funding support for the Project.

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

Authorised Sealing Officer

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

Chairman/Vice Chairman

Authorised Signatory

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

Chairman

Chief Executive

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

Legal and Cabinet Service Manager

The Common Seal of)
CYNGOR SIR YNYS MÔN /)
ISLE OF)
ANGLESEY COUNTY COUNCIL)
was affixed in the presence of:)

Solicitor