

DATED

2013

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- (1) CAERPHILLY COUNTY BOROUGH COUNCIL
 - (2) THE COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF
 - (3) MONMOUTHSHIRE COUNTY COUNCIL
 - (4) NEWPORT CITY COUNCIL
 - (5) THE VALE OF GLAMORGAN COUNCIL

SECOND JOINT WORKING AGREEMENT
in relation to the joint procurement of a Residual Waste Treatment
Solution pursuant to Project Gwyrdd

This final draft (is a work in progress) and is subject to any further amendments that may be required: –

- a) as a result of fine tuning of the Project Agreement during the preferred bidder stage; and
- b) to include details of the Host Authority and any ancillary amendments.

Version Approved v2.0 – 7th February 2013

Revision History

Revision Date	Version	Updated by	Summary of Changes
07.02.13	Approved v2.0	JAC	Approved by Joint Committee on Thursday 7 th February 2013

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BETWEEN

- (1) **CAERPHILLY COUNTY BOROUGH COUNCIL** of Penallta House, Tredomen Park, Ystrad Mynach, Hengoed, CF82 7PG ("**Caerphilly Council**");
- (2) **THE COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF** of County Hall, Atlantic Wharf, Cardiff, CF10 4UW ("**Cardiff Council**");
- (3) **MONMOUTHSHIRE COUNTY COUNCIL** of County Hall, Cwmbran, NP4 2XH ("**Monmouthshire Council**");
- (4) **NEWPORT CITY COUNCIL** of Civic Centre, Newport, NP20 4UR ("**Newport Council**"); and
- (5) **THE VALE OF GLAMORGAN COUNCIL** of Civic Offices, Holton Road, Barry, CF63 4RU ("**Vale of Glamorgan**"),

(together referred to as "**the Councils**" and individually as a "**Council**" or a "**Partner**" for the purposes of Schedule 11 (JWA2 Payment Mechanism)).

BACKGROUND

- (A) The Councils have agreed to work together in a partnering relationship to jointly procure a residual waste treatment solution ("**the Solution**") in furtherance of the objectives of the Memorandum of Understanding and the project known as "**Project Gwyrdd**".
- (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 Joint Working Agreement ("**JWA 1**") to formalise their respective roles and responsibilities in relation to the joint working arrangements for the procurement of Project Gwyrdd and the appointment of Cardiff Council as host council in carrying out the procurement in accordance with the terms of the Outline Business Case and the common decision made by each Council to approve the affordability envelope for Project Gwyrdd and commence the procurement.
- (C) The Councils acknowledge that JWA 1 regulated the procurement of Project Gwyrdd up to Financial Close. Pursuant to JWA 1, the Councils have agreed to enter into this second Joint Working Agreement (the "**Agreement**") which will set out the respective rights and obligations of each Council in relation to the implementation and operational phases of Project Gwyrdd, referred to for the purposes of this Agreement as the "**Contract**".
- (D) The Councils have agreed that the Host Authority shall enter into a contract (the "**Project Agreement**") with [xxx] (Company No. [xxx]), a private sector contractor, of [xxx] (the "**Contractor**") involving the design, installation, commissioning, financing, operation and maintenance of a residual waste treatment facility (the "**Facility**") for the treatment of Contract Waste at the Site.
- (E) The Councils acknowledge that this Agreement formalises the basis on which risks and liabilities are apportioned between the Councils in relation to the implementation and operational phases of the Contract. Such apportionment is intended to reflect the terms of the Project Agreement.

¹ [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

- (F) The Councils agree to work together in the implementation and contract management of the Project Agreement and acknowledge that all decisions relating to the Contract and the operation of the Project Agreement shall be made in accordance with the terms of this Agreement (principally by the Contract Manager or, as the case may be, the Contract Management Board or the Joint Committee) and shall be implemented by the Host Authority under the Project Agreement for and on behalf of itself and the other Councils.
- (G) The Councils wish to enter into this Agreement and implement the Contract 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.
- (H) 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.
- (I) 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.
- (J) By virtue of Section 3 of the Local Government Act 1999, 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.
- (K) By virtue of Section 2 of the Local Government Act 2000, each of the Councils has powers 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.
- (L) The Councils have established and agreed to participate in the Joint Committee (whose remit is presently limited to the Contract but may be extended to cover other activities by agreement) to facilitate the delivery and management of the Contract from the date of Financial Close of Project Gwyrdd when the Project Agreement and supporting documentation is completed.
- (M) 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:-

"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) which represents the necessary funding for the Host Authority to discharge its functions on behalf of all of the Councils under this Agreement, as managed by the Contract Management Board, notified to the Joint Committee and approved by each Council in respect of this Contract (and the Councils acknowledge that the Annual Budget does not include the Unitary Charge or any payments or deductions made under the Project Agreement)
"Authority"	is the term used to define the Host Authority in the Project Agreement
"Authority Change"	has the meaning given to it in the Project Agreement
"Business Day"	means any day other than a Saturday or Sunday or a public or bank holiday in England and/or Wales
"Chairperson"	means the chairperson of the Joint Committee (duly appointed pursuant to Clause 7.3) or the Contract Management Board (duly appointed pursuant to Clause 8.4) (as the case may be)
"CIWM"	means the Chartered Institution of Wastes Management
"Commencement Date"	means the date of entry into of the Project Agreement
"Commissioning Plan"	has the meaning given to it in the Project Agreement
"Competitive Dialogue Procedure"	has the meaning given to it in the Public Contracts Regulations 2006
"Confidential Information"	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 Management Board Meeting"	means a meeting of the Contract Management Board duly convened in accordance with Clause 6
"Contract Manager Matter"	has the meaning given to it in Clause 6.1.1 (Decision Making)
"Contract Documents"	means the Project Agreement, the Collateral Warranties, the Independent Certifier's Appointment and the Parent Company Guarantee (each as defined in the Project Agreement) and any other document entered into between the Host Authority and the Contractor in respect of Project Gwyrdd
"Contract Period"	has the meaning given to it in the Project Agreement
"Contract Tasks"	means as described in Clause 5.1 (Duties of the Host Authority and other Councils), as allocated to the relevant decision makers in accordance with Clause 6.1 (Decision Making) and shall include the duties and obligations set out in this Agreement and any obligation of the "Authority" under the Project Agreement
"Contract Waste"	has the meaning given to it in the Project Agreement
"Contract Year"	has the meaning given to it in the Project Agreement
"Contractor"	is the term used to define the Contractor in the Project Agreement
"Council Lead Officer"	means each of the Council's nominated lead officer from time to time for the Contract
"Decision Period"	means the period of three (3) months from the date of the Liability Report or such other time as is unanimously agreed by all the Councils
"Default Rate"	means the Bank of England's Base Rate from time to time plus five percent (5%)
"Deductions"	means the deductions imposed by the Host Authority pursuant to Schedule 4 (Payment Mechanism) of the Project Agreement
"Dispute"	means any difference or dispute between the Councils arising out of or in connection with this Agreement or the Contract
"Dispute Resolution"	means the procedure set out in Clause 28 (Dispute Resolution)
"DPA"	means the Data Protection Act 1998
"Facility"	means the residual waste facility to be built by the Contractor on the Site for the purposes of disposing of Contract Waste

"Final Business Case" or "FBC"	means the final business case for Project Gwyrdd, prepared by the Councils and subject to the Councils' delegated approval before submission to the Welsh Government for funding to support Project Gwyrdd
"Financial Close"	means the date of the entry into of the Project Agreement
"Forecast Base Case Contract Waste Tonnage"	means in relation to each Council, the relevant share of the Base Case Contract Waste Tonnage (as defined in the Project Agreement) as set out in Table Z in Clause 4A.4
"Host Authority"	means the Council appointed under Clause 5 whose duties are set out in this Agreement
"Intellectual Property"	any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them
"IP Material"	the Intellectual Property in the Material
"JWA2 Payment Mechanism"	means the payment mechanism set out in Schedule 11 (JWA2 Payment Mechanism) of this Agreement
"JWA2 Sustainable Transport Plan"	means the plan detailing (inter alia) the minimisation of environmental impact of vehicles delivering Contract Waste to the Facility in the form set out in Schedule 12 (Transport Route Plan and JWA2 Sustainable Transport Plan) as updated from time to time in accordance with this Agreement
"Joint Committee Meeting"	means a meeting of the Joint Committee duly convened in accordance with Clause 6
"LAS"	means the Landfill Allowances Scheme (Wales) Regulations 2004
"Lead Finance Officer"	means the person so appointed or nominated from time to time by the Contract Management Board to represent the interests of the Councils in respect of financial matters in respect of the Contract and who shall be called the Lead Finance Officer
"Liability Report"	means a report prepared by the Contract Manager assisted by the Project Gwyrdd Team setting out the financial and resource commitments of the relevant Council on a termination or withdrawal including (but not limited to) the items set out in Schedule 7 (Liability Report).

"Local Council"	a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in Wales established as a successor of a principal council
"Material"	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"	has the meaning given to it in Clause 6.1.4 (Decision Making)
"Maximum Tonnage"	means the maximum tonnage of Contract Waste that a Council can deliver to the Facility before the Additional Waste provisions of the Payment Mechanism apply, and such Maximum Tonnages for each Council are set out in Clause 4A.2
"Memorandum of Understanding"	means the memorandum of understanding entered into between the Councils on or around 5 December 2007 in order to allocate resources to and co-ordinate the work required to deliver the pre-procurement stage of Project Gwyrdd
"Minimum Payment"	means the minimum annual amount to be paid by each of the Councils in accordance with Clause 4A (Minimum Payment and Maximum Tonnages) as calculated in accordance with Schedule 11 (Payment Mechanism)
"Minimum Tonnage"	means the minimum tonnage of Contract Waste to be delivered by each Council as set out in Table X in Clause 4A.1 (as adjusted in accordance with paragraph 3.2 of Schedule 11 (Payment Mechanism)
"Outline Business Case"	means the outline business case dated on or about 19 January 2009 (as amended from time to time) prepared by the Councils and submitted to the Welsh Assembly Government for funding to support Project Gwyrdd and provide approval to proceed with the procurement of Project Gwyrdd
"Partner Council"	means each Council entering into this Agreement other than the Host Authority
"Payment Force Majeure Event"	means a failure of a relevant ICT system or direct debit payment outside of the day to day control of a Council or Councils
"Performance and Improvement Plan"	means the plan to be prepared and updated as and when necessary by the Contract Manager indicating major milestones, activities and resources required in relation to the Contract, to be presented annually to the Contract Management Board in accordance with Clause 10.2 (Contract Performance Monitoring)

"Personal Data"	means the personal data as defined in the DPA
"Project Agreement Payment Mechanism"	means the Payment Mechanism as set out in Schedule 4 of the Project Agreement
"Project Gwyrdd Team Member"	has the meaning given in Clause 9.1 (Project Gwyrdd Team)
"Qualifying Change in Law"	has the meaning given to it in the Project Agreement
"Services Commencement Date"	has the meaning given to it in the Project Agreement
"Site"	means the area of land shown for the purposes of identification only edged red on the plan set out in Schedule 8 (Site)
"Site Rules"	has the meaning given to it in the Project Agreement
"Statutory Officer"	means each of a Council's head of paid service, monitoring officer (both as defined pursuant to the Local Government and Housing Act 1989) and Chief Finance Officer/(Section 151 Officer) as defined in the Act
"Transport Route Plan"	means the plan detailing (inter alia) transport routes for Contract Waste to be delivered to the Facility in the form set out in Schedule 12 (Transport Route Plan and JWA2 Sustainable Transport Plan) as updated from time to time in accordance with this Agreement.
"Waste Acceptance Protocol"	means the protocol agreed between the Host Authority and the Contractor as set out in Schedule 10 (Waste Acceptance Protocol) of this Agreement
"Welsh Language Measure"	means the Welsh Language (Wales) Measure 2011

1.2 Interpretation

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

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 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;
- 1.2.3 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.4 any reference to legislation shall be construed as a reference to any legislation as amended, replaced, consolidated or re-enacted;
- 1.2.5 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 functions and responsibilities of such public organisation;

- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 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;
- 1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and
- 1.2.9 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.

1.3 **Schedules**

The Schedules to this Agreement form part of this Agreement.

2. **COMMENCEMENT, DURATION AND TERMINATION**

2.1 **Duration of Agreement**

2.2 This Agreement shall continue in full force and effect from the Commencement Date until the earlier of the following dates:-

- 2.2.1 all the Councils agree in writing to its termination; or
- 2.2.2 there is only one remaining Council who has not withdrawn from this Agreement in accordance with Clause 18 (Withdrawal); or
- 2.2.3 the date falling six (6) months after the expiry or earlier termination of the Project Agreement.

2.3 Notwithstanding the provisions of Clause 2.2, Clause 28 (Dispute Resolution) 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.

2.4 The Councils agree that following the Commencement Date, the rights, liabilities and obligations of each Council set out in JWA 1 (and the heads of terms for "Joint Working Agreement 2" contained therein) shall be superseded by the rights, liabilities and obligations set out in this Agreement.

2.5 **Breaches of this Agreement and Remediation**

2.5.1 At any time a Statutory Officer of any of the Councils (the "**First Council**") may serve a notice on one (1) 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.

2.5.2 A Council in receipt of a Default Notice shall have ten (10) Business Days (or such longer period as agreed between the Parties (acting reasonably)) within which to serve on a Statutory Officer of the First Council who served the Default Notice a "**Counternotice**", setting out in respect of every matter contained in the Default Notice proposals for the remediation of the alleged failure 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.

- 2.5.3 Within ten (10) Business Days (or such longer period as agreed between the Parties (acting reasonably)) of receipt of a Counternotice, a Statutory Officer of the First Council shall send to a Statutory Officer 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/or 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.
- 2.5.4 Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the Other Council shall implement that proposal as soon as reasonably practicable.
- 2.5.5 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 28 (Dispute Resolution).

Termination of this Agreement

- 2.6 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/or any Contract Document and in the case of a breach capable of remedy fails to remedy the same 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 and being required to remedy the same. The Councils acknowledge that a decision to terminate the participation of a Council shall be treated as a Matter Reserved To The Councils.
- 2.7 If this Agreement is terminated in accordance with Clause 2.2 (Duration of Agreement) or Clause 2.6 (Termination), save for the obligations set out in Clause 14 (Liability of the Councils), Clause 16 (Obligations Following Expiry or Earlier Termination of the Project Agreement) and Clause 19 (Confidentiality and Announcements), the Councils shall be released from their respective obligations described in this Agreement.
- 2.8 The Councils acknowledge and agree that:
- 2.8.1 Project Gwyrdd 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;
- 2.8.2 accordingly, in the event that this Agreement is terminated in relation to any Council pursuant to Clause 2.6 (Termination) such Defaulter shall, without prejudice to Clause 16 (Obligations Following Early Termination of the Project Agreement), be liable to the Non-Defaulting Council or Councils for their consequential loss as set out in a Liability Report issued to the Defaulter within sixty (60) Business Days of the notice of termination (such Liability Report being prepared by the Contract Manager assisted by the Project Gwyrdd Team) 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;

2.8.3 pursuant to Clause 16 (Obligations Following Early Termination of the Project Agreement), if a Defaulter Council causes the early termination of the Project Agreement, such Defaulter Council shall be liable to the other Councils in accordance with Clause 16.6 and the Liability Report (prepared in accordance with Clause 2.8.2 above) shall reflect such liabilities; and

2.8.4 any amounts payable by a Defaulter set out in a Liability Report shall be paid by the Defaulter within twenty (20) Business Days following agreement of the Liability Report by the Joint Committee.

3. **SITE**

[XXX]²

4. **PRINCIPLES AND KEY OBJECTIVES**

4.1 The Councils intend this Agreement to be legally binding.

4.2 The Councils agree to work together to carry out the Contract Tasks in accordance with the terms of this Agreement.

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

4.3.1 Openness and Trust

in relation to this Agreement the Councils will act in accordance with a duty of good faith to each other, will be open and trusting in their dealings with each other, make information and analysis available to each other (and use such information in support of the Contract), 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 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;

4.3.2 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 Contract with drive, enthusiasm and a determination to succeed;

4.3.3 Skills and Creativity

the Councils recognise that each brings complimentary 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;

4.3.4 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;

² [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

4.3.5 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 Project Gwyrdd 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 Host Authority's obligations within the Project Agreement are met at all times;

4.3.6 Reputation and Standing

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

4.3.7 Reasonableness of Decision Making

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

4.3.8 Necessary Consents

each Council hereby represents to the other Councils that it has obtained all necessary consents sufficient to ensure the delegation of functions and responsibilities provided for by this Agreement;

4.3.9 Members and Officers Commitments

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

4.3.10 Welsh Language Measure

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

4A **MINIMUM PAYMENT AND MAXIMUM TONNAGES**

4A.1 The Councils acknowledge and agree that under the terms of the Project Agreement there will be a commitment to make payments for not less than the Minimum Tonnage of Contract Waste to the Contractor per year. Accordingly, if any Council fails to deliver its Minimum Tonnage of Contract Waste in any year, such Council shall still be liable for its Minimum Payment ('PUCBE y') as calculated in accordance with paragraph 3.2 of Schedule 11 (JWA2 Payment Mechanism) to the extent caused by its failure to deliver its share of Contract Waste. Table X below sets out each Council's Minimum Tonnage, unless such tonnage figure is adjusted in accordance with paragraph 3.2 of Schedule 11 (JWA2 Payment Mechanism).

Table X

Council	Minimum Tonnage
----------------	------------------------

Caerphilly County Borough Council	24,840
The County Council of the City and County of Cardiff	56,025
Monmouthshire County Council	13,095
Newport City Council	21,330
The Vale of Glamorgan Council	19,710
Total	135,000

4A.2 The Councils acknowledge the terms of Clause 23.1A (Additional Waste) of the Project Agreement relating to Additional Waste and agree that if a Council delivers more than its Maximum Tonnage of Contract Waste in any Contract Year and the Authority has delivered more than the Maximum Tonnage (as such term is defined in the Project Agreement) to the Contractor in that Contract Year, then the Additional Waste provisions of paragraph [16.2] of the Project Agreement Payment Mechanism shall apply and they will be liable for Additional Waste Payments calculated in accordance with Schedule 11 (JWA2 Payment Mechanism). Table Y below sets out each Council's Maximum Tonnage, unless such tonnage figure is adjusted in accordance with 3.2 of Schedule 11 (JWA2 Payment Mechanism).

Table Y

Council	Maximum Tonnage
Caerphilly County Borough Council	40,480
The County Council of the City and County of Cardiff	91,300
Monmouthshire County Council	21,340
Newport City Council	34,760
The Vale of Glamorgan Council	32,120
Total	220,000

4A.3 The Councils acknowledge that under the terms of the Project Agreement Payment Mechanism, a banded gate fee structure has been agreed with the Contractor based on the following 3 bands:

- 4A.3.1 the first band 'Band 0' applies up to the Minimum Tonnage (as such term is defined in the Project Agreement);
- 4A.3.2 the second band 'Band 1' applies to Contract Waste tonnages above the Minimum Tonnage (as such term is defined in the Project Agreement) up to the Forecast Base Case Contract Waste Tonnage (as such term is defined in the Project Agreement) figure for the relevant Contract Year; and
- 4A.3.3 the third band 'Band 2' applies to Contract Waste tonnages above the Forecast Base Case Contract Waste Tonnage (as such term is defined in

the Project Agreement) figure for the relevant Contract Year up to the Maximum Tonnage (as such term is defined in the Project Agreement).

- 4A.4 The Councils agree that the Contract Waste tonnage figures used to set their Bands 0, 1 and 2 (for the purposes of this Agreement) for the purposes of calculating each Council's share of the Unitary Charge in accordance with paragraph 3.2 of Schedule 11 (JWA2 Payment Mechanism) shall be as set out in Table Z below.

Table Z

Council	Band 0 up to Minimum Tonnage	Band 1 – from Minimum Tonnage up to Forecast Base Case Contract Waste Tonnage	Band 2 – from Forecast Base Case Contract Waste Tonnage to Maximum Tonnage
Caerphilly County Borough Council	24,840	Each Council's Forecast Base Case Contract Waste tonnage for that Contract Year, as set out in Schedule 9 (Forecast Base Case Contract Waste Tonnages) of this Agreement	40,480
The County Council of the City and County of Cardiff	56,025		91,300
Monmouthshire County Council	13,095		21,340
Newport City Council	21,330		34,760
The Vale of Glamorgan Council	19,710		32,120

- 4A.5 The Councils acknowledge the terms of Clause 21.2 (Testing and Commissioning) of the Project Agreement and the Commissioning Plan in relation to the delivery of Contract Waste to the Facility for the purposes of the Contractor undertaking testing and commissioning of the Facility. The Councils each agree and undertake to deliver (and to pay for the treatment of) Contract Waste up to their Minimum Tonnages in accordance with the Commissioning Plan and the Waste Acceptance Protocol and as required by the Contractor for the purposes of testing and commissioning in accordance with Clause 21.2 (Testing and Commissioning) of the Project Agreement and the Commissioning Plan. The Councils acknowledge that a failure by a Council to deliver its Minimum Tonnage during the Commissioning Period will still result in that Council having to pay its Minimum Payment in accordance with Schedule 11 (JWA2 Payment Mechanism).
- 4A.6 The Councils each agree and undertake to keep true, complete and accurate records of all Contract Waste delivered to the Contractor and to make the same available to each other as reasonably required for the purposes of the operation of this Clause 4A. The Councils agree that the Project Agreement contains an equivalent obligation on the Contractor (detailed in Schedules 2 (Authority's Requirements) and 3 (Contractor's Proposals) of the Project Agreement) to maintain and make available records of Contract Waste delivered to the Facility by each of the Councils in each year.

5. DUTIES OF THE HOST AUTHORITY AND OTHER COUNCILS

- 5.1 The Councils (acting severally) have agreed, with effect from the Commencement Date, that (following, where relevant, any approvals required from the Councils) [xxx]³ will be the Host Authority for the carrying out of the Contract administrative and representative functions (the "**Contract Tasks**") which shall be carried out for and on behalf of itself and the other Councils and [xxx] agrees to act in that capacity subject to and in accordance with the terms of this Agreement.
- 5.2 The Councils shall recognise:
- 5.2.1 that each Council has made the decision to conclude the entry into the Project Agreement and to meet the obligations of "the Authority" therein; and
- 5.2.2 the existence of and shall comply with the decisions that have been delegated to the Joint Committee. For the avoidance of doubt the Councils shall have the right to and shall make individual independent decisions on matters referred to each of them by the Joint Committee for decision and on matters not delegated or referred to the Joint Committee.
- 5.3 The Councils have agreed that role of Host Authority includes (but is not limited to):-
- 5.3.1 acting on behalf of the Councils in the administration of the Contract;
- 5.3.2 acting under the direction of the Joint Committee, provided always that the Joint Committee can only direct in accordance with the terms of the Project Agreement;
- 5.3.3 in respect of any function, acting on behalf of the other Councils in respect of that function;
- 5.3.4 liaising with the Contractor and the Contractor 's representatives;
- 5.3.5 participating in the Liaison Committee (and co-ordination of the three (3) Council representatives who are appointed to the Liaison Committee for the purposes of Schedule 18 (and Liaison Procedure) of the Project Agreement);
- 5.3.6 subject to indemnities, acting as the employing authority for any staff involved in the administration of the Contract (who shall report to the Contract Management Board) in accordance with this Agreement (including the Contract Manager);
- 5.3.7 being the legal point of contact for the purposes of managing the Contract;
- 5.3.8 providing such additional administrative resources and office facilities that may be necessary for the purpose of discharging the Contract and holding all central funds;
- 5.3.9 responsibility for liaison and communication with the Welsh Government and co-ordination of communication and public relations;
- 5.3.10 managing the application of the Annual Budget in respect of the Contract and reporting on expenditure to the Joint Committee; and
- 5.3.11 having powers to enter into contracts for consultants as required for the purposes of the Contract following prior approval from the Contract Management Board.

³ [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

- 5.4 The Councils acknowledge that the Host Authority's role in the administration of the Project Agreement shall be largely discharged by the Contract Manager acting as Authority's Representative (as such term is defined in the Project Agreement) within the limits of the delegated authority granted to the Contract Manager.
- 5.5 The Contract Manager shall:
- 5.5.1 be employed by or seconded to the Host Authority and report to the Contract Management Board;
 - 5.5.2 be responsible to all of the Councils when acting in accordance with the terms of this Agreement, regardless of whether he/she is employed by or seconded to the Host Authority;
 - 5.5.3 conduct all day to day business for the Contract to satisfy the Host Authority's obligations to the Contractor under the Project Agreement, including all "Contract Manager Matters" described in Clause 6.1.1 and in doing so the Contract Manager shall, before committing to a decision for the Contract, acting in the interests of each of the Councils liaise and consult with appropriate technical officers of the relevant Councils (which technical officers shall each report to their relevant Council Lead Officer) where that decision has a material effect on the services provided under Project Gwyrdd within the relevant Councils' administrative areas;
 - 5.5.4 potentially have staff reporting to him or her who may be seconded from the other Councils (not being the Host Authority); and
 - 5.5.5 notify the Host Authority (without undue delay) of any matter that may reasonably be expected to have a local and/or political significance to any Council.
- 5.6 The Councils (subject always to a right to improve and increase recycling) agree and undertake to commit to the Contract 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 Contract outside the terms of this Agreement (including (without limitation) wilfully diverting Contract Waste away from the Facility) unless and until it shall have withdrawn from the Contract in accordance with Clause 18 (Withdrawal). The Councils acknowledge that their commitment to a Minimum Payment for Contract Waste remains whether they consider alternative waste collection or recycling programmes and that pursuant to Clause 4A.1 (Minimum Payment and Maximum Tonnages) each Council shall be liable for its Minimum Payment.
- 5.7 Each Council shall be deemed to have satisfied itself of all relevant matters contained within the Contract Documents and shall not rely on any representations made by any other Council in respect of the Contract Documents. Other than the Contract Documents specifically referred to in this Agreement, no Council shall have any liability to another Council in respect of any additional or further contracts entered into by that other Council unless previously agreed in writing.
- 5.8 Each Council warrants to the other Councils that it shall observe and comply with the terms of each of the Contract Documents and shall, subject to the other provisions of this Agreement, indemnify the other Councils in respect of any loss, damage or expense caused as a result of its breach of any of the Contract Documents.
- 5.9 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 Contract provided that (subject to any specific obligations within this Agreement) no

Council shall be under any duty to fulfil obligations which are the responsibility of any other Council.

- 5.10 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.
- 5.11 If the Host Authority defaults and the Agreement is terminated in respect of it pursuant to Clause 2.6 (Termination) or the Host Authority withdraws pursuant to Clause 18 (Withdrawal), then a replacement Host Authority will be appointed by the Joint Committee and the withdrawing/defaulting Host Authority will not have the right to vote in regard to any such appointment.
- 5.12 For the duration of this Agreement, the Host Authority shall act diligently and in good faith in all its dealings with the Contractor and the other Councils and it shall use its reasonable endeavours to carry out the Contract Tasks in accordance with any Welsh Government guidance and any applicable legislation.
- 5.13 For the duration of this Agreement, the Host Authority shall act as the primary interface with the Contractor, the Welsh Government and any other body necessary to carry out the Contract Tasks in accordance with the terms of this Agreement.
- 5.14 For the duration of this Agreement, the other Councils shall act diligently and in good faith in all their dealings with the Host Authority and shall use their reasonable endeavours to assist the Host Authority to carry out the Contract Tasks in accordance with any requirements of the Welsh Government and any applicable legislation.

6. DECISION MAKING

- 6.1 In terms of the need for decisions and other actions to be taken and carried out pursuant to the performance of the Contract Tasks, the Councils have identified the following four categories together with the means by which they will be taken:-
- 6.1.1 **"Contract Manager Matter"** – being the day to day management of the Contract (in accordance with the terms of the Project Agreement) pursuant to Clause 5.5, which shall include any decision which has (or is reasonably expected to have) an annual financial impact on the Contract of up to (and including) [£250,000]⁴, except in circumstances where such decision could reasonably be expected to have local and/or political significance to any of the Councils, in which case such decision shall be elevated to the Contract Management Board, provided always that the Contract Manager may refer any matter to the Contract Management Board;
- 6.1.2 **"Contract Management Board Matter"** - being a matter which is to be decided upon (pursuant to Clause 8 and Schedule 3 (Contract Management Board Terms of Reference)) at a quorate meeting of the Contract Management Board by those present and entitled to vote and which shall have (or is reasonably expected to have) an annual financial impact on the Contract of between [£250,001] and [£500,000], or be a matter referred to the Contract Management Board by the Contract Manager. Any decision made by the Contract Management Board in relation to a Contract Management Board Matter within these financial parameters shall be binding on all of the Councils. Any decision to be made on a matter with an impact (or expected impact) in excess of these parameters shall be elevated to the Joint Committee, provided always that the Contract Management Board can refer any matter of any financial value to the Joint Committee if they so decide;

⁴ [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

- 6.1.3 **"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 7 and Schedule 2 (Joint Committee Terms of Reference) to vote and which shall have (or is reasonably expected to have) an annual financial impact on the Contract of between [£500,001] and [£1,000,000], or be a matter referred to the Joint Committee by the Contract Management Board. Any decision made by the Joint Committee in relation to a Joint Committee Matter within these financial parameters shall be binding on all of the Councils. Any decision to be made on a matter with an impact (or expected impact) in excess of these parameters shall be referred as a Matter Reserved To The Councils. The Joint Committee may determine that any Joint Committee Matter or any Contract Management Board Matter may be referred back to each Council for decision as a Matter Reserved To The Councils and/or make a decision to delegate any matter to the Contract Management Board for decision; and
- 6.1.4 **"Matter Reserved To The Councils"** – being a matter which will have to be referred to each Council for decision (at a meeting of either the relevant cabinet or full Council at the discretion of each Council) and, for the avoidance of doubt, any such matter will not be dealt with by the Contract Management 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 28 (Dispute Resolution) as a dispute for resolution.
- 6.2 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.
- 6.3 The Partner Representative Group consisting of operational staff representatives from each Council and chaired by the Contract Manager shall meet on a monthly basis to report on performance under the terms of the Project Agreement and on any service changes or service deficiencies experienced by the Councils. Further details on the aims of the Partner Representative Group are set out in Schedule 1 (Partner Representative Group).
- 6.4 Each Council acknowledges and agrees that the Host Authority shall have the power and the entitlement to require a decision that in its opinion (acting reasonably) shall either:
- 6.4.1 lead to a significant and material deviation from the agreed Transport Route Plan or JWA2 Sustainable Transport Plan detailed in Clause 10A (Transport Route Plan and JWA2 Sustainable Transport Plan); or
 - 6.4.2 mean a substantive change to the size or nature of the Facility; or
 - 6.4.3 mean a substantive change to the size or nature of the Contract,
- to be referred as a Matter Reserved To The Councils and such decision shall not be implemented unless approved by all of the Councils.
7. **JOINT COMMITTEE**
- 7.1 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 JWA 1 to carry out the functions set out in Schedule 2 (Joint Committee Terms of Reference).
- 7.2 The Joint Committee shall not have power to approve any Matter Reserved To The Councils pursuant to Clause 6.1.4.

- 7.3 Each Council shall appoint two elected member representatives to the Joint Committee. The Chairperson of the Joint Committee shall be an elected member of the Host Authority appointed by the Joint Committee from time to time.
- 7.4 Each Council shall be entitled from time to time to appoint a deputy for each of its representatives but such deputy (in each case) shall only be entitled to attend meetings of the Joint Committee in the absence of his or her corresponding principal.
- 7.5 Each Council shall be entitled to invite appropriate third parties to observe Joint Committee Meetings and such third parties shall be entitled to take part in such Joint Committee Meetings at the discretion of the Chairperson 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.
- 7.6 Each Council may, at their discretion, replace their representatives (and their respective deputies) appointed to the Joint Committee, provided that at all times, they have representatives appointed to the Joint Committee in accordance with the roles identified in Clause 7.3 above.
- 7.7 The Joint Committee shall meet as and when required in accordance with the timetable for the Contract and, in any event, at appropriate times and on reasonable notice (to be issued through the Contract Manager) to carry out the Joint Committee Matters.
- 7.8 The quorum necessary for a Joint Committee meeting shall be one of the following:
- 7.8.1 an elected member or appropriate deputy appointed pursuant to Clause 7.4 above, or
- 7.8.2 if neither the elected member or the applicable appointed deputy of a Council are available, then an appropriate proxy (in person or by telephone),
- from all five (5) Councils unless such a quorum is not reached in which case the relevant meeting shall be re-convened and the required quorum shall be at least one of the representatives set out in Clause 7.8.1 or Clause 7.8.2 above from at least three (3) Councils.
- 7.9 At meetings of the Joint Committee each elected member or appropriate deputy appointed pursuant to Clause 7.4 above or appropriate proxy (as applicable) from each Council shall have one vote. Subject to the Host Authority's right to refer a decision pursuant to Clause 6.4 as a Matter Reserved To The Councils, decisions at meetings of the Joint Committee will be taken by a majority vote. The Contract Manager shall not have a vote.
- 7.10 If, at a meeting of the Joint Committee, a matter is not determined by a majority vote pursuant to Clause 7.9, that matter ("**JC Unresolved Matter**") shall be deferred for consideration at the next Joint Committee Meeting which shall be convened within ten (10) Business Days of that meeting. If at the reconvened Joint Committee meeting the JC Unresolved Matter is not determined by a majority vote, the Chairperson shall have a casting vote in respect of that JC Unresolved Matter.
- 7.11 Without prejudice to Clause 7.10, if one Council requests that a decision of the Joint Committee be deferred, the Chairperson shall defer such decision until the next Joint Committee Meeting which shall be convened within the next ten (10) Business Days of that meeting.
- 7.12 Each Council shall provide all information reasonably required upon request by the Joint Committee and shall comply with any decisions of the Joint Committee to request such information.

- 7.13 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.
- 7.14 The Host Authority will provide clerical support for the Joint Committee including convening meetings and maintaining minutes.
- 7.15 The Project Gwyrdd Team will provide financial, legal, procurement and technical advice and support to the Joint Committee as and when required.

8. **CONTRACT MANAGEMENT BOARD**

- 8.1 The Councils shall form the Contract Management Board ("**Contract Management Board**") for the purpose of the day-to-day management of the Contract and the Contract Manager and the implementation and monitoring of the process and to carry out the Contract Management Board Matters in accordance with the Contract Management Board's Terms of Reference as set out in Schedule 3 (Contract Management Board Terms of Reference).
- 8.2 The Contract Management Board shall have the powers to make decisions and recommendations within its Terms of Reference as set out in Schedule 3 (Contract Management 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 6.1.4.
- 8.3 Notwithstanding the above, the following specific functions are given to the Contract Management 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 costs expended against the Annual Budget to ensure that the contract management function remains within budget; and
- (b) the Unitary Charge payments to the Contractor for services delivered against the overall forecast Unitary Charge for each Contract Year.
- 8.4 Each Council shall appoint one senior officer representative (being a director or head of service) to the Contract Management Board. The Chairperson of the Contract Management Board shall be a director of the Host Authority appointed by the Contract Management Board from time to time. Each such representative shall have one vote on any matter to be determined by the Contract Management Board. Decisions at meetings of the Contract Management Board will be taken by a majority vote.
- 8.5 The quorum necessary for a Contract Management Board Meeting shall be a senior officer representative from all five (5) Councils unless such a quorum is not reached in which case the relevant meeting shall be re-convened and the required quorum shall be a senior officer representative from at least three (3) Councils (in person or by telephone or video-conference facility). The Contract Manager, the Lead Finance Officer, the legal, procurement and technical officers for each Council shall be entitled to attend the meetings of the Contract Management 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 Contract Management Board Meetings in a non-voting capacity.
- 8.7 If, at a meeting of the Contract Management 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 Contract Management Board Meeting which shall be convened within ten (10) Business Days of that meeting. If at the reconvened Contract Management Board Meeting the PB Unresolved Matter is not determined by a majority vote, subject to the Host Authority's right to refer a decision pursuant to Clause 6.4 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 Contract Management 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 Contract Management 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 Contract Management Board are unable or incapable of discharging their functions.
- 8.10 Each Council's substitute representative shall be entitled to attend meetings of the Contract Management Board but shall only be entitled to vote in the absence of his or her corresponding voting representative.
- 8.11 The Contract Management Board shall meet as and when required in accordance with the timetable for the Contract.

9. **PROJECT GWYRDD TEAM**

- 9.1 The Councils shall appoint the officers set out below (the "**Project Gwyrrdd Team Members**") for the purpose of the Contract (advised by the head of human resources or equivalent officer of the Host Authority and shall act within the employment procedure rules and policies of the Host Authority):

- 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 Contract (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 Project Gwyrrdd Team Members may be:

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

- 9.2.2 seconded by the Councils for the purpose of the Contract to the Host Authority 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. **CONTRACT PERFORMANCE MONITORING**

- 10.1 The Contract Manager shall continually monitor all aspects of the Contract's performance and prepare the Performance and Improvement Plan.
- 10.2 No later than 10 December in any Contract Year, the Contract Manager shall present the draft Performance and Improvement Plan including any resource requirements for

the Contract and the draft Annual Budget to the Contract Management Board to enable the Contract Management Board to be made aware of any significant changes which they may refer for approval and recommendation to the Joint Committee at the meeting referred to in Clause 11.2.

10.3 The Performance and Improvement Plan for the Contract, as amended where necessary and 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 11.4 (Annual Budget and Accounts); and

10.3.2 an instruction from the Joint Committee to the Contract Management Board.

10A **TRANSPORT ROUTE PLAN AND JWA2 SUSTAINABLE TRANSPORT PLAN**

10A.1 The Councils have agreed that deliveries of Contract Waste to the Facility shall be carried out in accordance with the Transport Route Plan and the JWA2 Sustainable Transport Plan set out in Schedule 12 (Transport Route Plan and JWA2 Sustainable Transport Plan).

10A.2 The Councils agree that subject to Clause 10A.3, the Transport Route Plan and the JWA2 Sustainable Transport Plan shall be reviewed and updated where necessary by the Contract Management Board (where such updates are minor in nature).

10A.3 Any significant changes to the Transport Route Plan and/or the JWA2 Sustainable Transport Plan shall be referred as a Matter Reserved to the Councils. Subject to Clause 6.4, what constitutes a "significant change" shall be decided upon at the relevant time by the Contract Management Board (acting reasonably).

11. **ANNUAL BUDGET AND ACCOUNTS**

11.1 The Councils have approved the Annual Budget for 2013-14 and recommended indicative budgets for financial years 2014-2015, 2015-2016 and 2016-2017 as set out in Schedule 5 (Annual Budget).

11.2 By no later than the fifteenth (15th) Business Day in December in any Contract Year, the Contract Management Board shall present to the Joint Committee a draft Annual Budget for the following Contract Year.

11.3 The draft Annual Budget shall have been prepared by the Contract Manager, assisted by the Lead Finance Officer, and be based on the Contract spend in the previous Contract Year, taking into account the contents of the Performance and Improvement Plan.

11.4 At the relevant meeting referred to in Clause 11.2 above, the Joint Committee shall consider the draft Annual Budget and subject to any amendments will then recommend it to the Councils as a final Annual Budget for the following Contract Year. The Annual Budget shall be the amount in the opinion of the Joint Committee that is reasonably required to fund the administration of the Contract.

11.5 The approval of the Annual Budget shall be a Matter Reserved To The Councils, and each Council shall contribute one fifth of the Annual Budget.

11.6 Each of the Councils shall make available to the Host Authority their share of the Annual Budget by the first day of each Accounting Period or as agreed by the Councils.

- 11.7 Expenditure for the Contract, to be counted against the Annual Budget, will be solely recorded by the Host Authority. In accordance with Clause 11.10, Contract expenditure incurred by a Partner Council will need to be approved in advance by the Contract Manager. Any approved expenditure incurred by a Partner Council will be recovered by the issuing of an invoice to the Host Authority with supporting documents to justify such expenditure. Any such approved expenditure shall be paid by the Host Authority within twenty (20) Business Days of receipt of a valid invoice.
- 11.8 Each Council shall nominate an individual to be responsible for ensuring their Council's compliance with this Clause 11. If an individual nominated by a Council pursuant to this Clause 11.8 changes, that Council shall notify the Host Authority forthwith of the replacement nominee.
- 11.9 Whenever any sum of money is recoverable from or payable by a Council it may be deducted from any sum then due to that Council under this Agreement and vice versa.
- 11.10 The Councils hereby agree that:-
- 11.10.1 if one of the Councils wishes to carry out any work or incur any cost or expenses in relation to the Contract in any single Contract Year or requests the Joint Committee, the Contract Management Board or any member or officer appointed to or engaged to support the Contract to carry out any work or to incur any cost or expense that is not envisaged by relevant Annual Budget then such Council shall seek the prior written approval of the Contract Manager to approve it and allocate Contract funding else it shall have to bear the cost itself; and
- 11.10.2 if one of the Councils carries out any work or incurs any cost or expenses or requests the Joint Committee, the Contract Management Board or any member or officer appointed to or engaged to support the Contract to carry out any work or to incur any cost or expense in relation to the Contract 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 Contract Management Board for a decision as to whether such work, cost or expense is part of the Contract 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 Contract Management Board and in the case of dispute Clause 28 (Dispute Resolution) shall apply.
- 11.11 The Councils hereby agree that if one of the Councils believes it is likely to incur disproportionate internal resource costs (compared to the Contract spend profile set out in the relevant Annual Budget) that matter shall be referred to the Contract Management 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.
- 11.12 If at any time in any Contract Year, in the opinion of the Contract Management Board, the actual costs associated with the Contract are likely to exceed the approved Annual Budget by more than 20% (twenty percent) this will be referred to the Joint Committee for approval as a Matter Reserved To The Councils.
- 11.13 The Lead Finance Officer shall prepare the accounts in respect of the Annual Budget in accordance with proper accounting practices as contained in the appropriate Code of Practice on Local Authority Accounting in the United Kingdom. The Joint Committee shall approve the audited statement of accounts in accordance with the relevant Accounts and Audit (Wales) Regulations.

12. PAYMENTS, DATA AND REPORTING⁵

12.1 Monthly Payments, Quarterly Payments and Annual Reconciliation Payments

12.1.1 The provisions of Schedule 11 (JWA2 Payment Mechanism) shall apply in respect of:

- (a) Monthly Commissioning Payments to be made by the Partner Councils to the Host Authority pursuant to this Agreement
- (b) Commissioning Reconciliation Payments to be made by the relevant Councils
- (c) Monthly Payments to be made by the Partner Councils to the Host Authority pursuant to this Agreement;
- (d) Quarterly Payments to be made either by the Host Authority to the Partner Councils or vice versa; and
- (e) Annual Reconciliation Payments to be made either by the Host Authority to the Partner Councils or vice versa.

12.1.2 Subject to the provisions of Schedule 11 (JWA2 Payment Mechanism), with effect from the Readiness Date each Partner Council shall pay to the Host Authority the Monthly Payment in respect of each Payment Period, calculated in accordance with Schedule 11 (JWA2 Payment Mechanism) subject always to the Quarterly Payments and Annual Reconciliation Payments calculated in accordance with that Schedule.

12.2 Other Payments

12.2.1 In respect of any payments not covered by the provisions of Clause 12.1 above, that may be necessary as a result of the operation of the Project Agreement, or any other payments due from one Council to another Council pursuant to the terms of this Agreement which shall include (without limitation):

- (a) costs relating to a Qualifying Change in Law;
- (b) costs relating to Compensation Events;
- (c) costs as a consequence of Relief Events;
- (d) costs in relation to disputes under the Project Agreement;
- (e) costs of the resolution of any dispute and/or disagreement between the Councils under Clause 28 of this Agreement,

the Host Authority shall, on or before the fifth (5th) Business Day following the date upon which it becomes aware of the requirement for such payment, prepare and submit to each Partner Council affected by that payment either:

⁵ [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

- (i) an invoice for the amount owing by the Partner Council to the Host Authority and for any VAT payable by the Partner Council in respect of that amount; or
- (ii) a credit note for the net amount owing by the Host Authority to the Partner Council and for any VAT payable by the Host Authority in respect of that amount.

12.2.2 A Partner Council in receipt of an invoice submitted under Clause 12.2.1 shall pay to the Host Authority the amount stated on the date which is thirty (30) days following receipt of that invoice.

12.3 **Payments to Contractor**

12.3.1 The Councils acknowledge that the Host Authority's ability to agree and make payments to the Contractor is governed by the terms of the Project Agreement (specifically pursuant to Clause 45 (Invoicing and Payment), the Project Agreement Payment Mechanism and Schedule 19 (Revision of Base Case and Custody)). The Councils acknowledge that the invoicing provisions of the Project Agreement shall inform the timescales for intra-Councils handling of payments and the Contract Management Board shall be responsible for agreeing any amended timetable for invoice review and payment within this Agreement from time to time.

12.3.2 The Councils acknowledge and agree that there is a fundamental requirement for the Host Authority to be in receipt of cleared funds prior to the date payment is due to be made by the Host Authority to the Contractor pursuant to the Project Agreement.

12.3.3 Subject to Clause 12.3.5, if a Partner Council fails to pay a payment when due under the terms of this Agreement, the Host Authority will still make payment to the Contractor in accordance with any requirement to pay under the Project Agreement in order not to default under such terms, but will then be entitled to claim Interest at the Default Rate in addition to the payment owed by such Partner Council.

12.3.4 If the Host Authority fails to make a payment to the Contractor in accordance with any requirement to pay under the Project Agreement then any extra payment required to be paid to the Contractor will be shared by all Councils in accordance with the Cost Sharing Ratio set out in paragraph 1 of Schedule 11 (JWA2 Payment Mechanism).

12.3.5 If a failure to pay on time by a Council is down to a Payment Force Majeure Event then any costs shall be shared by the Councils in accordance with the Cost Sharing Ratio set out in paragraph 1 of Schedule 11 (JWA2 Payment Mechanism).

12.3.6 A series of direct debits between the Partner Councils and the Host Authority shall be implemented to ensure the fundamental payment requirement set out in Clause 12.3.2 is achieved. Each direct debit shall be set up to implement payment on the tenth (10th) Business Date of each Payment Period and the amount of each payment shall equal the relevant Monthly Forecast Partner Unitary Charge calculated in accordance with paragraph 4.3 of Schedule 11 (JWA2 Payment Mechanism). Each Partner Council shall ensure that their respective direct debits are only cancellable by two senior officers.

12.3.7 If the amounts in a Partner Council's direct debits are too little then the appropriate Council's Forecast Partner Unitary Charge shall be increased

accordingly. If the amounts in a Partner Council's direct debits are too large then adjustments will be made in the Annual Reconciliation Amount in accordance with paragraph 6 of Schedule 11 (JWA2 Payment Mechanism).

12.3.8 The Host Council shall implement a direct debit to the Contractor for the purposes of payment of the Unitary Charge under the Project Agreement. This direct debit payment shall only be cancellable by two senior officers.

12.4 Project Agreement Benefits

12.4.1 The Councils agree that, notwithstanding that any Council (or combination of Councils) may have received a payment or deduction (whether by way of set-off or otherwise) from the Contractor pursuant to the Project Agreement or pursuant to a claim made under the Required Insurances, to the extent that any costs, payments, liabilities, compensation or claims are paid by the Contractor pursuant to the Project Agreement relate to a matter shown in the first column of the table below, such costs, payments, liabilities, compensation or claims shall be allocated between them in accordance with the allocation set out the second column of Table A below in the row corresponding to the matter in question:

Table A

Nature of cost, payment, liability or claim (and Project Agreement reference)	Allocation
Receipt of amounts from the Contractor pursuant to any indemnities under the Project Agreement	To be allocated to the Councils in proportions equal to the Cost Sharing Ratio set out in paragraph 1 of Schedule 11 of this Agreement.
Insurance proceeds	Payable to the Council or Councils directly affected by the matter the subject of the relevant insurance claim, and where not specific to an individual Council or Councils, to be allocated to the Councils in proportions equal to the Cost Sharing Ratio set out in paragraph 1 of Schedule 11 of this Agreement.
Savings associated with a Contractor Change	Payable to the Council or Councils directly affected by the Contractor Change, and where not specific to an individual Council or Councils, to be allocated to the Councils in proportions equal to the Cost Sharing Ratio set out in paragraph 1 of Schedule 11 of this Agreement.
Any costs, payments, liabilities, compensation or claims not referred to above.	To be allocated between the Councils in proportions which are deemed by all Councils to be equitable in the circumstances, having regard to the nature of the cost, payment, liability or claim borne by the Contractor provided that the Councils shall at all times act in good faith and seek to agree proportions that reflect the

Nature of cost, payment, liability or claim (and Project Agreement reference)	Allocation
	principles set out in this Agreement.

12.5 Third Party Income

12.5.1 The Councils acknowledge the provisions of Clause 50 (Third Party Income) of the Project Agreement, paragraph 9 (Third Party Income Deduction) of the Project Agreement Payment Mechanism and paragraph 6 (Principles Relating to Third Party Income) of Schedule 19 (Revision of Base Case and Custody) in relation to Third Party Income.

12.5.2 The Councils agree that the provisions of paragraph 3 of Schedule 11 (JWA2 Payment Mechanism) relating to [Gain Share Revenues] shall apply in relation to payments in respect of Third Party Income.

12.6 Payments from Welsh Government

12.6.1 The Councils agree that the provisions of Schedule 11 (JWA2 Payment Mechanism) shall apply in relation to payments from the Welsh Government.

12.7 Reporting

Without prejudice to Clause 4A.6, the Host Authority shall within one week of receipt of the same from the Contractor, provide to the Partner Councils a copy of any information received from the Contractor pursuant to the reporting obligations on the Contractor set out in Schedule 2 (Authority's Requirements) and Schedule 3 (Contractor's Proposals) of the Project Agreement relating to tonnage inputs of all of the Councils.

13. INTELLECTUAL PROPERTY

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

13.2 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 Contract Tasks and any other purpose resulting from the Contract Tasks whether or not the party granting the licence remains a party to this Agreement or the Contract Tasks.

13.3 Without prejudice to Clause 13.1, if more than one 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 Council can demonstrate that it independently supplied or created the relevant IP Material without the help of one 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.

13.4 For the avoidance of doubt, any entity or person who is at the Commencement Date 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.

13.5 Each Council warrants that it has or will have the necessary rights to grant the licences set out in Clause 13.2 and 13.3 in respect of the IP Material to be licensed.

13.6 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.

14. **LIABILITY OF THE COUNCILS**

14.1 The Host Authority shall indemnify and keep indemnified each of the Partner Councils to this Agreement against any losses, claims, expenses, actions, demands, costs and liability suffered by that Partner Council to the extent arising from any wilful default or wilful breach or negligent act or omission to the extent such negligent act or omission is covered by insurance and can be successfully claimed under insurance in relation to its obligations under this Agreement or under the Contract Documents and the Host Authority shall make payment to the other Councils sums for which it becomes liable under this Clause 14.1 within twenty (20) Business Days of the date of Partner Council's written demand.

14.2 No claim shall be made against the Host Authority to recover any loss or damage which may be incurred by reason of or arising out of the carrying out by the Host Authority of its obligations under this Agreement or under the Contract Documents unless and to the extent such loss or damage arises from any wilful default or wilful breach or negligent act or omission to the extent such negligent act or omission is covered by insurance and can be successfully claimed under insurance pursuant to Clause 14.1.

14.3 Each of the Partner Councils warrant that they will not through action or inaction cause the Host Authority to breach the terms of the Project Agreement and each Partner Council (acting severally) shall indemnify and keep indemnified the Host Authority against all losses, claims, expenses, actions, demands, costs and liabilities which the Host Authority may incur by reason of or arising out of the carrying out by the Host Authority of its obligations under this Agreement or under the Contract Documents for that Partner Council or any wilful default or wilful breach or negligent act or omission to the extent such negligent act or omission is covered by insurance and can be successfully claimed under insurance in relation to such obligations unless and to the extent that the same result from any breach by the Host Authority of any such obligations or any wilful default or wilful breach or negligent act or omission to the extent such negligent act or omission is covered by insurance and can be successfully claimed under insurance by the Host Authority and each Partner Council shall make payment to the Host Authority sums for which it becomes liable under this Clause 14.3 within twenty (20) Business Days of the date of the Host Authority's written demand.

14.4 The Councils agree and acknowledge that the amount to be paid to the Host Authority by any of the Partner Councils under Clause 14.3 shall be borne by each of the Partner Councils to the extent of its responsibility, however in the event that the responsibility is a shared one between the Partner Councils (so that it is not reasonably practicable to ascertain the exact responsibility between the Partner Councils) then the amount to be paid shall be divided equally between the Partner Councils.

14.5 Each of the Partner Councils (acting severally) shall indemnify and keep indemnified the Host Authority against all losses, claims, expenses, actions, demands, costs and liabilities suffered by the Host Authority to the extent arising from any wilful default or wilful breach or negligent act or omission to the extent such negligent act or omission is covered by insurance and can be successfully claimed under insurance in relation to such other Partner Councils' obligations under this Agreement and such other Partner Council shall make payment to the Host Authority sums for which it becomes

liable under this Clause 14.5 within twenty (20) Business Days of the date of the Host Authority's written demand.

- 14.6 In the event of a claim under this Clause 14 in which it is not reasonably practicable to determine the extent of responsibility as between the Councils (including the Host Authority), or where there is a claim that arises otherwise than through the wilful default or wilful breach or negligent act or omission to the extent such negligent act or omission is covered by insurance and can be successfully claimed under insurance of the Host Authority or a Partner Council, then the amount shall be divided equally between the Councils (including the Host Authority).
- 14.7 A Council (including the Host Authority) 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 the other Councils.
- 14.8 No Council shall be indemnified in accordance with this Clause 14 unless it has given notice in accordance with Clause 14.7 to the other Council against whom it will be enforcing its right to an indemnity under this Agreement.
- 14.9 No Council shall be entitled to recover any amount pursuant to the indemnities set out in this Clause 14 to the extent that such amounts have already been paid pursuant to any other Clause of this Agreement including (inter alia) Clause 12 (Payments, Data and Reporting).
- 14.10 Each Council ("**Indemnifier**") shall not be responsible or be obliged to indemnify the other Councils (including the Host Authority) ("**Beneficiary**") to the extent that any insurances maintained by the Beneficiary at the relevant time provide an indemnity against the loss giving rise to such claim and to the extent that the Beneficiary recovers under such policy of insurance (save that the Indemnifier shall be responsible for the deductible under any such policy of insurance and any amount over the maximum amount insured under such policy of insurance).
- 14.11 Any liability to the Contractor in respect of any indemnity (which for the avoidance of doubt shall include Compensation Events and any other remedy of the Contractor under the Project Agreement which results in a financial obligation on the Host Authority) 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 Council in such proportions as are agreed or determined by the Contract Management Board else in accordance with Clause 28 (Dispute Resolution) to reflect the respective liability of each Council).
- 14.12 The Host Authority will have regard to, and to the extent not dealt with by the Contractor, administer all Contract insurances in accordance with the provisions of the Project Agreement.
- 14.13 The Councils shall ensure that adequate insurance cover is effected and maintained as far as possible in respect of any liabilities they may have in the event of any neglect or default on their part.
- 14.14 Where any claim or claims are brought by any third party against [xxx]⁶ Council acting in its role as Host Authority and would fall for consideration under any insurance policy held by [xxx] Council, then to the extent that [xxx] Council has to meet a part of the claim (including any deductible payable pursuant to the policy of insurance) then [xxx] Council shall be entitled to charge such cost to the Contract and such cost shall be met by the Councils in equal shares. To the extent that [xxx] Council incurs any increased insurance premiums, which arise directly as a result of it acting as Host Authority, then it may recharge the cost of such increased premium to the Contract and such cost shall be met by the Councils in equal shares. Should any other Council

⁶ [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

be required to carry out any specific role for the Contract, which has any similar resulting insurance costs to those identified in this clause, then the same principles shall apply in respect of such other Council.

15. **TERMINATION OF THE PROJECT AGREEMENT**

15.1 Should the Host Authority become entitled to terminate the Project Agreement or otherwise serve a notice pursuant to Clause 67 (Termination for Contractor Default), Clause 69 (Termination on Force Majeure), Clause 71 (Termination on Corrupt Gifts and Fraud) or Clause 75 (Termination for Breach of Refinancing Provisions) of the Project Agreement, the Councils shall meet as soon as reasonably practicable thereafter to decide as a Matter Reserved To The Councils whether the Project Agreement should be terminated (and for the avoidance of doubt no partial termination is contemplated and any changes of scope in the Contract are to be addressed as an Authority Change), taking into account:

15.1.1 the point during the Contract term at which termination of the Project Agreement would occur;

15.1.2 the financial consequences of such termination and the rights of the Contractor pursuant to Schedule 17 (Compensation on Termination) of the Project Agreement;

15.1.3 the financial consequences of continuing with the Contract;

15.1.4 the views of each Council concerning such termination;

15.1.5 any alternative providers or means of provision of the works and/or services available to the Councils; and

15.1.6 any other matters relevant to the termination or continuance of the Contract.

15.2 For the avoidance of doubt, the Host Authority 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.

16. **OBLIGATIONS FOLLOWING EARLY TERMINATION OF THE PROJECT AGREEMENT**

16.1 The Councils' liability on early termination of the Project Agreement shall be defined by reference to the Host Authority's obligation to pay compensation on early termination to the Contractor as follows:

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

16.1.2 Clause 67 (Termination for Contractor Default) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;

16.1.3 Clause 69 (Termination on Force Majeure) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;

16.1.4 Clause 71 (Termination on Corrupt Gifts and Fraud) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;

16.1.5 Clause 73 (Voluntary Termination by the Authority) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;

- 16.1.6 Clause 75 (Termination for Breach of Refinancing Provisions) and Part 2 of Schedule 17 (Compensation on Termination) of the Project Agreement;
 - 16.1.7 Any other provision within the Project Agreement that affects liability on termination of the Project Agreement; and
 - 16.1.8 Any other liability that the Host Authority may reasonably incur which flows from or is connected to the termination of the Project Agreement.
- 16.2 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.
- 16.3 The Councils shall be liable (and shall indemnify each other) for the Termination Sum payable to the Contractor following the early termination of the Project Agreement, in the proportions described in the Cost Sharing Ratio set out in paragraph 1 of Schedule 11 of this Agreement, in respect of any Termination Sum payable in accordance with Clause 65 (Termination for Authority Default) or Clause 4.5 (Relevant Discharge Terms) and Schedule 28 (Relevant Discharge Terms) of the Project Agreement, in the case of an early termination that is the equal fault of all of the Councils.
- 16.4 If the Councils are not equally at fault for such an early termination as referred to in Clause 16.3 above, the Councils agree that the Council or Councils whose acts or omissions gave rise to the termination pursuant to Clause 65 (Termination for Authority Default) or Clause 4.5 (Relevant Discharge Terms) and Schedule 28 (Relevant Discharge Terms) of the Project Agreement shall be liable (and shall indemnify each other) for a greater proportion of the Termination Sum than would otherwise be the case if the Termination Sum was apportioned solely in accordance with the Cost Sharing Ratio set out in paragraph 1 of Schedule 11 of this Agreement, in such proportions as are agreed between the Councils acting reasonably, or in default of agreement between the Councils, by the date which is three (3) months after the date the Termination Sum is paid to the Contractor, the matter being determined in accordance with Clause 28 (Dispute Resolution) to reflect the respective liability of each Council and the concept of mutual benefit shall not apply. If such early termination is caused entirely by the acts or omissions of a single Council, then that Council shall be liable for the entire Termination Sum payable to the Contractor.
- 17. CHANGES AND CHANGE IN LAW**
- 17.1 In relation to any proposed variations under the Project Agreement (whether the proposed variation is a Qualifying Change in Law or an Authority Change or any other matter affecting the Contract which may have an equivalent effect), the Councils shall work with the Contractor to achieve the best value solution for the Contract in respect of such Qualifying Change in Law, Authority Change or any other such matter as described in this Clause 17.
- 17.2 The Councils agree to be bound by the obligations on the Host Authority set out in Clause 43 (Authority and Contractor Changes) and more particularly Schedule 21 (Change Protocol) of the Project Agreement.
- 17.3 If, following a decision of the Contract Manager, the Contract Management Board, the Joint Committee or the Councils (in respect of a Matter Reserved To The Councils) (as applicable), the Councils support a proposed variation under the Project Agreement, the Host Authority seeks an Authority Change with the Contractor in the Project Agreement, then where the proposed Authority Change is agreed by the Contract Manager, the Contract Management 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 Contract, 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 in paragraph 1 of Schedule 11 of this Agreement.

- 17.4 Where a proposed Authority Change is agreed by the Contract Manager, the Contract Management 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 Contract, the Council seeking such Authority Change in the Project Agreement shall bear responsibility for payment for the costs of the Authority Change and indemnify the other Councils to hold them harmless against losses caused to each other Council by such Authority Change.
- 17.5 When requesting an Authority Change, a requesting Council shall consider and address the impact on the other Councils and the provisions of Clause 6.4 shall apply.
- 17.6 No Council shall propose an Authority Change that falls within the grounds set out in paragraph 2.1 of Schedule 21 (Change Protocol) of the Project Agreement (Limits on Changes).
- 17.7 The Councils agree to be bound by the obligations on the Host Authority set out in Clause 44 (Change in Law) of the Project Agreement and their respective contributions to any expenditure to be paid to the Contractor under the Project Agreement on a Qualifying Change in Law shall (subject to Clause 12 (Payments, Data and Reporting)) be as determined by the Contract Management Board, calculated in accordance with the Cost Sharing Ratio as set out in paragraph 1 of Schedule 11 of this Agreement.
- 17.8 Any payments due from a Council to the Host Authority in respect of a Qualifying Change in Law that has led to an adjustment to the Unitary Charge shall be paid in accordance with the standard payment provisions set out in Clause 12 (Payments, Data and Reporting) of this Agreement.
- 17.9 Any payments due from a Council to the Host Authority in respect of a Qualifying Change in Law further to which the Host Authority has to pay a capital sum to the Contractor pursuant to Clause 44.5 (Financing) of the Project Agreement shall be paid to the Host Authority no later than three (3) Business Days prior to the date that the Host Authority is obliged to pay the Contractor such capital sum.
18. **WITHDRAWAL**
- 18.1 If for any reason any Council (including the Host Authority) determines to withdraw from this Agreement then Clauses 18.2 to 18.9 shall apply.
- 18.2 If any Council wishes to withdraw from the Contract it shall provide written notice (a "**Withdrawal Notice**") to all the other Councils, such notice to be given at least twenty four (24) months prior to the proposed withdrawal date (or such shorter period as agreed between the Councils (acting reasonably)), such proposed or agreed date to be the "**Withdrawal Date**". The Contract Manager assisted by the Project Gwyrdd Team shall within six (6) months of receipt of the Withdrawal Notice provide to all the Councils a Liability Report which shall be discussed and approved by the Joint Committee at its next meeting or a specially convened meeting if the next meeting falls more than 2 (two) weeks after the issue of the Liability Report.
- 18.3 Within the Decision Period the Council which proposed to withdraw shall indicate either:-
- 18.3.1 that it still wishes to withdraw from the Contract and this Agreement on the Withdrawal Date; or
- 18.3.2 that it wishes to continue with the Contract and this Agreement.
- 18.4 If a Council confirms its decision to withdraw in accordance with Clause 18.3.1, then following such confirmation the other Councils shall within one (1) month either confirm that they wish to continue with the Contract and this Agreement, or shall

indicate an intention to withdraw. If an intention to withdraw is indicated, the process set out in Clauses 18.1 to 18.3 shall be repeated in respect of that Council or Councils.

- 18.5 Where a Council does not indicate within one (1) month its intentions as required by Clause 18.4 then it shall at the expiry of such time be taken to have indicated that it wishes to continue with the Contract and this Agreement.
- 18.6 Where a Council indicates that it wishes to withdraw from the Contract in accordance with Clause 18.3.1 then:-
- 18.6.1 each Council who shall have indicated a wish to withdraw shall pay all amounts due to be paid by it in accordance with the relevant Liability Report within 20 (twenty) Business Days of the date of its notification under Clause 18.3.1 and comply with its obligation to contribute to the Contract up to the date of its withdrawal; and
- 18.6.2 if in the event of such a withdrawal the Contract timetable is delayed then the Council (or Councils) who shall have indicated a wish to withdraw shall be responsible for any increased costs associated with such delay (as determined by the Contract Management Board).
- 18.7 Unless agreed otherwise by the remaining Councils, each Council who shall have indicated its wish to withdraw from the Contract shall not remove its appointees to the Contract Management Board until the Withdrawal Date. For the avoidance of doubt, each Council who shall have indicated its wish to withdraw from the Contract shall remove its representatives from the Joint Committee with effect from the Withdrawal Date.
- 18.8 Pursuant to Clause 16 (Obligations Following Early Termination of the Project Agreement), if a withdrawing Council (or Councils) causes the early termination of the Project Agreement, such withdrawing Council shall be liable to the other Councils in accordance with Clause 16.4 and the relevant Liability Report (prepared in accordance with Clause 18.2 above) shall reflect such liabilities.
- 18.9 Following the process set out in Clauses 18.1 to 18.8, the relevant Council (or Councils) shall withdraw from the Project on the relevant Withdrawal Date.

19. **CONFIDENTIALITY AND ANNOUNCEMENTS**

- 19.1 Each Council ("**Covenanter**") shall, both during the currency of this Agreement and at all times following its termination or expiry, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any Confidential Information about the business of and/or belonging to any other Council or the Contractor which has come to its attention as a result of or in connection with this Agreement, in particular (but without prejudice to the generality of the foregoing) Confidential Information relating to the Project Agreement.
- 19.2 The obligation set out in Clause 19.1 shall not relate to information which:-
- 19.2.1 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
- 19.2.2 any disclosure to enable a determination to be made under Clause 28 (Dispute Resolution); or
- 19.2.3 is required to be disclosed by law; or

- 19.2.4 was already in the possession of the Covenanter (without restrictions as to its use) on the date of receipt; or
 - 19.2.5 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
 - 19.2.6 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.
- 19.3 Where disclosure is permitted under Clause 19.2.4 or 19.2.5, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 19 and the disclosing Council shall make this known to the recipient of the information.
- 19.4 No Council shall make any adverse public statement or issue any adverse press release or publish any other adverse 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 the prior written consent of the other Councils.

20. 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.

21. NOTICES

- 21.1 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 or facsimile, addressed to the recipient at the address or facsimile number as the case may be set out in Schedule 4 (Contact Details) 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.
- 21.2 The notice or demand shall be deemed to have been duly served:-
- 21.2.1 if delivered by hand, when left at the proper address for service;
 - 21.2.2 if given or made by prepaid first class post or special delivery post, 48 hours after being posted (excluding days other than Business Days); or
 - 21.2.3 if given or made by facsimile, at the time of transmission,
- provided that, where in the case of delivery by hand or transmission by facsimile 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.
- 21.3 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.
- 21.4 Each Council shall notify the other Councils in writing within five (5) Business Days of any changes to the details for service set out in Schedule 4 (Contact Details).

22. **GOVERNING LAW**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Clause 28 (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.

23. **ASSIGNMENTS**

23.1 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) 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 Council to become a party to and to perform the obligations of the relevant Council under this Agreement being:

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

23.1.2 any Local Council which has sufficient financial standing or financial resources to perform the obligations of the relevant Council under this Agreement.

24. **WAIVER AND COSTS**

24.1 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.

24.2 Each Council shall pay their own costs incurred in connection with the preparation, execution, completion and implementation of this Agreement.

24.3 Save where otherwise provided, the Councils shall pay interest on any amount payable under this Agreement not paid on the due date from that date to the date of payment at a rate equal to four percent (4%) above the base rate from time to time of the Bank of England.

25. **ENTIRE AGREEMENT**

This Agreement and the Contract Documents contain 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 or understandings between the Councils relating to such subject matter. No Council has been induced to enter into this Agreement by any statement or promise which it does not contain, save that this Clause shall not exclude any liability which one Council would otherwise have to the other in respect of any statements made fraudulently by that Council.

26. **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.

27. **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 principle/agent or of employer/employee. No Council shall have the right to act on behalf of another nor

to bind the other by contract or otherwise except to the extent expressly permitted by the terms of this Agreement. In particular for the avoidance of doubt, none of the provisions relating to the principles of working in partnership shall be taken to establish any Partnership as defined by The Partnership Act 1890.

28. **DISPUTE RESOLUTION**

- 28.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Clause 28. The Councils undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this Partnership) to identify a solution which avoids legal proceedings and maintains a strong working relationship between the Councils.
- 28.2 In the event of any dispute 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 as follows by referral in the first instance to the Contract Management 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.
- 28.3 If the Contract Management Board fails to resolve a dispute or disagreement within five (5) Business Days of meeting pursuant to Clause 28.2, or fails to meet in accordance with the timescales set out in Clause 28.2, 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).
- 28.4 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 28.3, then the Councils in dispute or the Joint Committee (as the case may be) may refer the matter for resolution to:-
- 28.4.1 the Chief Executive(s) or equivalent officer(s) (as appropriate) of the Councils; or
 - 28.4.2 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
 - 28.4.3 the exclusive jurisdiction of the Courts of England and Wales otherwise.
- 28.5 Any dispute and/or disagreement to be determined by the Chief Executive(s) or equivalent officer(s) (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.
- 28.6 The Councils shall on request promptly supply to the Chief Executive(s) or equivalent officer(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.
- 28.7 If the CIWM is appointed to determine in dispute pursuant to Clause 28.5, then the CIWM shall be deemed to act as an expert and not as an arbitrator and his determination shall (in the absence of manifest error) be conclusive and binding upon the Councils.

28.8 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) or equivalent officer(s) (as appropriate), CIWM or the Courts of England and Wales (as the case may be).

29. DATA PROTECTION

29.1 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 Contract Tasks.

29.2 Each Council:

29.2.1 shall process Personal Data belonging to any other Council only on the instructions of that Council (subject to compliance with applicable law);

29.2.2 shall only undertake processing of Personal Data reasonably required in connection with the Contract Tasks and shall not transfer any Personal Data to any country or territory outside the European Economic Area; and

29.2.3 shall use its respective reasonable endeavours to procure that the Contractor complies with this Clause 29.2.

29.3 The Councils shall not disclose Personal Data to any third parties other than:

29.3.1 to employees, sub-contractors or the Contractor to whom such disclosure is reasonably necessary in order for the Councils to carry out the Contract Tasks; or

29.3.2 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 29.3.1 shall be made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 29 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 29.3.2 immediately they are aware of such a requirement.

29.4 The Councils shall bring into effect and maintain and shall use all reasonable endeavours to ensure that all relevant sub-contractors and the Contractor have in effect and maintain all reasonable technical and organisational measures necessary to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability and probity of any employee or agent of a relevant sub contractor or the Contractor having access to the Personal Data.

29.5 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 29.3.1. 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.

- 29.6 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.
- 29.7 If:-
- 29.7.1 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
- 29.7.2 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.
- 29.8 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:-
- 29.8.1 comply with its obligations under this Clause and the DPA; and
- 29.8.2 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.
- 29.9 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.

30. **FREEDOM OF INFORMATION AND ENVIRONMENT INFORMATION**

- 30.1 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.
- 30.2 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 Contract, it shall:
- 30.2.1 transfer the request for information to the other Councils as soon as practicable after receipt and in any event within 2 (two) Business Days of receiving a request for information;
- 30.2.2 provide the other Councils with a copy of all information in its possession or power in the form that the Councils reasonably require within 10 (ten) Business Days (or such longer period as the Councils may specify) of the Council requesting that information; and

30.2.3 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.

30.3 Where a Council receives a request for information under the FoIA or the EIR which relates to this Agreement or the Contract, it shall inform the other Councils of the request for information as soon as practicable after receipt and in any event at least 2 (two) 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.

30.4 The Councils shall be responsible for determining in their absolute discretion whether any information requested under the FoIA or the EIR:

30.4.1 is exempt from disclosure under the FoIA or the EIR;

30.4.2 is to be disclosed in response to a request for information.

30.5 Each Council acknowledges that the other Councils may be obliged under the FoIA or the EIR to disclose information:

30.5.1 without consulting with the other Councils where it has not been practicable to achieve such consultation; or

30.5.2 following consultation with the other Councils and having taken their views into account.

31. **MITIGATION**

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

32. **STATUTORY RESPONSIBILITIES**

Notwithstanding anything apparently to the contrary in this Agreement, in carrying out their statutory duties, the discretion of any Council shall not be fettered or otherwise affected by the terms of this Agreement.

33. **LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

The certificate in respect of this Agreement to be provided by the Councils (not being the Host Authority) in respect of their powers to enter into this Agreement and support the Host Authority model whereby the Host Authority 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 Host Authority) to the Host Authority on or before the Commencement Date.

34. **VARIATIONS**

34.1 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.

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

35. **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.

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

.....)
Authorised Signatory)

The **Common Seal** of)
THE COUNTY COUNCIL OF THE CITY AND)
COUNTY OF CARDIFF)
was affixed hereto in the)
presence of:-)

.....)
Authorised Signatory)

The **Common Seal** of)
MONMOUTHSHIRE COUNTY COUNCIL)
was affixed hereto in the)
presence of:-)

.....)
Authorised Signatory)

The **Common Seal** of)
NEWPORT CITY COUNCIL)
was affixed hereto in the)
presence of:-)

.....)
Authorised Signatory)

The **Common Seal** of)
THE VALE OF GLAMORGAN COUNCIL)
was affixed hereto in the)
presence of:-)

.....)
Authorised Signatory)

SCHEDULE 1

PARTNER REPRESENTATIVE GROUP

The aim of the Partner Representative Group will be to discuss and report on the following non - exhaustive list of matters:

- progress towards Project Agreement recycling and diversion targets;
- transport and waste delivery related issues;
- Contractor performance, in terms of the Performance Management Framework; and
- Obligations of each of the Councils.

SCHEDULE 2

JOINT COMMITTEE TERMS OF REFERENCE

Aims/Purpose

1. To oversee compliance with and the implementation of the Project Agreement and this Agreement in the interests of the Councils and their respective electorates at a strategic corporate and member level and to carry out those functions allocated to the Joint Committee as being "Joint Committee Matters".

Functions

2. The Joint Committee will carry out the following general functions:
 - 2.1 provide direction to the Contract Management Board (to include approval of any resourcing issues);
 - 2.2 act as a representative for each Council's Executive/Cabinet;
 - 2.3 monitor contract performance, management and working arrangements (to include the necessary audit and assurance checks);
 - 2.4 ensure that sufficient resources are committed to the Contract;
 - 2.5 without prejudice to Clause 28 (Dispute Resolution) of this Agreement, arbitrate on any conflicts within the Contract or negotiate a solution to any problems between the Contract and external bodies; and
 - 2.6 promote partnership working between the Councils.
3. Pursuant to this Agreement, the following specific functions are given to the Joint Committee:
 - 3.1 approving the Liability Report prepared by the Contract Manager (assisted by the Project Gwyrd Team) setting out the liability of a Defaulter Council pursuant to Clauses 2.8.2 or 2.8.3 (Termination) or Clause 18.2 (Withdrawal);
 - 3.2 replacement of the Host Authority with another Council should the Host Authority be terminated or withdrawn from the Contract pursuant to Clause 5.11 (Duties of the Host Authority and Other Councils);
 - 3.3 determination of any Contract Management Board Matters that have been referred to the Joint Committee for decision following an inconclusive vote by the Contract Management Board pursuant to Clause 8.4 (Contract Management Board Matters);
 - 3.4 approval of the Performance and Improvement Plan pursuant to Clause 10.3;
 - 3.5 consideration of the Annual Budget and recommendation of the same to the Councils for approval in accordance with Clause 11.4 (Annual Budget and Accounts);
 - 3.6 approval of the audited statement of accounts in accordance with Clause 11.13 (Annual Budget and Accounts);

- 3.7 approval of any spending in relation to this Agreement in excess of the Annual Budget (up to the 20% contingency) in accordance with Clause 11.12 and confirmation of the contingency to be included in the Annual Budget on an annual basis following the first year of the Contract;
 - 3.8 subject to the financial thresholds set out in Clause 6.1.3, determining whether to support a proposed variation under the Project Agreement in accordance with Clause 17.3 (Changes and Change in Law);
 - 3.9 approval of a Liability Report pursuant to Clause 18.2 (Withdrawal);
 - 3.10 determination of any disputes referred by the Contract Management Board pursuant to Clause 28.3 (Dispute Resolution) and
 - 3.11 referral of any disputes for determination pursuant to Clause 28.4 (Dispute Resolution)
4. The Joint Committee shall not have the power to determine Matters Reserved to the Councils which include (inter alia):
- 4.1 Termination of the Project Agreement;
 - 4.2 extension of the Contract for a further five (5) years in accordance with the terms of the Project Agreement;
 - 4.3 retendering the Services on Expiry of the Project Agreement;
 - 4.4 the termination of the participation of any Council in this Agreement, pursuant to Clause 2.6 (Termination); and
 - 4.5 the increase of the Annual Budget in excess of the 20% contingency pursuant to Clause 11.12.

SCHEDULE 3

CONTRACT MANAGEMENT BOARD TERMS OF REFERENCE

1. The Contract Management Board will manage the compliance with and the implementation of the Project Agreement and this Agreement on behalf of the Joint Committee in the interests of the Councils at the directorate strategy and senior officer level.
2. The Contract Management Board will manage the progress and implementation of the Contract including monitoring Contract performance and identifying all improvement measures necessary to be carried out and instructing the Contract Manager to carry out the same.
3. The Contract Management Board will determine the structure of the Project Gwyrd Team including the job description and person specification for the Contract Manager, for approval by the Joint Committee.
4. The Contract Management Board will oversee the Contract Manager in the day-to-day management and monitoring of the Contract.
5. The Contract Management Board will consider and determine any Contract Management Board Matters as described in Clause 6.1.2.
6. The Contract Management Board will as and when necessary report to the Joint Committee and provide advice to the Joint Committee on those matters as described in Clause 6.1.3.
7. Pursuant to this Agreement, the following specific functions are given to the Contract Management Board:
 - 7.1 prior approval of all reports including the Annual Budget for decision by the Joint Committee save if impractical in the case of a special meeting;
 - 7.2 nomination of the Lead Finance Officer;
 - 7.3 monitor the costs expended against the Annual Budget to ensure that the contract management function remains within budget, pursuant to Clause 8.3.2(a) (Contract Management Board);
 - 7.4 monitor the Unitary Charge payments to the Contractor for services delivered against the overall forecast Unitary Charge for each Contract Year, pursuant to Clause 8.3.2(b) (Contract Management Board);
 - 7.5 review of the Performance and Improvement Plan pursuant to Clause 10.2;
 - 7.6 review and any minor updating of the Transport Route Plan and/or the JWA2 Sustainable Transport Plan pursuant to Clause 10A.2;
 - 7.7 presentation to the Joint Committee of a draft Annual Budget for the following Contract Year no later than the 15th Business Day in December in each Contract Year in accordance with Clause 11.2;
 - 7.8 determining if extra costs incurred or proposed by a Council are not an efficient use of time and/or resources and as such shall fall to the account of a particular Council, pursuant to Clause 11.10.2 (Annual Budget and Accounts);
 - 7.9 determining whether a particular Council has incurred disproportionate internal resource costs and whether a proportion of that cost shall be shared

between the other Councils, pursuant to Clause 11.11 (Annual Budget and Accounts);

- 7.10 approval of any set-off of any monies owed by the Contractor to the Host Authority under Clause 46 (set-off) of the Project Agreement, including the determination of how such set-off affects each Council's payments;
- 7.11 determination of the liability proportions of each Council in respect of any indemnities to be paid pursuant to Clause 14.11 (Liability of the Councils);
- 7.12 subject to the financial thresholds set out in Clause 6.1.2, determining whether to support a proposed variation under the Project Agreement in accordance with Clause 17.3 (Changes and Change in Law);
- 7.13 subject to Clause 12 (Payments, Data and Reporting), determining each Council's contribution to costs in relation to a Qualifying Change in Law in accordance with Clause 17.7;
- 7.14 determining any increased costs to the Contract associated with any delays to the Contract timetable due to a Council withdrawing from the Contract, pursuant to Clause 18.6.2 (Withdrawal); and
- 7.15 consideration of any disputes referred to Dispute Resolution under this Agreement, pursuant to Clause 28.2 (Dispute Resolution) (except for disputes relating to Matters Reserved to the Councils).

SCHEDULE 4

CONTACT DETAILS

NAME	ADDRESS	LEGAL REPRESENTATIVE	FAX NO.
Caerphilly County Borough Council	Penallta House, Tredomen Park, Ystrad Mynach, Hengoed, CF82 7PG	Head of Legal Services	[xxx]
The County Council of the City and County of Cardiff	County Hall, Atlantic Wharf, Cardiff, CF10 4UW	Head of Legal Services	[xxx]
Monmouthshire County Council	PO Box 106, Caldicot, NP26 9AN	Head of Legal Services	[xxx]
Newport City Council	Civic Centre, Newport, NP20 4UR	Head of Legal Services	[xxx]
The Vale of Glamorgan Council	Civic Offices, Holton Road, Barry, CF63 4RU	Head of Legal Services	[xxx]

Contact details for the Contract Manager are as follows (and the Councils agree such information shall be updated from time to time):

NAME	ADDRESS	TELEPHONE	FAX NO.	EMAIL
[xxx]	[xxx]	[xxx]	[xxx]	[xxx]

SCHEDULE 5
ANNUAL BUDGET

1. The Annual Budget does not include the Unitary Charge payment due under the Project Agreement as envisaged by the Final Business Case and as approved by the Councils.
2. The following is a non-exhaustive list of the heads of expenditure that may be expected to be incurred by the Host Authority on behalf of the Councils in relation to the Contract Tasks:-
 - 2.1 Internal expenditure (staff costs and associated overheads) including:-
 - 2.1.1 internal financial support;
 - 2.1.2 internal legal support;
 - 2.1.3 other professional services (including asset management, architects, quantity surveyors, surveyors, procurement and planning);
 - 2.1.4 Contract management/technical and administrative support;
 - 2.1.5 communications; and
 - 2.1.6 associated overheads may include such expenses as travel expenses, room hire, printing, accommodation and ICT costs.
 - 2.2 External expenditure as agreed by the Contract Management Board (staff costs and associated overheads) including:-
 - 2.2.1 financial advisors;
 - 2.2.2 technical advisors;
 - 2.2.3 insurance advisors;
 - 2.2.4 legal advisors;
 - 2.2.5 other professional services (including asset management, architects, QS, surveyors, procurement, site investigation, remediation and planning);
 - 2.2.6 waste analysis; and
 - 2.2.7 communications advisors.
3. 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.

INDICATIVE SPEND PROFILE

Financial Year	Transitional Monitoring Costs			Contract costs	Management
	2013-14 August 2013 – March 2014	2014-15	2015-16 April – June 2015	2015-16 July 2015 – March 2016	2016-17
	£'000s	£'000s	£'000s	£'000s	£'000s
Staff costs	55	83	21	106	142
Overheads	8	12	3	21	28
Professional advice & Support	57	85	21	79	105
Total Indicative Budget	120	180	45	206	275

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) the following, which can be used as a pro-forma to be adapted as and when needed:-

PRO-FORMA LIABILITY REPORT	
	<u>Amount</u> (all figures in round pounds)
<p>Staff costs (and associated overheads) in progressing the Project:-</p> <ul style="list-style-type: none"> • consultancy and advisors fees (legal, financial, technical, insurance etc.); • internal Contract 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 Unitary Charge payments due to the Contractor under the Project Agreement; • loss of non-guaranteed Third Party Income; • loss of electricity and energy revenues; and • LAS and Recycling fines as a consequence of the withdrawal or termination (as the case may be) by a Council; and • Increased Landfill Tax payments as a consequence of the withdrawal or termination (as the case may be) by a 	

PRO-FORMA LIABILITY REPORT	
	<u>Amount</u> (all figures in round pounds)
Council.	
Any other losses, costs, claims and damages arising from the remaining Councils within the Contract recommissioning alternative service provision if the Contract is no longer viable and the Project Agreement is terminated. Such losses to include any Termination Sum payable under the Project Agreement.	
Costs incurred by the Host Authority as certified by the Lead Finance Officer and as approved by the Joint Committee as appropriate.	
Recognition of any mitigating factors including a substitute waste source (whether an additional local authority beyond the Councils or otherwise).	

Certified As Correct _____
(Signed)

(Date)

SCHEDULE 8

SITE

The details of the Site are as follows:

ADDRESS:

[xxx]⁷

SITE PLAN:

[xxx]

⁷ [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

SCHEDULE 9

FORECAST BASE CASE CONTRACT WASTE TONNAGES

Contract Year		Caerphilly	Cardiff	Monmouth-shire	Newport	Vale of Glamorgan	PG
2016/2017	1	31,231	64,505	17,015	28,667	24,545	165,963
2017/2018	2	31,269	65,138	17,152	28,586	24,714	166,859
2018/2019	3	31,307	65,780	17,289	28,506	24,885	167,767
2019/2020	4	31,345	66,428	17,426	28,426	25,057	168,680
2020/2021	5	31,382	67,061	17,209	27,999	24,909	168,560
2021/2022	6	31,402	67,694	16,988	27,564	24,818	168,466
2022/2023	7	31,422	68,326	16,686	27,121	24,773	168,328
2023/2024	8	31,441	68,955	16,380	26,671	24,763	168,210
2024/2025	9	31,461	69,579	16,072	26,173	24,245	167,529
2025/2026	10	31,513	70,110	16,120	26,275	24,388	168,407
2026/2027	11	31,542	70,635	16,168	26,373	24,528	169,246
2027/2028	12	31,571	71,154	16,214	26,469	24,663	170,071
2028/2029	13	31,600	71,667	16,259	26,560	24,793	170,879
2029/2030	14	31,629	72,173	16,303	26,649	24,919	171,674
2030/2031	15	31,658	72,674	16,346	26,735	25,041	172,454
2031/2032	16	31,688	73,170	16,388	26,819	25,157	173,222
2032/2033	17	31,717	73,689	16,506	26,901	25,269	174,081
2033/2034	18	31,746	74,212	16,624	26,981	25,376	174,938
2034/2035	19	31,775	74,740	16,741	27,066	25,494	175,816
2035/2036	20	31,805	75,272	16,859	27,151	25,612	176,699
2036/2037	21	31,834	75,808	16,977	27,236	25,731	177,587
2037/2038	22	31,863	76,349	17,094	27,322	25,851	178,480
2038/2039	23	31,893	76,894	17,212	27,408	25,972	179,378
2039/2040	24	31,922	77,443	17,329	27,494	26,092	180,281
2040/2041	25	31,952	77,997	17,447	27,581	26,214	181,190
Contract Tonnage		789,969	1,787,452	418,805	680,730	627,808	4,304,765
Ave. annual contract tonnage		31,599	71,498	16,752	27,229	25,112	172,191
COST SHARING RATIO		18.4%	41.5%	9.7%	15.8%	14.6%	100%

SCHEDULE 10
WASTE ACCEPTANCE PROTOCOL

[XXX]⁸

⁸ [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

SCHEDULE 11

JWA2 PAYMENT MECHANISM⁹

Defined terms within this Schedule 11 (JWA2 Payment Mechanism) shall have the meaning set out in this Agreement or in the Project Agreement, as appropriate.

For the avoidance of doubt, in this Schedule 11, the term "Partner" shall be used to refer to a Council.

1. COST SHARING RATIO

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

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

Partner	Cost Sharing Ratio
Caerphilly County Borough Council	18.4%
The County Council of the City and County of Cardiff	41.5%
Monmouthshire County Council	9.7%
Newport City Council	15.8%
The Vale of Glamorgan Council	14.6%
Total	100%

2. COMMISSIONING PAYMENT

2.1 Principal Formula

With effect from the Readiness Date, the Partner's Commissioning Payments (PCP_{cp}) for the Commissioning Period shall accrue and become due from each Partner to the Host Authority and shall be payable by means of successive Commissioning Payments calculated in accordance with paragraph 2.2 below and a Commissioning Payment Reconciliation Amount calculated in accordance with paragraph 2.3 below and shall be calculated using the following formula:

$$PCP_{cp} = (CGF_y \times COMIND_y \times \sum ACCW_{cp}) - \sum TAC_{cp} - \sum CNAD_{cp} - (\sum CSPD_{cp} * CSR_p) - \sum CSPD_{ps} + CPR_{ps}$$

Where:

PCP_{cp} = the Partner's Commissioning Payment due in respect of the Commissioning Period

CGF_y = the Commissioning Gate Fee per tonne for Contract Year 'y' calculated in accordance with the Project Agreement Payment Mechanism

COMIND_x = Full Indexation for the relevant Contract Year as calculated in

⁹ [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

accordance with the Project Agreement Payment Mechanism

- $\sum ACCW_{CP}$ = the sum of the actual tonnage of Commissioning Contract Waste delivered by the Partner in the Commissioning Period 'cp'
- $\sum TAC_{CP}$ = if applicable, the sum of the Transport Adjustments calculated in accordance with paragraph [18.7] of the Project Agreement Payment Mechanism for the delivery of the Partner's Commissioning Contract Waste to a Contingency Delivery Point
- $\sum CNAD_{CP}$ = if applicable, the sum of the Commissioning Non-Acceptance Deductions in respect of the Partner's Commissioning Contract Waste not Accepted in Commissioning Period 'cp', as defined in paragraph [3.5] of the Project Agreement Payment Mechanism
- $\sum CSPD_{CP}$ = the sum of the non Partner specific Commissioning Performance Standard Deductions made in the Commissioning Period 'cp', being the amount calculated as stated in the Performance Measurement Framework
- CSR_P = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11
- $\sum CSPD_{Ps}$ = the sum of the Partner specific Commissioning Performance Standard Deductions made in the Commissioning Period 'cp', being the amount calculated as stated in the Performance Measurement Framework
- CPR_{Ps} = if applicable, the Partner's share of the Commissioning Payment Reconciliation calculated in accordance with paragraph 2.3

2.2 Commissioning Payment

Each Partner shall make a Commissioning Payment (CP_t) in respect of each Payment Period (t) falling wholly or partly within the Commissioning Period on the tenth (10th) Business Day of the following Payment Period in question. The Commissioning Payment (CP_t) will be based on the projected tonnage of Contract Waste forecast to be delivered by that Partner in the Payment Period before the Services Commencement Date, calculated in accordance with paragraph [3] in Part A "Commissioning Payments" of the Project Agreement Payment Mechanism.

Each Partner's Commissioning Payment for each Payment Period shall be calculated using the following formula:

$$CP_t = (CGF_y \times COMIND_y \times FCCW_t)$$

Where:

- CP_t = the Commissioning Payment payable by the Partner for the relevant Payment Period 't' during the Commissioning Period
- CGF_y = the Commissioning Gate Fee per tonne for Contract Year 'y' calculated in accordance with the Project Agreement Payment Mechanism

- COMIND_x = Full Indexation for the relevant Contract Year as calculated in accordance with the Project Agreement Payment Mechanism
- FCCW_t = the Partner's forecast Commissioning Contract Waste tonnage for the Payment Period 't'

2.3 Partner's share of the Commissioning Payment Reconciliation

Each Partner's share of the Commissioning Payment Reconciliation (CPR_m) under the Project Agreement Payment Mechanism shall be calculated in accordance with the following methodology:

- 2.3.1 Each Partner shall have a Minimum Commissioning Payment obligation (MCP_{cp}) during the Commissioning Period. The Minimum Commissioning Payment obligation shall be calculated in accordance with the following formula:

$$\text{MCP}_{cp} = (\text{CGF}_y \times \text{COMIND}_y \times \text{CGMT}_m \times \text{CSR}_p)$$

Where:

- MCP_{cp} = the Minimum Commissioning Payment payable by the Partner for the Commissioning Period
- CGF_y = the Commissioning Gate Fee per tonne for Contract Year 'y' calculated in accordance with the Project Agreement Payment Mechanism
- COMIND_x = Full Indexation for the relevant Contract Year as calculated in accordance with the Project Agreement Payment Mechanism
- CGMT_t = the Guaranteed Minimum Tonnage for Commissioning Contract Waste. The Guaranteed Minimum Tonnage for Commissioning Contract Waste will be [78,750 tonnes] or as adjusted on a pro-rata basis if the Commissioning Period is less than 7 months in accordance with paragraph 3 of the Project Agreement Payment Mechanism
- CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

- 2.3.2 If a Partner's Commissioning Payments are less than its Minimum Commissioning Payment obligation (MCP_{cp}) as calculated above and the Authority incurs a Commissioning Payment Reconciliation (CPR_m) under paragraph [3] of the Project Agreement Payment Mechanism because it has failed to deliver the Guaranteed Minimum Tonnage for Commissioning Contract Waste (CGMT_m) then the Partner's share of the Commissioning Payment Reconciliation (CPR_{ps}) shall be calculated as follows

$$\text{CPR}_{ps} = (\text{CPR}_m \times \text{CPRS}_p)$$

Where:

- CPR_{ps} = the Partner's share of the Commissioning Payment Reconciliation
- CPR_m = the Commissioning Payment Reconciliation calculated in accordance paragraph [3] of the Project Agreement Payment Mechanism
- CPRS_p = the Partner's pro-rata share of the Guaranteed Minimum Tonnage for Commissioning Contract Waste shortfall

For example, if there is a Commissioning Contract Waste shortfall of 100 tonnes and one Partner is responsible for 10 tonnes of this shortfall and another is responsible for 90 tonnes, then the first Partner's pro-rata share CPRS_p shall be (10/100 = 10%) and the other Partner's pro-rata share shall be (90/100 = 90%).

2.4 Commissioning Payment Reconciliation Amount

The Commissioning Payment Reconciliation Amount represents an amount added (where the Commissioning Payment Reconciliation Amount is positive) to, or deducted (where the Commissioning Payment Reconciliation Amount is negative) from, each Partner's second Monthly Payment post the Actual Service Commencement Date to reconcile differences between the amounts which have accrued due during the Commissioning Period and the payments actually made through each Partner's Commissioning Payments in respect of the actual Commissioning Period.

$$\text{CPRA}_{cp} = [(\text{CGF}_y \times \text{COMIND}_y \times \sum \text{ACCW}_{cp}) - \sum \text{TAC}_{cp} - \sum \text{CNAD}_{cp} - (\sum \text{CSPD}_{cp} * \text{CSR}_p) - \sum \text{CSPD}_{ps} + \text{CPR}_{ps}] - \sum \text{CP}_t$$

Where:

- CPRA_{cp} = the Partner's Commissioning Payment Reconciliation Amount
- CGF_y = the Commissioning Gate Fee per tonne for Contract Year 'y' calculated in accordance with the Project Agreement Payment Mechanism
- COMIND_x = Full Indexation for the relevant Contract Year as calculated in accordance with the Project Agreement Payment Mechanism
- $\sum \text{ACCW}_{cp}$ = the sum of the actual tonnage of Commissioning Contract Waste delivered by the Partner in the Commissioning Period 'cp'
- $\sum \text{TAC}_{cp}$ = if applicable, the sum of the Transport Adjustments calculated in accordance with paragraph [18.7] of the Project Agreement Payment Mechanism for the delivery of the Partner's Commissioning Contract Waste to a Contingency Delivery Point
- $\sum \text{CNAD}_{cp}$ = if applicable, the sum of the Commissioning Non-Acceptance Deductions in respect of the Partner's Commissioning Contract Waste not Accepted in Commissioning Period 'cp', as defined in paragraph

[3.5] of the Project Agreement Payment Mechanism

- $\sum \text{CSPD}_{\text{CP}}$ = the sum of the non Partner specific Commissioning Performance Standard Deductions made in the Commissioning Period 'cp' , being the amount calculated as stated in the Performance Measurement Framework
- CSR_{P} = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11
- $\sum \text{CSPD}_{\text{Ps}}$ = the sum of the Partner specific Commissioning Performance Standard Deductions made in the Commissioning Period 'cp', being the amount calculated as stated in the Performance Measurement Framework
- CPR_{Ps} = if applicable, the Partner's share of the Commissioning Payment Reconciliation calculated in accordance with paragraph 2.3 of this Schedule 11
- $\sum \text{CP}_t$ = the sum of Commissioning Payments (CP_t) made during the Commissioning Period

2.4.1 If any Transport Adjustment (TAC_m) for the delivery of Commissioning Contract Waste to a Contingency Delivery Point is made under the Project Agreement Payment Mechanism and it is not possible to identify which Partner should benefit from the Transport Adjustment, then the financial benefit of that deduction calculated in accordance with paragraph [18.7] of the Project Agreement Payment Mechanism will be shared between the Partners using the Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11.

2.4.2 If a Commissioning Non Acceptance Deduction (CNAD_m) is made and it is not possible to identify which Partner should benefit from the Commissioning Non Acceptance Deduction, then the benefit of the deduction made under the Payment Mechanism will be shared between the Partners using the Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11.

3. ANNUAL UNITARY PAYMENT

3.1 Principal Formula

With effect from the Services Commencement Date, each Partner's Annual Unitary Payment (PAUP_y) for each Contract Year shall accrue and become due from each Partner to the Host Authority and shall be payable by means of successive Monthly Payments and Quarterly Payments subject always to the Annual Reconciliation Amounts and shall be calculated using the following formula:

$$\text{PAUP}_y = \text{PUC}_y + \text{PNNDR}_y + \text{PAHW}_y + \text{PAW}_y - \text{PGS}_{y-1} - \text{PWGG}_y - \text{PRPD}_y - \text{PD}_{y-1} - \text{PAUIBAD}_{y-1} - \text{PR1D}_{y-1} - \text{PNAD}_y - \text{PPSD}_y - \text{PSWGS}_{y-1}$$

Where:

- PAUP_y = the Partner's Annual Unitary Payment due in respect of the relevant Contract Year 'y'
- PUC_y = the amount due in respect of the Partner's Unitary Charge in the relevant Contract Year, calculated in accordance with paragraph 3.2
- PNNDR_y = any NNDR properly payable by the Partner in respect of the Facility in the relevant Contract Year calculated in accordance with paragraph 3.3
- PAHW_y = the amount due in respect of the Partner's Ad Hoc Waste applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.4
- PAW_y = the amount due in respect of the Partner's Additional Waste applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.5
- PGS_{y-1} = the Partner's allocation of Gain Share revenues applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.6
- PWGG_y = the Partner's allocation of the Welsh Government Grant applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.7
- PRPD_y = the Partner's allocation of the Recycling Performance Deduction applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.8
- PD_{y-1} = the Partner's allocation of the BMW Diversion Performance Deduction applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.9
- PAUIBAD_y = the Partner's allocation of the Annual Unprocessed IBA Deduction applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.10
- PR1D_y = the Partner's allocation of the R1 Deduction applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.11
- PNAD_y = the Partner's allocation of the Non Acceptance Deduction applicable in respect of the relevant Contract Year, calculated in accordance with

paragraph 3.12

PPSD_y = the Partner's allocation of the Performance Standard Deduction applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.13

PSWGS_{y-1} = the Partner's allocation of the Substitute Waste Gain Share applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.14

3.2 Partner's Unitary Charge

The Unitary Charge for each Contract Year (UC_y) shall be based on an amount per tonne of Contract Waste as defined under the Project Agreement Payment Mechanism delivered by each Partner and Accepted by the Contractor and shall be calculated as follows:

$$PUC_y = PUCBE_y + [(MET_m \times MER_y) \times J2_y] + [(MXT_m \times MXR_y) \times J3_y]$$

Where:

PUC_y = the amount due in respect of the Partner's Unitary Charge in the relevant Contract Year

PUCB_{E_y} = the Partner's Unitary Charge Base Element as calculated below, based on their Minimum Tonnage as set out in Table X in Clause 4A.1 of this Agreement or as adjusted proportionately in accordance with the drafting below.

MET_y = the number of tonnes of Contract Waste delivered by the Partner and Accepted by the Contractor in the relevant Contract Year falling within the Partner's Marginal Element Band (Band 1) as set out in Table Z in Clause 4A.4 of this Agreement

MER_y = the Marginal Element Rate per tonne for Band 1 for Contract Year 'y' as calculated in the Project Agreement Payment Mechanism

J2_y = the Base Payment Index for Contract Year 'y' in accordance with [paragraph 19] of the Project Agreement Payment Mechanism

MXT_y = the number of tonnes of Contract Waste delivered by the Partner and Accepted by the Contractor in the relevant Contract Year falling within the Partner's Band 2 as set out in Table Z in Clause 4A.4 of this Agreement

MXR_y = the applicable rate per tonne for Band 2 for Contract Year 'y' as calculated in the Project Agreement Payment Mechanism

J3_y = the Base Payment Index for the Contract Year 'y', for Band 2, in accordance with [paragraph 19] of the Project Agreement Payment Mechanism

with each Partner's Unitary Charge Base Element for Contract Year 'y' (PUCBE_y) calculated as set out below:

$$\text{PUCBE}_y = \text{PMT}_p \times \text{BER}_y \times \text{J1}_y$$

Where:

- PUCBE_y = each Partner's Unitary Charge Base Element of the Unitary Charge
- PMT_p = each Partner's Minimum Tonnage as set out in Table X in Clause 4.A.1 of this Agreement
- BER_y = the applicable Base Element Rate per tonne for Price Band (0) in Contract Year 'y' calculated in accordance with the Project Agreement Payment Mechanism
- J1_y = the Base Payment Index for Contract Year 'y' calculated in accordance with the Project Agreement Payment Mechanism

If there are less than 365 days in any Contract Year between the Services Commencement Date and the Expiry Date, each Partner's Minimum Tonnage, Forecast Base Case Contract Waste Tonnage and Maximum Tonnage as set out in Clause 4A of this Agreement shall all be adjusted proportionately to the number of days in the relevant Contract Year.

Also, if the Minimum Tonnage under the Project Agreement Payment Mechanism is less than the Unadjusted Minimum Tonnage of Contract Waste 135,000 tonnes in a Contract Year due to the Contractor not accepting Contract Waste, the Partner(s) whose Contract Waste was not Accepted and which led to a lower Minimum Tonnage figure under the Project Agreement Payment Mechanism will have their Minimum Tonnage reduced in accordance with the reduction in the Minimum Tonnage figure under the Project Agreement Payment Mechanism.

3.3 National Non-Domestic Rates

In respect of the relevant Contract Year, from the Services Commencement Date, where the Contractor is liable for and has paid national non-domestic rates (NNDR) in respect of the Facility, the NNDR cost payable by each Partner in the relevant Contract Year (PNNDR_y) shall be calculated as follows:

$$\text{PNNDR}_y = (\text{PTC}_m \times \text{CSR}_p)$$

Where:

- PTC_m = the Pass Through Cost (PTC) payment calculated in accordance with the Project Agreement Payment Mechanism
- CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

3.4 **Annual Ad Hoc Waste Amounts**

The Annual Ad Hoc Waste Amounts payable by each Partner that delivers Ad-Hoc Waste to the Contractor in respect of the relevant Contract Year (PAHW_y) shall be the sum of the Ad Hoc Waste Payments payable in respect of each Payment Period within the relevant Contract Year, calculated in accordance with the Project Agreement Payment Mechanism.

3.5 **Annual Additional Waste Amounts**

The Annual Additional Waste Amounts payable by any Partner delivering Contract Waste above their Maximum Tonnage in the relevant Contract Year (PAW_y) shall be the sum of the Additional Waste Payments payable in respect of each Payment Period within the relevant Contract Year, calculated in accordance with the Project Agreement Payment Mechanism.

3.6 **Gain Share Revenues**

From the Services Commencement Date, a deduction from each Partner's Annual Unitary Payment shall be made for its associated share of the Gain Share Mechanism revenues (PGS_{y-1}) in the relevant Contract Year, calculated as follows:

$$PGS_{y-1} = GS_{y-1} \times CSR_p$$

Where:

GS_{y-1} = the Authority's share of excess revenues in each full Contract Year as set out in paragraph [8 (Gain Share Mechanism)] of the Project Agreement Payment Mechanism

CSR_p the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

3.7 **Welsh Government Grant**

From the Services Commencement Date, a deduction from each Partner's Annual Unitary Payment shall be made for its share of the Welsh Government Grant received by the Host Authority in respect of the Project for the relevant Contract Year (PWGG_y) and shall be calculated as follows:

$$PWGG_y = (WGG_y) \times CSR_p$$

Where:

WGG_y = the total amount of Welsh Government Grant received by the Host Authority in respect of the Project in the relevant Contract Year

CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

3.8 Recycling Performance Deduction

From the Services Commencement Date, a deduction shall be made from each Partner's Annual Unitary Payment for the Partner's share of the Recycling Performance Deduction (PRPD_{y-1}) for the relevant Contract Year made under paragraph [10] of the Project Agreement Payment Mechanism. PRPD_{y-1} shall be calculated as follows:

$$\text{PRPD}_{y-1} = \text{RPD}_{y-1} \times \text{CSR}_p$$

Where:

- RPD_{y-1} = the Recycling Performance Deduction for the previous Contract Year 'y-1' calculated in accordance with paragraph [10] of the Project Agreement Payment Mechanism
- CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

3.9 BMW Diversion Performance Deduction

From the Services Commencement Date, a deduction (PD_{y-1}) shall be made from each Partner's Annual Unitary Payment for the Partner's share of the BMW Diversion Performance Deduction for the relevant Contract Year. The Partner will be allocated its share of the BMW Diversion Performance Deduction (D_{y-1}) made under paragraph [9] of the Project Agreement Payment Mechanism if the Partner has incurred a LAS fine. If this is the case then the deduction will be allocated to the Partner incurring the LAS fine, or on a pro-rata basis if more than one Partner has been fined.

3.10 Partner Annual Unprocessed IBA Deduction

From the Services Commencement Date, a deduction (PAUIBAD_{y-1}) shall be made from each Partner's Annual Unitary Payment for the Partner's allocation of the Annual Unprocessed IBA Deduction (AUIBA_{y-1}) for the relevant Contract Year made under paragraph [10] of the Project Agreement Payment Mechanism. (PAUIBAD_{y-1}) shall be calculated as follows:

$$\text{PAUIBAD}_{y-1} = \text{AUIBAD}_{y-1} \times \text{CSR}_p$$

Where:

- AUIBA_{y-1} = the Annual Unprocessed IBA Deduction for the previous Contract Year 'y-1' calculated in accordance with paragraph [10] of the Project Agreement Payment Mechanism

Agreement Payment Mechanism

CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

3.11 R1 Deduction

From the Services Commencement Date, a deduction ($PR1D_{y-1}$) shall be made from each Partner's Annual Unitary Payment for the Partner's allocation of the R1 Deduction ($R1D_{y-1}$) applicable in respect of the relevant Contract Year under paragraph [13] of the Project Agreement Payment Mechanism. ($PR1D_{y-1}$) shall be calculated as follows:

$$PR1D_{y-1} = R1D_{y-1} \times CSR_p$$

Where:

$R1D_{y-1}$ = the R1 Deduction for the previous Contract Year 'y-1' calculated in accordance with paragraph [13] of the Project Agreement Payment Mechanism

CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

3.12 Non Acceptance Deduction

From the Services Commencement Date, a deduction ($PNAD_y$) shall be made from each Partner's Annual Unitary Payment for the Non-Acceptance Deductions made in respect of the Partner's Contract Waste not Accepted in the Contract Year 'y' under the Project Agreement Payment Mechanism. ($PNAD_y$) shall be calculated as follows:

$$PNAD_y = \sum NAD_y$$

Where:

$\sum NAD_y$ = if applicable, the sum of the Non-Acceptance Deductions in respect of the Partner's Contract Waste not Accepted in the Contract Year 'y', as defined in paragraph [12] of the Project Agreement Payment Mechanism

3.13 Performance Standard Deduction

From the Services Commencement Date, a deduction (PPSD_y) shall be made from each Partner's Annual Unitary Payment for the Partner's share of the Performance Standard Deductions made under the Project Agreement Payment Mechanism in respect of the relevant Contract Year. (PPSD_y) shall be calculated as follows:

$$\text{PPSD}_y = (\sum \text{SPDCP} \times \text{CSR}_p) + \sum \text{SPD}_{Ps}$$

Where:

- PPSD_y = the Partner's Performance Standard Deductions due in respect of the relevant Contract Year
- $\sum \text{SPDCP}$ = the sum of the non Partner specific Performance Standard Deductions made in the relevant Contract Year, being the amount calculated as stated in the Performance Measurement Framework
- CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11
- $\sum \text{SPD}_{Ps}$ = the sum of the Partner specific Performance Standard Deductions made in the Contract Year 'y', being the amount calculated as stated in the Performance Measurement Framework

3.14 Substitute Waste Gain Share

From the Services Commencement Date, a deduction (PSWGS_{y-1}) shall be made from each Partner's Annual Unitary Payment for the Partner's share of the Substitute Waste Gain Share applicable under the Project Agreement Payment Mechanism in respect of the relevant Contract Year. PSWGS_{y-1} shall be calculated in accordance with paragraph 8.3 of this Schedule 11

4. **MONTHLY PAYMENT**

The Monthly Payment represents a payment by each Partner to the Host Authority (if positive) or to each Partner from the Host Authority (if negative) in respect of each Payment Period commencing with the Payment Period in which the Services Commencement Date occurs. The Monthly Payment shall become due and payable on the 10th Business Day of the following Payment Period.

4.1 **Principal Formula**

Each Partner’s Monthly Payment for each Payment Period shall be calculated using the following formula:

$$PMP_m = PUC_m + PNDR_m - PR1D_m$$

Where:

- PMP_m = the Monthly Payment payable by the Partner for the relevant Payment Period 'm'
- PUC_m = the amount due by the Partner in respect of the Unitary Charge in the relevant Payment Period 'm' calculated in accordance with paragraph 4.2 of this schedule 11
- PNDR_m = the NNDR cost payable by each Partner in the relevant Payment Period 'm' calculated in accordance with paragraph 4.4 of this schedule 11
- PR1D_m = the Partner’s allocation of the R1 Deduction (R1Dm) calculated in accordance with paragraph 3.13 of this schedule 11

4.2 **Partner Unitary Charge**

With effect from the Payment Period in which the Services Commencement Date occurs and all subsequent Payment Periods, the amount representing each Partner’s Unitary Charge for the Facility in each Payment Period shall be calculated as follows:

$$PUC_t = PUCF_y / 12$$

Where:

- PUC_t = the amount due in respect of the Partner’s Unitary Charge in the relevant Payment Period 't'
- PUCF_y = the forecast amount in respect of the Partner’s Unitary Charge in the Contract Year in which the relevant Payment Period falls, calculated in accordance with paragraph 4.3 of this schedule 11

4.3 **Forecast Partner Unitary Charge**

Each Partner's forecast Unitary Charge for each Contract Year 'y' (PUCF_y) will be based on the Contract Waste tonnage forecasts agreed by the Partners for that Contract Year no later than 2 months prior to the start of the Contract Year. In the event that a forecast is not agreed by then, then the Host Authority will utilise the actual Contract Waste tonnages from the previous Contract Year. If the Contract Year is the first Contract Year then the Host Authority shall use the forecast Contract Waste tonnages from the Final Business Case in the event that Contract Waste forecasts have not been agreed on time.

Each Partner's forecast Unitary Charge for Contract Year 'y' (PUCF_y) shall be calculated as set out below.

$$\text{PUCF}_y = \text{PUCBE}_y + [(\text{MET}_m \times \text{MER}_y) \times \text{J2}_y] + [(\text{MXT}_m \times \text{MXR}_y) \times \text{J3}_y]$$

Where:

- PUCBE_y = each Partner's forecast Unitary Charge Base Element of the Unitary Charge as calculated below
- MET_y = the number of tonnes of Contract Waste forecast to be delivered by the Partner and Accepted by the Contractor in the relevant Contract Year falling within the Partner's Marginal Element Band (Band 1) as set out in Table Z in Clause 4A.4 of this Agreement
- MER_y = the Marginal Element Rate per tonne for Band 1 for Contract Year 'y' as calculated in the Project Agreement Payment Mechanism
- J2_y = the Base Payment Index for contract year 'y' in accordance with [paragraph 19] of the Project Agreement Payment Mechanism
- MXT_y = the number of tonnes of Contract Waste forecast to be delivered by the Partner and Accepted by the Contractor in the relevant Contract Year falling within the Partner's Band 2 as set out in Table Z in Clause 4A.4 of this Agreement
- MXR_y = the applicable rate per tonne for Band 2 for Contract Year 'y' as calculated in the Project Agreement Payment Mechanism
- J3_y = the Base Payment Index for the Contract Year 'y', for Band 2, calculated in accordance with [paragraph 19] of the Project Agreement Payment Mechanism

with each Partner's forecast Unitary Charge Base Element for Contract Year 'y' (PUCBE_y) shall be calculated as set out below.

$$\text{PUCBE}_y = \text{PMT}_p \times \text{BER}_y \times \text{J1}_y$$

Where:

- PUCBE_y = each Partner's forecast Unitary Charge Base Element of the Unitary Charge

- PMT_p = each Partner's forecast Minimum Tonnage as set out Clause 4.A of this Agreement
- BER_y = the applicable Base Element Rate per tonne for Price Band (0) in Contract Year 'y' calculated in accordance with the Project Agreement Payment Mechanism
- J1_y = the Base Payment Index for Contract Year 'y' calculated in accordance with the Project Agreement Payment Mechanism

If there are less than 365 days in any Contract Year between the Services Commencement Date and the Expiry Date, each Partner's Minimum Tonnage, Forecast Base Case Contract Waste Tonnage and Maximum Tonnage as set out in Clause 4A of this Agreement shall all be adjusted proportionately to the number of days in the relevant Contract Year.

4.4 Partner National Non-Domestic Rates

In respect of the relevant Payment Period, from the Services Commencement Date, where the Contractor is liable for and has paid national non-domestic rates ("NDR") in respect of the Treatment Facility, the NDR cost payable by each Partner in the relevant Payment Period ("PNDR_m") shall be calculated as follows:

$$\text{PNDR}_m = (\text{PTC}_m \times \text{CSR}_p)$$

Where:

- PTC_m = the Pass Through Cost ('PTC') payment calculated in accordance with the Project Agreement Payment Mechanism for the Payment Period 'm'
- CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

5. **QUARTERLY PAYMENT**

The Quarterly Payment represents a payment by each Partner to the Host Authority (if positive) or to each Partner from the Host Authority (if negative) in respect of each three (3) month period ending on the last day of June, September, December and March respectively (the "Quarterly Period"), commencing with the Quarterly Period in which the Services Commencement Date occurs. The Quarterly Payment shall become due and payable on the 10th Business Day of the following Payment Period.

5.1 **Principal Formula**

Each Partner's Quarterly Payment (PQP_q) for each Quarterly Period shall be calculated using the following formula:

$$PQP_q = PAHW_q + PAW_q - \sum PMA_q - PAA_y - PWGG_q$$

Where:

- PQP_q = the Partner's Quarterly Payment payable for the relevant Quarterly Period
- PAHW_q = the Partner's allocation of any Quarterly Ad Hoc Waste Payment applicable in respect of the relevant Quarterly Period, calculated in accordance with paragraph 5.2 of this Schedule 11
- PAW_q = the Partner's allocation of any Quarterly Additional Waste payment applicable in respect of the relevant Quarterly Period, calculated in accordance with paragraph 5.3 of this Schedule 11
- $\sum PMA_q$ = the Partner's allocation of the aggregate of Monthly Adjustments in respect of the relevant Quarterly Period, calculated in accordance with paragraph 7 of this Schedule 11
- PAA_y = the Partner's allocation of Annual Adjustments incurred during the relevant Contract Year, calculated in accordance with paragraph 8 of this Schedule 11
- WGG_q = the Partner's allocation of Welsh Government Grant applicable and reconciled in respect of the relevant Quarterly Period, calculated in accordance with paragraph 5.4 of this Schedule 11

5.2 **Quarterly Ad Hoc Waste Payment**

Where the Contractor is required to manage Ad Hoc Waste, the Quarterly Ad Hoc Waste Payment payable by each Partner for the Ad-Hoc Waste they have delivered to the Contractor in the relevant Payment Period (PAHW_q) shall be calculated in accordance with paragraph [16] of the Project Agreement Payment Mechanism using the following formula:

$$PAHW_q = \sum AHWP_{mps}$$

Where:

AHWP_{mps} = the sum of Ah-Hoc Waste Payments AWP_m made under the Project Agreement Payment Mechanism in the Quarterly Period for the Ad-Hoc waste delivered by that Partner

5.3 Quarterly Additional Waste Payment

Where the Contractor is required to manage Additional Waste pursuant to the Project Agreement Payment Mechanism and one or more Partner(s) has delivered Contract Waste above its Maximum Tonnage, the Quarterly Additional Waste payment payable by each Partner that has delivered Contract Waste above their Maximum Tonnage in the Contract Year shall be calculated in accordance with paragraph [16] of the Project Agreement Payment Mechanism using the following formula:

$$PAW_q = \sum AWP_m \times AWPPS$$

Where:

AWP_m = the Additional Waste Payment in Contract Month 'm' of the relevant Quarterly Period calculated in accordance with paragraph 16 of the Project Agreement Payment Mechanism

AWPPS = the Partner's share on a pro rata basis of the Additional Waste Payments Calculated in accordance with the following example: [if the Partners' Additional Waste Payment is £(X+Y),000 and Partner 1's Additional Waste Payment is £X,000 and Partner 2's Additional Waste Payment shortfall is £Y,000 then Partner 1's pro-rata share is (X/(X+Y),000)]

5.4 Quarterly Welsh Government Grant

From the Quarterly Period which includes the Services Commencement Date, each Partner's allocation of Welsh Government Grant applicable in respect of the relevant Quarterly Period (PWGG_q) shall be calculated as follows:

$$PWGG_q = (WGG_q) \times CSR_p$$

Where:

WGG_q = the total amount of Welsh Government Grant received by the Host Authority in respect of the Project for the relevant Quarterly Period

CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

6. **ANNUAL RECONCILIATION AMOUNT**

The Annual Reconciliation Amount is a payment by each Partner to the Host Authority (if positive) or to each Partner from the Host Authority (if negative) in respect of reconciliation differences between the amounts which have accrued due during the relevant Contract Year and payments actually made through each Partner's Monthly Payments and Quarterly Payments in respect of the relevant Contract Year. The Annual Reconciliation Amount shall be due and payable on the last Business Day of the Payment Period following the Payment Period in which the Annual Report is delivered pursuant to the Project Agreement by the Contractor to the Authority or on the date of delivery of the Annual Report in respect of the final Contract Year and no interest for late payment shall be due from either Party to the other in respect of any period occurring before such due date for payment.

The Annual Reconciliation Amount in respect of the Final Contract Year shall result in an amount due from the Authority to the Contractor (or vice versa) and payable in accordance with clause 45.3 (Final Payment Periods) of the Project Agreement.

6.1 **Principal Formula**

Each Partner's Annual Reconciliation Amount (PAR_y) for each Contract Year shall be calculated using the following formula:

$PAR_y = PAUP_y - PMP_y - PQP_y$

Where:

- PAR_y = the Partner's Annual Reconciliation Amount
- PAUP_y = the Partner's Annual Unitary Payment due for the relevant Contract Year calculated in accordance with paragraph 3 of this Schedule 11
- PMP_y = the aggregate of the Partner's Monthly Payments (PMP_t) in respect of the relevant Contract Year, calculated in accordance with paragraph 4 of this Schedule 11
- PQP_y = the aggregate of the Partner's Quarterly Payments (PQP_q) in respect of the relevant Contract Year, calculated in accordance with paragraph 5 of this Schedule 11

7. MONTHLY ADJUSTMENTS

Monthly Adjustments shall be made for each Partner's share of Performance Standard Deductions in respect of the Services not being delivered in accordance with Key Performance Indicators (KPIs), calculated in accordance with [paragraph 11] of the Project Agreement Payment Mechanism, Transport Adjustments in respect of costs incurred by the Partners as a result of diversion of Contract Waste from Delivery Points and Deductions for Non-Acceptance of Contract Waste by the Contractor pursuant to paragraph [12] of the Project Agreement Payment Mechanism. Monthly Adjustments in respect of each Payment Period (PMA_t) shall be applied to the Quarterly Payment for the Quarterly Period in which they occur.

7.1 Principal Formula

Each Partner's Monthly Adjustment (PMA_t) applicable in respect of each Payment Period shall be calculated using the following formula:

$$PMA_t = (\sum MPD_m \times CSR_p) + \sum MPD_{psm} + TA_t + PNAD_t$$

Where:

- PMA_t = the Partner's allocation of the Monthly Adjustment applicable in respect of the relevant Payment Period
- $\sum MPD_m$ = the sum of the non Partner specific Monthly Performance Standard Deductions made in respect of the Payment Period as determined in accordance with paragraph [11] of the Project Agreement Payment Mechanism.
- CSR_p = the Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11
- $\sum MPD_{psm}$ = the sum of the Partner specific Performance Standard Deductions made in respect of the Payment Period as determined in accordance with paragraph [11] of the Project Agreement Payment Mechanism
- TA_t = the Partner's allocation of Transport Adjustments applicable in respect of the relevant Payment Period as a result of the delivery of Contract Waste by the Partner to a Contingency Delivery Point, calculated in accordance with paragraph [18] of the Project Agreement Payment Mechanism
- PNAD_t = the Partner's costs incurred for Non Acceptance of Contract Waste by the Contractor pursuant to paragraph [12] of the Project Agreement Payment Mechanism

8. ANNUAL ADJUSTMENT

8.1 Annual Adjustment

Each Partner's allocation of the Annual Adjustment (PAA_y) applicable in respect of each Contract Year (which shall be applied to the last Quarterly Payment of the Contract Year) shall be calculated using the following formula:

$$PAA_y = PUCA_y + PD_{y-1} + PRPD_{y-1} + PAUIBAD_{y-1} + PGS_{y-1} + PSWGS_{y-1}$$

Where:

- PAA_y = the Partner's allocation of the Annual Adjustment applicable to the relevant Contract Year
- $PUCA_y$ = the adjustment calculated in accordance with paragraph 8.2 below
- PD_{y-1} = the Partner's allocation of the BMW Diversion Performance Deduction applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.9 of this Schedule 11
- $PRPD_y$ = the Partner's allocation of the Recycling Performance Deduction applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.8 of this Schedule 11
- $PAUIBAD_{y-1}$ = the Partner's allocation of the Annual Unprocessed IBA Deduction applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 3.10 of this Schedule 11
- PGS_{y-1} = the Partner's share of excess revenues in each full Contract Year calculated in accordance with paragraph 3.6 of this Schedule 11
- $PSWGS_{y-1}$ = the Partner's allocation of the Substitute Waste Gain Share applicable in respect of the relevant Contract Year, calculated in accordance with paragraph 8.3

8.2 Partner Unitary Charge Adjustment

When both the total Unitary Charge payments made by the Authority to the Contractor under the Project Agreement for the Contract Year 'y' and the total Partner Unitary Charges (PUCy) for the Contract Year 'y' are known, a reconciliation exercise will be undertaken to ensure that the total Partner Unitary Charges (PUCy) calculated using the bands in Clause 4A of this Agreement do not add up to more than the actual total Unitary Charge payments made by the Authority to the Contractor under the Project Agreement for the Contract Year 'y'.

The reconciliation will consider:

- (a) if a Partner has not delivered its Minimum Tonnage as set out in Table x in Clause 4A of this Agreement for that Contract Year, whether any other Partner has delivered more than their Minimum Tonnage and what the Partners' Minimum Tonnage shortfall is for that Contract Year. The reconciliation will then calculate the total payment owed by that Partner

and the extent to which that Partner can benefit from other Partners delivering Contract Waste above their Minimum Tonnage. An example reconciliation is set out in Example 1 below.

- (b) If a Partner has delivered Contract Waste tonnages within their Band 2 tonnage threshold for the Contract Year, whether any other Partner has delivered less than their Band 1 tonnage threshold as set out in Table Z in Clause 4A.4 of this Agreement. The reconciliation will then calculate the total payment owed by that Partner and the extent to which that Partner can benefit from other Partners delivering less than Band 1 Contract Waste threshold.
- (c) If a Partner has delivered Contract Waste tonnages above their Band 2 tonnage threshold for the Contract Year, whether any other Partner has delivered less than their Band 2 tonnage threshold set out in Table Z in Clause 4A.4 of this Agreement. The reconciliation will then calculate the total payment owed by that Partner and the extent to which that Partner can benefit from other Partners delivering less than Band 2 Contract Waste threshold.

Example 1 - Minimum Tonnage shortfall:

A Partner's Minimum Tonnage for the Contract Year is 33,375 tonnes. The Partner has only delivered 3,375 tonnes and therefore failed to deliver its Minimum Tonnage. Its Minimum Tonnage shortfall is 30,000. Another Partner has however delivered 25,000 tonnes above their Minimum Tonnage so the Authority's overall Minimum Tonnage shortfall under the Project Agreement is $30,000 - 25,000 = 5,000$ tonnes. The Partner's total payments post the reconciliation should therefore be:

- (1) 3,375 tonnes x Band 0 gate fee
- (2) 25,000 tonnes x (Band 1 – Band 0)
- (3) 5,000 tonnes x Band 0 gate fee

If more than one Partner has failed to deliver its Minimum Tonnage, then the financial benefit that arises as a result of another Partner exceeding its Minimum Tonnage (25,000 tonnes in the example above) will be allocated between the Partners with a Minimum Tonnage Shortfall based on the relative size of the Minimum Tonnage shortfalls (e.g. if one Partner has a 10,000 tonne shortfall and the other 20,000 tonnes, then the first Partner will get (10,000 / 30,000) of the financial benefit derived from the 25,000 tonnes). The reconciliation should never lead to a Partner paying more than they should based on their Bands as defined in Clause 4A of this Agreement.

8.3 Partner Substitute Waste Gain Share

From the Services Commencement Date, $PSWGS_{y-1}$ shall be the Partner's share of the Substitute Waste Gain Share applicable under the Project Agreement Payment Mechanism in respect of the relevant Contract Year. $PSWGS_{y-1}$ shall be calculated as follows:

$$PSWGS_{y-1} = [SFS_{y-1} \times PS_{y-1}] + [SWR_{y-1} \times PS_{y-1}] + [STPI_{y-1} \times CSR_P]$$

Where:

- $PSWG_{y-1}$ = the Partner's allocation of the Annual Adjustment applicable to the relevant Contract Year
- SFS_{y-1} = As calculated in paragraph [17] of the Project Agreement Payment Mechanism
- PS_{y-1} = The Partner's pro-rata share of the overall Minimum Tonnage shortfall for Contract Year 'y-1' – for example, if the Partnership's Minimum Tonnage Shortfall is 15,000 tonnes and Partner 1's Minimum Tonnage shortfall is 5,000 tonnes and Partner 2's Minimum Tonnage shortfall is 10,000 tonnes, then Partner 1's pro-rata share is (5,000 / 15,000 = 1/3rd)
- SWR_{y-1} = As calculated in paragraph [17] of the Project Agreement Payment Mechanism
- $STPI_{y-1}$ = As calculated in paragraph [17] of the Project Agreement Payment Mechanism
- CSR_P = The Partner's Cost Sharing Ratio as set out in paragraph 1 of this Schedule 11

SCHEDULE 12

TRANSPORT ROUTE PLAN AND JWA2 SUSTAINABLE TRANSPORT PLAN¹⁰

PART A – Transport Route Plan for accessing the Facility

The Transport Route Plan shall be completed during the transition period prior to commencement of Commissioning of the Facility with Contract Waste.

The Transport Route Plan shall include the following instructions and information (as a minimum):

1. the Councils shall use reasonable endeavours to ensure that (with the exception of cleansing and collection vehicles undertaking services in those areas) no vehicles delivering waste going to or from the Facility shall pass along any residential road in Splott, Adamsdown or Butetown, with the exception of Newport Road, Tyndall Street, Central Link, Ocean Way and Rover Way (each an "**Approved Route**");
2. each Council shall instruct its drivers to only follow the Approved Routes. Written details and reminders of the Approved Routes shall be provided by the Contractor at the Facility but each Council shall be responsible for educating its own drivers; and
3. an estimated number of vehicle movements and the timing of vehicle movements in relation to transport of the Contract Waste.

PART B – JWA2 Sustainable Transport Plan

The JWA2 Sustainable Transport Plan shall be completed during the transition period prior to the commencement of Commissioning of the Facility with Contract Waste.

Each Council shall prepare a sustainable transport plan in line with its statutory requirements that will form part of the JWA2 Sustainable Transport Plan.

The JWA2 Sustainable Transport Plan shall include (as a minimum):

1. vehicle standards;
2. minimisation of local impacts; and
3. review of sustainable vehicle usage, including:
 - o fuel usage;
 - o mileage;
 - o fuel types;
 - o vehicle and engine types;
 - o environmental sustainability driver training; and
 - o maintenance and servicing of vehicles.

The JWA2 Sustainable Transport Plan will also aim to raise innovative ideas for consideration by the Councils that could potentially reduce the impact of transporting Contract Waste to the Facility.

¹⁰ [DN: To be updated once Preferred Bidder decision made/to reflect fine tuning]

The JWA2 Sustainable Transport Plan shall be reviewed and updated in accordance with Clause 10A.2.

Any proposed significant changes to the JWA2 Sustainable Transport Plan shall be referred as a Matter Reserved To The Councils.