

Date

**TEES VALLEY RESIDUAL WASTE TREATMENT PROJECT: PROFORMA LEAD  
AUTHORITY INTER-AUTHORITY AGREEMENT (IAA)**

**Dated**

**20[ ]**

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- (1) HARTLEPOOL BOROUGH
- (2) Y COUNCIL
- (3) Z COUNCIL

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**INTER AUTHORITY AGREEMENT**

**(Lead Authority)**

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**relating to the joint procurement of long term  
Residual Waste Treatment Facilities**



## CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION	2
2	TERM	9
3	PRINCIPLES AND KEY OBJECTIVES	9
4	APPOINTMENT OF HARTLEPOOL BOROUGH AS THE LEAD AUTHORITY	11
5	DUTIES OF THE AUTHORITIES	12
6	DECISION MAKING	13
7	PROJECT BOARD	13
8	EVALUATION	15
9	PROJECT TEAM	15
10	ADMISSION OF ADDITIONAL AUTHORITIES	16
11	COMMITMENT OF THE AUTHORITIES AND CONTRIBUTIONS	16
12	SITES	18
13	INTELLECTUAL PROPERTY	20
14	REMIEDIATION	20
15	WITHDRAWAL DURING THE PROCUREMENT EXERCISE	21
16	CONCLUSION OF THE SECOND INTER AUTHORITY AGREEMENT	22
17	DISPUTE RESOLUTION	23
18	COMMENCEMENT, DURATION AND TERMINATION	24
19	CONSEQUENCES OF TERMINATION	24
20	CONFIDENTIALITY AND ANNOUNCEMENTS	25
21	FREEDOM OF INFORMATION	27
22	NO AGENCY OR PARTNERSHIP	28
23	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 199	28
24	ENTIRE AGREEMENT	28
25	INCONSISTENCY	28
26	SEVERANCE	28
27	WAIVER	29
28	AMENDMENTS	29
29	LAW AND JURISDICTION	29
30	NOTICES	29
31	GENERAL	30
32	COUNTERPARTS	30
33	COSTS	30
SCHEDULE 1	Procurement Milestones	32
SCHEDULE 2	Project Board	35
SCHEDULE 3	Project Team	36

<b>SCHEDULE 4</b>		<b>37</b>
<b>Part 1</b>	<b>Options On Sites</b>	<b>37</b>
<b>Part 2</b>	<b>Sites</b>	<b>37</b>
<b>SCHEDULE 5</b>	<b>Heads of Terms</b>	<b>38</b>
<b>SCHEDULE 6</b>	<b>Accounting Period (Financial Year [ / ])</b>	<b>44</b>
<b>SCHEDULE 7</b>	<b>Heads of Expenditure</b>	<b>45</b>
<b>SCHEDULE 8</b>		<b>46</b>
<b>Part 1</b>	<b>Role of Project Director</b>	<b>46</b>
<b>Part 2</b>	<b>Duties of Project Director</b>	<b>46</b>
<b>SCHEDULE 9</b>	<b>Project Board Terms of Reference</b>	<b>47</b>
<b>SCHEDULE 10</b>	<b>Communications Strategy</b>	<b>48</b>

**THIS AGREEMENT** is made on the                      day of                      20[ ]

**BETWEEN**

- (1)     **HARTLEPOOL BOROUGH** of [                      ];
- (2)     **Y COUNCIL** of [                      ]; and
- (3)     **Z COUNCIL** of [                      ]

**Together “the Authorities”**

**BACKGROUND**

- (A)     The Authorities are in the process of jointly procuring the award of a contract for residual waste treatment facilities (“**the Project**”).
- (B)     The Project will involve the financing and operation of long term residual waste treatment facilities which may include the design and build of the facilities or alternatively access to existing facilities.
- (C)     The Authorities have agreed to work together in the joint procurement of the Project and this Agreement sets out the terms of the joint working arrangements for the Project and the appointment of Hartlepool Borough Council as Lead Authority in carrying out the Procurement Milestones.
- (D)     The Authorities wish to enter into this agreement and implement the Project pursuant to the powers conferred on them by Section 51 and 55 of The Environmental Protection Act 1990, Section 19 of The Local Government Act 2000, and Regulation 7 Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000.
- (E)     The Authorities have agreed that, following the successful award of the Project Agreement, they will enter into an agreement which will set out the respective rights and obligations of each of them in respect of the Project. Such agreement (“**the Second Inter Authority Agreement**”) is intended to reflect the terms of the Project Agreement and as such cannot be completed until the Authorities have agreed the terms of the Project Agreement.
- (F)     The Authorities have agreed the Heads of Terms, the principles and/or terms of which will be included in the Second Inter Authority Agreement.
- (G)     The Authorities have delegated sufficient authority to the Project Board, Project Director and Project Team to enable them to fulfil their roles in relation to this Agreement.

**IT IS AGREED** as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

<b>Accounting Period</b>	means those periods set out in <b>Schedule 6 (Accounting Periods)</b> ; as may be amended from time to time in accordance with this Agreement;
<b>Acquiring Party</b>	means the relevant Authority named in <b>Schedule 4</b> and as referred to in <b>Clause 12.8</b> ;
<b>Authority</b>	means X, Y and Z Councils and “ <b>Authorities</b> ” shall mean all or any of them as the context so permits;
<b>Bidder</b>	means any person who responds to the Procurement Notice relating to the Project;
<b>Business Day</b>	means any day other than a Saturday or Sunday or a public or bank holiday in England;
<b>CIWM</b>	means the Chartered Institute of Waste Management;
<b>Commencement Date</b>	means the date of this Agreement;
<b>Confidential Information</b>	means all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of the Authorities, 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;
<b>Contributing Parties</b>	means the relevant Authorities named in <b>Schedule 4</b> ;

<b>Decision Period</b>	means the period of fifteen (15) Business Days commencing on the date of the relevant Break Point or such other time as is unanimously agreed by the Authorities;
<b>Defaulter</b>	has the meaning given in <b>Clause 18.2 (Termination)</b> ;
<b>Data Protection Legislation</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) [and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.;
<b>EIR</b>	means the Environmental Information Regulations 2004 together with the Code of Practice issued by DEFRA as amended/ reissued from time to time
<b>EU Procurement Regime</b>	means the Public Contracts Regulations 2006;
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
<b>Heads of Terms</b>	means the heads of terms relating to the Second Inter Authority Agreement set out in <b>Schedule 5 (Heads of Terms)</b> ;
<b>Intellectual Property</b>	means any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not

	registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them;
<b>[Joint Leaders and/or Members Meeting]</b>	means the meetings (comprising the elected mayor and/or respective council leaders) which provide a mechanism to achieve political consensus at a high level prior to the submission of any high-level recommendations <sup>1</sup> to the respective executives across the three authorities;
<b>Joint Sites</b>	means the joint sites listed in <b>Schedule 4 (Sites)</b> ;
<b>Key Procurement Functions</b>	means those actions identified as Key Procurement Functions in the first column of the table set out in <b>Schedule 1 (Procurement Milestones)</b> ;
<b>Lead Authority</b>	means Hartlepool Borough;
<b>Material</b>	means all data, text, graphics, images and other materials or documents created, used or supplied by an Authority in connection with this Agreement (unless before the first use or supply, the Authority notifies the others that the data, text supplied by it is not to be covered by this definition);
<b>Matter Reserved to Authorities</b>	means those actions, matters and/or functions identified as such in the fourth column in the table set out in <b>Schedule 1 (Procurement Milestones)</b> ;
<b>Non-Defaulting Parties</b>	has the meaning given in <b>Clause 18.2 (Termination)</b> ;
<b>Procurement Notice</b>	means a notice advertising the Project placed in the Official Journal of the European Union or in the UK Government e-notification service, entitled "Find a Tender", if the publication date

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<sup>1</sup> Decisions themselves would be taken by the executives.



falls after the day on which the UK exits the European Union;

**Open Market Value**

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

- (a) a willing seller;
- (b) that, prior to the relevant time, there has been a reasonable period for the proper marketing of such Site and for the agreement of price and terms for completion of the disposal of such Site;
- (c) the state of the market, levels of values and other circumstances are on any earlier assumed date of exchange of contracts, the same as at the relevant time;
- (d) the relevant Authority has good and marketable title to such Site;
- (e) all necessary consents for any building or other works at such Site have been obtained and such Site can be lawfully used;
- (f) any damage to such Site caused by any insured risk has been made good,

and otherwise taking into account of the actual circumstances as shall exist at the time;

**Option**

An option agreement where a landowner grants the Authorities (or any one of them) an option to purchase an interest in land for the purposes of the Project;

**Original Price**

means the purchase price paid by the relevant Authority or Contributing Parties in respect of the purchase of a Site;

<b>Outline Business Case</b>	means the outline business case in relation to the Project set out at Schedule[ ]
<b>Procurement Milestones</b>	means the procurement stages set out in <b>Schedule 1</b> to be carried out in order to procure the Project and as may be amended from time to time by the Authorities in accordance with the terms of this Agreement;
<b>Project</b>	means <ul style="list-style-type: none"><li>(a) the procurement process set out in the Procurement Milestones to be carried out by or on behalf of the Authorities with the intention of appointing a preferred bidder for the Project including negotiating and agreeing with such preferred bidder the contract documentation necessary to secure the delivery by the Provider of the Project;</li><li>(b) the Services and to be provided by the Authorities to enable the Procurement milestones to be met as set out in clause 5 and Schedule [ ]</li></ul>
<b>Project Agreement</b>	means the Project Agreement to be entered into between the Authorities and the Provider relating to the Project;
<b>Project Board</b>	has the meaning given in <b>Clause 7.1 (Project Board)</b> ;
<b>Project Board Matters</b>	means those actions, matters and functions identified as such in the third column of the table set out in <b>Schedule 1 (Procurement Milestones)</b> ;
<b>Project Director</b>	means the person identified as such in <b>Schedule 3 (Project Team)</b> or any replacement of him;
<b>Project Manager</b>	means the person identified as such in <b>Schedule 3 (Project Team)</b> or any replacement of him;
<b>Project Office</b>	means the offices of the Project Director;

<b>Project Team</b>	Subject to <b>Clause 9.4</b> means the team formed pursuant to the provisions of <b>Clause 9.1 (Project Team)</b> the original members of which are listed in <b>Schedule 3 (Project Team)</b> , for the purpose of assisting to deliver the Project;
<b>Provider</b>	means the private sector partner to be party to the Project Agreement;
<b>Quarter</b>	means each period of three calendar months (or part thereof), the first such period commencing on the Commencement Date;
<b>Residual Waste Treatment Facilities</b>	means facilities designed for processing residual waste, waste being defined in the Waste and Emissions Trading Act 2003;
<b>RPIX</b>	means the Retail Prices Index (excluding mortgage interest rates) as published by the Office for National Statistics from time to time (" <b>the Index</b> "), or failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the index not ceased to be published or the relevant fundamental change not made) or, in the event that no such agreement is reached, as may be determined in accordance with the dispute resolution procedure set out in <b>Clause 17 (Dispute Resolution)</b> ;
<b>Second Inter Authority Agreement</b>	has the meaning given in recital (D);
<b>Services</b>	means the services to be provided by the Provider pursuant to and defined by the Project Agreement;
<b>Sites</b>	means those pieces of land where an Option is to be secured for the Project on which it is intended that a new residual waste facility may be situated;

<b>Site Options Appraisal</b>	means the appraisal which sets out the methodology for an options appraisal for delivery of the required Sites into the Project at a time and on terms which are most likely to ensure Project deliverability whilst achieving best value for the Authorities;
<b>Unitary Charge</b>	means the payment due under the Project Agreement; and
<b>WIDP</b>	means the Waste Infrastructure Delivery Programme.

## 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- 1.2.1 each gender includes all genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 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;
- 1.2.4 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.5 any reference to legislation (including subsidiary legislation), determinations and directions shall be construed as a reference to any legislation, determinations, directions and statutory guidance as amended, replaced, consolidated or re-enacted;
- 1.2.6 a reference to a public organisation (other than an Authority) 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 the functions and responsibilities of such public organisation;
- 1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.8 any reference to a requirement for “consent” or “approval” shall be taken to be the prior written consent or approval of the relevant body or person;

- 1.2.9 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;
  - 1.2.10 the Schedules hereto all form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement; and
  - 1.2.11 words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words.
- 1.3 The principles set out in **Clause 1.2** above shall be borne in mind and applied so far as appropriate in the interpretation of this Agreement and in the resolution of any dispute under this Agreement.

## 2 **TERM**

This Agreement shall come into effect on the Commencement Date and shall continue in force in respect of the Authorities until terminated in accordance with **Clause 16**.

## 3 **PRINCIPLES AND KEY OBJECTIVES**

- 3.1 The Authorities intend this Agreement to be legally binding and mutual commitments between them created by the Agreement shall be construed accordingly.
- 3.2 The Authorities agree to work together to carry out the Procurement Milestones in accordance with the terms of this Agreement.
- 3.3 The Authorities acknowledge and agree that the Heads of Terms are not intended to be exhaustive but to contain the major principles which the Authorities have identified as being pertinent to the Second Inter Authority Agreement and which will be expanded and incorporated in the Second Inter Authority Agreement once the terms of the Project Agreement have been agreed.
- 3.4 Each of the Authorities hereby represents to the others that it has obtained all necessary consents sufficient to ensure the delegation of functions provided for by this Agreement for the Project.
- 3.5 The Authorities shall use all reasonable endeavours to procure that their respective members and officers who are involved in the Project shall at all times act in the best interests of the Project. The Authorities expressly acknowledge that their members and officers involved in carrying out activities

under this Agreement or otherwise in connection with the Project may be required to act in conflict with their duty to their own Authority, and the Authorities hereby authorise them to act in such a manner.

3.6 The Authorities commit to share data and knowledge relevant to the Project where appropriate and in accordance with all applicable requirements of the Data Protection Legislation. This 3.6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this 3.6, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

3.7 In working together, the Authorities agree that they will conduct the relationship between them in accordance with the following principles:

3.7.1 **Openness and trust**

- (a) The Authorities undertake to act in accordance with a duty of good faith to each other, be open and trusting in their dealings with each other, make information, data, knowledge and analysis available to each other, use such information to support the Project, discuss and develop ideas openly and contribute fully to all aspects of the successful achievement of the Project.
- (b) While respecting the mutual need for commercial confidentiality, the Authorities undertake to be transparent in their dealings with each other and, without prejudice to the foregoing, the Authorities undertake to respect matters of commercial confidentiality and potential commercial prejudice.

3.7.2 **Commitment and drive**

The Authorities undertake to be committed fully to the Project, will seek to motivate their respective employees, officers and members involved in or attached to the Project and undertake to address the challenges of the Project with drive, enthusiasm and a determination to succeed.

### 3.7.3 **Skills and creativity**

The Authorities acknowledge and agree that:

- (a) each brings complementary skills and knowledge which they will apply creatively to achieving their respective objectives, resolution of difficulties and the development of the Project and the personnel working within it; and
- (b) to achieve their respective objectives, will involve the appreciation and adoption of common values by each of them.

### 3.7.4 **Effective relationships**

The Authorities undertake to develop and maintain clear roles and responsibilities for each of them and to develop relationships at the appropriate levels within each organisation providing direct and easy access for the others' representatives.

### 3.7.5 **Developing and adapting**

The Authorities acknowledge and agree that they are engaged in a long term relationship for their mutual benefit through the achievement of the Project which relationship needs to develop and adapt and each will use reasonable endeavours to develop and maintain an effective joint process to ensure that the Project develops appropriately and in line with the principles set out in this Agreement.

### 3.7.6 **Reputation and standing**

The Authorities agree that, in relation to this Agreement and the Project generally, they shall pay the utmost regard to the standing and reputation of one another and shall not do (by act or omission) anything which may bring the standing or reputation of any of the other Authorities into disrepute or attract adverse publicity to any of the other Authorities.

### 3.7.7 **Reasonableness of Decision Making**

The Authorities agree as between each other that all decisions made in relation to this Agreement and the Project generally shall be made by them acting reasonably with procedural fairness and observing any statutory procedural rules.

## 4 **APPOINTMENT OF HARTLEPOOL BOROUGH AS THE LEAD AUTHORITY**

Subject to the provision of **Clause 5.3** below, Y and Z Councils (acting severally) appoint, with effect from the Commencement Date, Hartlepool Borough to be the Lead Authority for the discharge of the Key Procurement Functions which functions shall be carried out for and on behalf of the Authorities and Hartlepool Borough agrees to act in that capacity subject to and in accordance with the terms and conditions of this Agreement.

## 5 **SERVICES AND DUTIES OF THE AUTHORITIES**

- 5.1 For the duration of this Agreement Hartlepool Borough as the Lead Authority shall act diligently and in good faith in all its dealings with Y Council and Z Council and shall use its reasonable endeavours to carry out the Key Procurement Functions in accordance with the EU Procurement Regime and any other applicable legislation.
- 5.2 Hartlepool Borough shall be responsible for the procurement and appointment of the legal advisors, planning advisors and insurance advisors to the Project, subject to the costs of such appointments being shared between the Authorities in accordance with **Clause 11 (Commitment of the Authorities and Contributions)**. Hartlepool Borough shall lead on monitoring the performance of these advisors. Hartlepool Borough's Standing Orders and Financial Regulations shall be applicable.
- 5.3 Z Council shall be responsible for the procurement and appointment of the technical advisors and financial advisors to the Project, subject to the costs of such appointments being shared between the Authorities in accordance with **Clause 11 (Commitment of the Authorities and Contributions)**. Z Council shall lead on monitoring the performance of these advisors. Z Council's Standing Orders and Financial Regulations shall be applicable.
- 5.4 For the avoidance of doubt, the provisions of **Clause 5.2** are subject further to such appointments being approved by the Project Board as required by Milestone 2 in **Schedule 1 (Procurement Milestones)** or, to the extent that the actual costs associated with any such appointments undertaken together with all the actual other costs associated with the Project are likely to exceed the approved annual budget of the Lead Authority held on behalf of the Authorities by 5% subject to approval as required pursuant to Milestone 42.
- 5.5 Hartlepool Borough shall at the reasonable request of Z Council and/or Y Council and at reasonable times during normal business hours permit the duly authorised representatives of Y Council and/or Z Council (as the case may be) to examine any documents relating to the Project and/or the Project at the Project Office.



- 5.6 Y Council and Z Council shall each, during the currency of this Agreement, act diligently and in good faith in all their dealings with Hartlepool Borough and shall use its reasonable endeavours to assist Hartlepool Borough to discharge the Key Procurement Functions in accordance with the EU Procurement Regime and any other applicable legislation and shall be timely in responding to requests for information, and in their decision making processes.

## 6 **DECISION MAKING**

- 6.1 The Authorities have identified the following three categories of decisions and other actions to be taken and carried out during the Procurement Milestones together with the means by which they will be taken:

- 6.1.1 a “Project Director Matter”, being a matter which the Project Director shall have authority to carry out on behalf of the Authorities;
- 6.1.2 a “Project Board Matter”, being a matter which it is expected that any or all of the representatives of each of the Authorities appointed pursuant to **Clause 7.3 (Project Board)** will be able to make a decision upon and have the power to bind the Authority it represents in doing so; and
- 6.1.3 a “Matter Reserved To Authority”, being a matter which shall be reserved to each Authority for an executive decision under the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007 and, for the avoidance of doubt, that matter requiring a decision would not be dealt with by the representatives of the Authorities appointed pursuant to **Clause 7.3 (Project Board)**, the Project Manager or the Lead Authority (as the case may be) until the decision shall have been taken,

and, in each case, such matters are identified in **Schedule 1 (Procurement Milestones)**.

## 7 **PROJECT BOARD**

- 7.1 The Authorities shall form the project board (“**Project Board**”) for the purpose of overseeing and co-ordinating the Procurement Milestones and to carry out the functions set out in **Schedule 11 (Project Board Terms of Reference)**.
- 7.2 The Project Board shall not have power to approve any Matter Reserved to the Authorities.
- 7.3 The first members of the Project Board are those persons named in the first column of the table set out in **Schedule 2 (Project Board)**.

- 7.4 Each Authority shall be entitled from time to time to appoint a deputy for each of its representatives set out in **Schedule 2 (Project Board)**, but such deputy (in each case) shall only be entitled to attend meetings of the Project Board in the absence of his or her corresponding principal.
- 7.5 Each Authority shall be entitled to invite appropriate third parties to observe Project Board meetings and such third parties shall be entitled to take part in such Project Board Meetings at the discretion of the Chairperson of the Project Board.
- 7.6 The Authorities shall procure that:
- 7.6.1 the Project Board appoints a person to represent the interests of all of the Authorities in respect of their operational requirements for the Project who shall be called the Project Director and who shall be a member of the Project Board;
  - 7.6.2 the first Project Director appointed in accordance with **Clause 7.6.1 (Project Board)** shall be an officer seconded from Hartlepool Borough and who shall be the person identified as the Project Director and a member of the Project Board in **Schedule 2 (Project Board)**; and
  - 7.6.3 the salary and on costs of the Project Director shall be shared equally by the Authorities; and
  - 7.6.4 The Project Director shall not be removed or replaced unless three (3) months prior written notice is given by the Authorities to the Project Board.
- 7.7 Each Authority may, at their discretion, replace their representatives (and their respective deputies) appointed to the Project Board, provided that:
- 7.7.1 at all times, they have representatives appointed to the Project Board in accordance with the positions identified in **Schedule 2 (Project Board)**; and
  - 7.7.2 any such replacement shall have no lesser status or authority than that set out at the second column of **Schedule 2 (Project Board)**.
- 7.8 The Project Board shall meet as and when required in accordance with the timetable for the Project and, in any event, at appropriate times and on reasonable notice (to be issued through the Project Director) to carry out the Project Board Matters referred to in **Schedule 1 (Procurement Milestones)** and in carrying out such activities.

- 7.9** The details of the ways of working, clerking and other operational matters of the Project Board are set out in **Schedule 11 (*Project Board Terms of Reference*)**.
- 7.10** Each Authority shall provide all information reasonably required upon request by the Project Board and comply with unanimous decisions of the Project Board to request such information.
- 7.11** Each Authority shall consult with the other Authorities to ensure the diligent progress of the day to day matters relating to the Procurement Milestones.
- 7.12** The Project Board has appointed the Project Director as identified in the table in **Schedule 3 (*Project Team*)** to carry out the functions set out in **Part 1 of Schedule 10 (*Duties of Project Director and Project Manager*)**.

**[NB Voting provisions to be included at Schedule 11]**

## **8 EVALUATION**

The Authorities have agreed that the representative of each of them appointed in accordance with **Clause 7.3 (*Project Board*)** will be part of the evaluation team for the Project so that the Authorities agree on the selection of the Provider and the terms of the Project Agreement.

## **9 PROJECT TEAM**

- 9.1** The Authorities shall form a Project Team ("**Project Team**") working under the direction of the Project Director for the purposes of managing the Project Milestones.
- 9.2** The Project Director shall not have power to approve a Project Board Matter or a Matter Reserved to Authorities.
- 9.3** The Authorities have appointed those representatives specified in **Schedule 3 (*Project Team*)** to the Project Team at the level and for the resource specified in each case together with any other person as may be agreed by the Project Board from time to time.
- 9.4** The Authorities may, at their discretion, replace their representatives appointed to the Project Team, provided that such replacement shall be on the same basis as the original appointee as set out in **Clause 9.3 (*Project Team*)** and provided further that no member of the Project Team shall be removed or replaced by any Authority without that Authority giving at least three (3) months' (or such shorter period as may be agreed with the Project Director) prior written notice of its intention to remove or replace that member of the Project Team.

**9.5** Unless otherwise agreed by the Authorities, the Authorities appoint the Project Director to lead all negotiations with Bidders in connection with the Project together with the external advisors appointed in accordance with **Clause 5.2 (Duties of Hartlepool Borough as Lead Authority)**.

## **10 ADMISSION OF ADDITIONAL AUTHORITIES**

**10.1** The Authorities may vary the terms of this Agreement including admitting additional authorities to the Project, the terms of such admission to be agreed by the Authorities.

**10.2** Where an additional Authority is admitted to the Project it shall enter into a Deed of Variation in a form agreed by the Authorities and from the date of its admittance to the Project all provisions of this Agreement shall apply to the admitted Authority and the definition of “Authorities” shall include it.

## **11 COMMITMENT OF THE AUTHORITIES AND CONTRIBUTIONS**

**11.1** The Authorities agree and undertake to commit to the Project in accordance with the terms of this Agreement and not to commission and/or undertake any procurement and/or project that seeks or would procure the delivery of all or any part of the Project outside the terms of this Agreement unless and until it shall have withdrawn from the Project in accordance with **Clause 15 (Withdrawal during the Procurement Exercise)**.

**11.2** The costs associated with providing internal resources in relation to the Procurement Milestones shall be borne by the Authority providing that internal resource. However, any additional and external costs required shall be financed by equal contributions from the Authorities.<sup>2</sup>

**11.3** Each Authority shall be required to prepare accounts including details of any expenditure incurred pursuant to **Schedule 8 (Heads of Expenditure)** (“the **Accounts**”) in respect of each Accounting Period and for such further and/or other accounting periods as the Project Board shall determine and which shall be incorporated into **Schedule 7 (Accounting Periods)**.

**11.4** The Authorities shall:

11.4.1 in the Accounts make true and complete entries of all relevant payments made during the previous Accounting Period;

11.4.2 within 5 days of the end of each Accounting Period, Z Council and Y Council provide to the Project Director unaudited Accounts for such

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<sup>2</sup> Authorities will need to make provision in the terms of reference of the project board for the meeting of the board administrative costs. This could be a simple sharing of the costs equally, the meetings could be held at each authority in turn and borne by the host on an in kind basis or could be part of an authority's contribution to the project.

Accounting Period together with certification that such Accounts comply with **Clause 11 (Commitment of the Authorities and Contributions)**.

- 11.4.3 each nominate an individual to be responsible for ensuring that Authority's own compliance with this **Clause 11 (Commitment of the Authorities and Contributions)** and the name, address and telephone number of each individual nominated pursuant to this **Clause 11.4.3 (Commitment of the Authorities and Contributions)** shall be notified to the other Authorities in accordance with **Clause 30 (Notices)**; and
- 11.4.4 Hartlepool Borough shall within ten (10) Business Days of receipt of the Accounts submitted by Z Council and Y Council in accordance with **Clause 11.4.2. (Commitment of the Authorities and Contributions)** prepare a reconciliation statement identifying the payments made by each Authority and the balance due from or owing to each. Hartlepool Borough shall within thirty (30) Business Days of the preparation of the reconciliation statement send out relevant balancing invoices or credit payments to the relevant Authority. An Authority receiving an invoice for payment shall pay it in full within thirty (30) days.
- 11.5** If an individual nominated by an Authority pursuant to **Clause 11.4.3** changes, that Authority shall notify the other Authorities forthwith of the replacement nominees.
- 11.6** The Authorities hereby agree that if one of the Authorities carries out any work or incurs any cost or expenses or requests the Project Team (or any member of the Project Team) to carry out any Work or to incur any cost or expense that is not envisaged by the Project Director to be an efficient use of time and/or resources, that matter shall, at the discretion of the Project Director, be referred to the Project Board for a decision as to whether such work, cost or expense is part of the Project or whether such work, cost or expense should be the entire responsibility of the Authority so carrying it out or requesting it (as the case may be).
- 11.7** The Authorities hereby agree that if one of the Authorities believes it is likely to incur disproportionate internal resource costs pursuant to **Clause 11.2**, that matter shall, at the discretion of the Project Director, be referred to the Project Board for a decision as to whether such costs will be disproportionate and whether any contributions should be made to this cost by the other Authorities.

## 12 [SITES<sup>3</sup>

- 12.1 The Authorities have identified the requirement in respect of the Project for Options on *[insert number]* Sites, (*[state in which of]* the Authorities' areas) and the Project Board shall use its reasonable endeavours to formulate a Site Options Appraisal to facilitate the delivery of those Options on Sites as expeditiously as possible.
- 12.2 The approval of the Site Options Appraisal shall be a Matter Reserved to Authorities.
- 12.3 Subject to the approval of the appointment of the external planning advisers pursuant to Milestone 2, the Project Director shall procure that the external planning advisers shall identify potential Sites for the Project and shall report to the Project Director in respect of each potential Site so identified.
- 12.4 The Project Director shall report to the Project Board in respect of the potential Sites identified by the external planning advisers as referred to in **Clause 12.2 (Sites)**.
- 12.5 Where the external planning advisers are unable to identify appropriate potential Sites, the provisions of the Site Options Appraisal shall apply to enable the Authorities to agree an alternative location for the Sites.
- 12.6 Subject to the Authorities approving acquisition of Options and/or Sites in accordance with Milestone 5, the Authorities shall equally participate in the financing of the acquisition of these Options and/or Sites. The respective contributions of the Authorities will be re-evaluated at financial close before the Project Agreement is entered into, and the contribution of each Authority to these Options and/or Sites will be adjusted to be proportionate to their tonnages of residual waste which are to be subject to the Project Agreement at its commencement, and if the Authorities do not use all the Sites then in proportions which accord with their usage in tonnage.
- 12.7 It shall be the responsibility of the Project Director to have overall management, through the Project Team, of the acquisition of such Options and/or Sites.
- 12.8 Each Option and/or Site shall be acquired by that Authority in whose area the property identified for that Site is located ("**Acquiring Party**"). The other Authorities shall be the "Contributing Parties" for the Option and/or Site and shall pay to the Acquiring Party a pro rata contribution of the cost of acquiring and/or securing the relevant Option/and or Site. An Acquiring Party shall be

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<sup>3</sup> Clauses 12.1- 12.8 will not be required where this Agreement is entered into post OJEU as Options/ Sites would have been acquired.

prepared to use their powers under the Acquisition of Land Act 1981. The Acquiring Party will hold the property on trust for the benefit of all the Authorities.

**12.9** The Acquiring Party consents to the entry of the following restriction against the Acquiring Party's title to the Site at HM Land Registry and will provide the other Authorities with all necessary assistance and/or documentation to permit entry of the restriction:

"No disposition of the registered estate [(other than a charge)] by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a consent in writing signed by each of [non acquiring Authorities] of [ADDRESS]"

**12.10** If an Authority withdraws from the Project during the Procurement Milestones (whether pursuant to **Clause 15 (Withdrawal during the Procurement Exercise)** or otherwise) or is a Defaulter and this Agreement is terminated in respect of that Authority in accordance with **Clause 18.2 (Termination)**, the provisions of **Clauses 12.9 and 12.10 (Sites)** shall apply.

**12.11** Where the Authority referred to in **Clause 12.9 (Sites)** is an Acquiring Party of an Option and/or Site, the Acquiring Party and the Contributing Parties for that Site shall jointly procure that an assessment of the Open Market Value of such Site shall be carried out within thirty (30) Business Days of either the Authority's decision to withdraw from the project or the date on which notice is given to an Authority that it is a Defaulter in accordance with the provisions of **Clause 18.2 (Termination)** and the Contributing Parties shall at their discretion following receipt of such assessment decide whether the Acquiring Party shall:

12.11.1 Sell the Option and/or Site, in which case the Acquiring Party shall (on completion of the sale) repay to the Contributing Parties the same proportion of the proceeds of sale in percentage terms as it contributed to the Original Price; or

12.11.2 Transfer the Site to the Contributing Parties, in which case the Contributing Parties shall pay to the Acquiring Party an amount equal to the same proportion of the Open Market Value as it contributed to the Original Price.

**12.12** Where the Authority referred to in **Clause 12.9 (Sites)** is a Contributing Party to an Option and/or Site, the Authority shall notify the Acquiring Party of those Option(s) and/or Site(s) in respect of which such Authority is a Contributing Party as to whether that Authority requires to have its Contribution(s) repaid. If the Authority does so require its Contribution(s) to be repaid, the Acquiring

and Contributing Authorities shall jointly procure that an assessment of the Open Market Value of such Option(s) and /or Site(s) shall be carried out and the Acquiring Party of that Option and/or Site shall within ninety (90) Business Days of such assessment being carried out pay to the Contributing Party the proportion of the Open Market Value (as determined by such jointly procured assessment), in percentage terms as it contributed to the Original Price and such payment shall extinguish any and all claims or rights that the Contributing Party may have in respect of such Option(s) and/or Site(s).]

### **13 INTELLECTUAL PROPERTY**

- 13.1** Each Authority will retain all Intellectual Property in its Material.
- 13.2** Each Authority will grant all of the other Authorities a non-exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its Material for the Procurement Milestones and any other purpose resulting from the Procurement Milestones whether or not the Authority granting the licence remains a party to this Agreement or the Procurement Milestones.
- 13.3** Without prejudice to **Clause 13.1 (*Intellectual Property*)**, if more than one Authority owns or has a legal or beneficial right or interest in any aspect of the Material for any reason (including that no one Authority can demonstrate that it independently supplied or created the relevant Material without the help of one or more of the other Authorities), each of the Authorities who contributed to the relevant Material will grant to all other Authorities to this Agreement a non-exclusive, perpetual, non-transferable and royalty free licence to use and exploit such Material as if all the other Authorities 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 date of this Agreement a party to this Agreement and who has licensed any Intellectual Property under this Agreement will have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.
- 13.5** Each Authority warrants that it has or will have the necessary rights to grant the licences set out in **Clauses 13.2 and 13.3 (*Intellectual Property*)** in respect of the Material to be licensed.
- 13.6** Each Authority shall indemnify the other Authorities against any loss arising out of any dispute or proceedings brought by a third-party alleging infringement of its intellectual property rights by use of that Authority's intellectual property for the purpose of the Project.

### **14 REMEDIATION**



- 14.1** At any time the Chief Executive of any of the Authorities (the “First Authority”) may serve a notice on one of the other Authorities (the “Other Authority”) a “default Notice”, alleging that that Authority has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the First Authority has or is likely to suffer as a result of the alleged failure.
- 14.2** An Authority in receipt of a Default Notice shall have 14 days within which to serve on the Chief Executive of the First Authority 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 Authority has suffered or may suffer as a result of the failure or the reasons why that alleged failure is disputed.
- 14.3** Within 14 days of receipt of a Counternotice, the Chief Executive of the First Authority shall send to the Chief Executive of the Other Authority a “Notice of Acceptance” of any proposals contained in the Counternotice in so far as those proposals are accepted by the First Authority, and may send a “Notice of Dispute” in so far as no proposal satisfactory to the First Authority is contained in the Counternotice, setting out in respect of each proposal which is not accepted by the First Authority why it is considered to be unacceptable.
- 14.4** Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the Other Authority shall implement that proposal as soon as reasonably practicable.
- 14.5** Where any matter is contained in a Notice of Dispute, it shall fall to be dealt with under the Disputes Procedure set out in **Clause 17**.

## **15 WITHDRAWAL DURING THE PROCUREMENT EXERCISE**

- 15.1** Each Authority acknowledges that, if it withdraws from this Agreement, that withdrawal is likely to cause additional cost to the other Authorities including, but not limited to, the cost of undertaking a separate procurement and the costs attendant upon the delayed availability of the services and/ or facilities which would enable it to secure the effective treatment and disposal of waste.
- 15.2** Each Authority agrees that in the event that it gives notice of withdrawal (such notice to be in writing to each Authority to the other Authorities), it will indemnify the other Authorities against any unmitigable **loss** or expense as a direct result of its withdrawal from this Agreement, to the extent that the other Authorities will be entitled to **compensation** to place them in the same position they would have been in, had the notice of withdrawal not been issued. The Authorities shall provide the withdrawing Authority with any information they

may reasonably require in order to assess the validity of any claim to **compensation**.

**15.3** Where any Authority withdraws from this Agreement:

15.3.1 The obligations of that Authority in respect of the furtherance of the Project shall cease on such withdrawal;

15.3.2 The Agreement shall continue in force as respect any financial liabilities which have arisen or may arise out of the performance of this Agreement;

15.3.3 The Agreement shall remain in force in respect of any liability of any Authority to indemnify the other Authorities under this **Clause** of the Agreement; and

15.3.4 **Clause 17 (Dispute Resolution)** of this Agreement shall remain in force in respect of any of the matters arising from the performance of or withdrawal of any Authority under this Agreement.

**16 CONCLUSION OF THE SECOND INTER AUTHORITY AGREEMENT**

**16.1** The Authorities will enter into the Second Inter Authority Agreement at the time of the successful award of the Project Agreement as soon as reasonably practicable and in any event within [6] [8] weeks following the successful award of the Project Agreement.

**16.2** The Second Inter Authority Agreement shall include:

16.2.1 Full drafting based on and worked up from the Heads of Terms; and

16.2.2 Such other provisions as the Authorities agree (or as may be determined by the dispute resolution procedure in **Clause 17 (Dispute Resolution Procedure)** as a consequence of the terms of the Project Agreement.

**16.3** The Authorities shall individually and jointly use all reasonable endeavours to negotiate and agree the Second Inter Authority Agreement in conjunction with the negotiation and agreement of the Project Agreement.

**16.4** The reference to “all reasonable endeavours” in **Clause 16.3 (Conclusion of the Second Inter Authority Agreement)** shall include a requirement on all Authorities to:

16.4.1 (without prejudice to **Clause 3.4 (Principles and Key Objectives)**) at all times act in good faith;

16.4.2 Acknowledge that the Authorities have agreed that the Heads of Terms will be expanded to become the Second Inter Authority Agreement and, accordingly, no Authority shall attempt to move significantly away from their intention or purpose;

16.4.3 Ensure that sufficient time is set aside to conduct the negotiations on the terms of the Second Inter Authority Agreement either through correspondence or by holding meetings or a combination of both to ensure that the terms of the Second Inter Authority Agreement are agreed in accordance with the timetable envisaged in **Clause 16.1 (Conclusion of the Second Inter Authority Agreement)**;

**16.5** If a dispute or difference arises between the Authorities in relation to a provision of the Second Inter Authority Agreement and such dispute or difference cannot be settled by the Authorities within ten (10) Business Days of it first arising, any Authority may refer such dispute or difference for determination in accordance with **Clause 17 (Dispute Resolution)**.

## **17 DISPUTE RESOLUTION**

**17.1** Any disputes and/or disagreements arising under or in connection with this Agreement shall be resolved in accordance with this Clause.

**17.2** If a dispute and/or disagreement arises in relation to any aspect of this Agreement, then, save in relation to disputes or disagreements relating to a Matter Reserved to Authorities, the Project Board 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.

**17.3** In relation to a dispute or disagreement relating to a Matter Reserved to Authorities, or if the Project Board fails to resolve a dispute or disagreement within five (5) Business Days of meeting pursuant to **Clause 16.2**, or fails to meet in accordance with the timescales set out in **Clause 16.2**, then the Project Board or any Authority as appropriate may refer the matter for resolution to:

17.3.1 The Joint Leaders/Members Meeting;

17.3.2 The CIWM or such other party as the Authorities may agree (or the CIWM may direct) for resolution by him; or

17.3.3 The exclusive jurisdiction of the Courts of England otherwise.

**17.4** Any dispute and/or disagreement to be determined by the Joint Leaders Meeting, CIWM or the Courts of England (as the case may be) under this Agreement shall be promptly referred for determination to him/them.

- 17.5** The Authorities shall on request promptly supply to the Joint Leaders Meeting or CIWM all such assistance, documents and information as may be required for the purpose of determination and the Authorities shall use all reasonable endeavours to procure the prompt determination of such reference.
- 17.6** 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 Authorities.
- 17.7** The costs of the resolution of any dispute and/or disagreement between the Authorities under this Agreement shall be borne equally by the Authorities to the dispute in question save as may be otherwise directed by the Joint Leaders Meeting, CIWM or the Courts of England (as the case may be).

## **18 COMMENCEMENT, DURATION AND TERMINATION**

- 18.1** This Agreement shall continue in full force and effect from the Commencement Date until the earliest of the following dates:

18.1.1 the Authorities agree in writing to its termination;

18.1.2 there is only one remaining Authority who has not withdrawn from the Agreement in accordance with **Clause 15 (*Withdrawal during the Procurement Exercise*)**; or

18.1.3 the date of execution of the Project Agreement.

- 18.2** Without prejudice to any other rights or remedies of the Authorities, this Agreement may be terminated in relation to any Authority (“**Defaulter**”) by the other Authorities (“**Non-Defaulting Parties**”) acting unanimously in giving written notice to the Defaulter effective on receipt where the Defaulter breaches any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within five (5) Business Days of being notified of each breach in writing by the Non-Defaulting Parties and being required to remedy the same.

## **19 CONSEQUENCES OF TERMINATION**

- 19.1** If the Agreement is terminated in accordance with **Clause 18.1. (*Termination*)**, save for the obligations set out in **Clause 11 (*Commitment of the Authorities and Contributions*)**, **Clause 12 (*Sites*)** and **Clause 20 (*Confidentiality and Announcements*)**, the Authorities shall be released from their respective obligations described in this Agreement.

- 19.2** Where an Authority withdraws from the Project and this Agreement in accordance with **Clause 15 (*Withdrawal during the Procurement Exercise*)**

or is a Defaulter and this Agreement is terminated in respect of that Authority in accordance with **Clause 18.2. (Termination)**, the withdrawing or Defaulter Authority shall, if the other Authority or Authorities so require by notice given before the expiry of the period of two (2) months' of the date of such withdrawing Authority's withdrawal or the termination of this Agreement in respect of that Authority as Defaulter, transfer to any one or all of such other Authorities any property acquired and/or secured by such withdrawing Authority or Defaulter for the purposes of the Project at cost (taking into account any contribution made to that cost to the withdrawing or Defaulter Authority from another Authority).

**19.3** The Authorities acknowledge and agree that:

19.3.1 the Project has been modelled on the basis of participation by the Authorities and that there are considerable economic benefits to be achieved as a result of such joint working; and

19.3.2 accordingly, save for the circumstances described in **Clause 18.1. (Termination)** or **Clause 15 (Withdrawal during the Procurement Milestones)**, in the event that this Agreement is terminated in relation to any Authority pursuant to **Clause 18.2. (Termination)** or that any Authority otherwise fails to conclude the Second Inter Authority Agreement pursuant to the provisions of **Clause 16 (Conclusion of Second Inter Authority Agreement)** such Defaulter shall, subject to **Clause 19.4. (Consequences of Termination)**, be liable to the Non-Defaulting Authority or Authorities for their consequential loss, including their reasonable and properly incurred abortive costs incurred in the Project (including but not necessarily limited to the costs of legal, financial and technical advice) any costs, claims and damages payable by the Non-Defaulting Authority or Authorities arising from claims from bidders in respect of their abortive costs and costs of re-commissioning alternative provision for the Project, loss of external funding and additional costs as a consequence of the delayed availability of the facilities which were proposed to be procured under the Contract.

**19.4** Notwithstanding the provisions of **Clause 19.3. (Consequences of Termination)** the Authorities shall not agree or enter into discussions with a view to agreeing with any Bidder (including any Bidder appointed as preferred or reserved Bidder for the Project) that any of them is or will become liable to that Bidder at the time in question or in the future for any abortive or similar costs or damages of that bidder or its advisers.

**20 CONFIDENTIALITY AND ANNOUNCEMENTS**

- 20.1** Each Authority 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 Authority 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 Second Inter Authority Agreement and/or the Project Agreement.
- 20.2** The obligation set out in **Clause 20.1 (Confidentiality and Announcements)** shall not relate to information which:
- 20.2.1 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause;
  - 20.2.2 any disclosure to enable a determination to be made under **Clause 17 (Dispute Resolution)**;
  - 20.2.3 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental regulatory authority concerned;
  - 20.2.4 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
  - 20.2.5 any disclosure of information by any Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract; or
  - 20.2.6 any provision of information to the Authorities' own professional advisers or insurance advisers.
- 20.3** Where disclosure is permitted under **Clause 20.2.3. or Clause 20.2.4. (Confidentiality and Announcements)**, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this **Clause 20 (Confidentiality and Announcements)** and the disclosing Authority shall make this known to the recipient of the information.

**20.4** No Authority shall make any public statement or issue any press release or publish any other public document relating, connected with or arising out of this Agreement and/or the Second Inter Authority Agreement and/or the Project Agreement which is not in accordance with the Communications Strategy as set out in **Schedule 12** (excluding any disclosure required by legal or regulatory requirements).

## **21 FREEDOM OF INFORMATION**

**21.1** Each Authority acknowledges that all of the Authorities are subject to the provisions of the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004 (“EIR”) and each Authority shall where reasonable assist and co-operate with any other Authority (at their own expense) to enable that other Authority to comply with these information disclosure obligations.

**21.2** Where an Authority 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 Authorities in relation to the Project, it shall (and shall procure that its consultants and/or sub-contractors shall):

21.2.1 transfer the request for information to the other Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;

21.2.2 provide the other Authority with a copy of all information in its possession or power in the form that the Authority requires within ten (10) Business Days (or such longer period as the Authority may specify) of the Authority requesting that information; and

21.2.3 provide all necessary assistance as reasonably requested by the other Authority to enable the Authority to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

**21.3** Where an Authority receives a request for information under the FOIA or the EIR which relates to the Agreement or the Project, it shall inform the other Authorities of the request for information as soon as practicable after receipt and in any event at least two (2) Business Days before disclosure and shall use all reasonable endeavours to consult with the other Authorities prior to disclosure and shall consider all representations made by the other Authority in relation to the decision whether or not to disclose the information requested.

**21.4** The Authorities shall be responsible for determining in their absolute discretion whether any information requested from them under the FOIA or the EIR:

21.4.1 is exempt from disclosure under the FOIA or the EIR; or

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

**21.5** Each Authority acknowledges that the other Authorities may be obliged under the FOIA or the EIR to disclose information:

21.5.1 without consulting the other Authority where it has not been practicable to achieve such consultation; or

21.5.2 following consultation with the other Authorities and having taken their views into account.

## **22 NO AGENCY OR PARTNERSHIP**

**22.1** Save as expressly provided otherwise in this Agreement or where a statutory provision otherwise requires, the Authorities shall not in any way whatsoever:

22.1.1 be, act or hold themselves out as an agent of the other;

22.1.2 make any representations or give any warranties to third parties on behalf or in respect of the other; or

22.1.3 bind or hold themselves out as having authority or power to bind the other.

**22.2** Nothing in this Agreement shall create, or be deemed to create, a partnership between the Authorities.

## **23 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement.

## **24 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the Authorities in relation to its subject matter and supersedes all prior representations, arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating to the same.

## **25 INCONSISTENCY**

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

## **26 SEVERANCE**



In the event of any provision of this Agreement being or becoming legally ineffective or unenforceable the remaining provisions of this Agreement shall not be invalidated.

## **27 WAIVER**

**27.1** The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute or shall not be construed as a waiver of the right or remedy or a waiver of other rights or remedies nor effect the validity of this Agreement.

**27.2** A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

**27.3** A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

## **28 AMENDMENTS**

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

## **29 LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the Laws of England and the Authorities irrevocably submit to the exclusive jurisdiction of the English courts.

## **30 NOTICES**

**30.1** Any notice required to be given by either Authority pursuant to or in connection with this Agreement shall not be effective unless given in writing and sent by first class post or delivered by hand or facsimile transmission to the address of the Authority set out above or such alternative address as may be notified in accordance with **Clause 30.3 (Notices)**.

**30.2** A notice served in accordance with **Clause 30.1 (Notices)** shall be deemed to have been duly served when received except that:

30.2.1 subject to **Clause 30.2.2 (Notices)** if it is received between 4 pm on a Business Day and 9 am on the immediately following Business Day it

shall be deemed to have been served at 9 am on the second of such Business Days; and

30.2.2 if given or made by facsimile transmission, it shall be deemed to have been received once an uninterrupted communication report has been generated, provided the Authority to whom the notice is to be transmitted has not notified the Authority giving or making the notice that the facsimile is unintelligible or incomplete.

**30.3** Each Authority shall notify the other in writing within five (5) Business Days of any change in its address for service.

## **31 GENERAL**

**31.1** Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers, duties and obligations in the exercise of their functions as Local Authorities and/or in any other capacity and all rights, powers, discretions, duties and obligations of the Authorities under all Laws may at all times be fully and effectually exercised as if the Authorities were not a party to this Agreement and as if the Agreement had not been made.

**31.2** This Agreement is personal to the Authorities and no Authority shall assign, transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.

**31.3** Each Authority shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Authority is entitled to bring a claim against another Authority pursuant to this Agreement.

**31.4** Save where otherwise provided, the Authorities will pay interest on any amount payable under this Agreement not paid on the due date from that date to the date of payment at a rate equal to 4% above the base rate from time to time of Barclays Bank Plc (the "**Prescribed Rate**").

## **32 COUNTERPARTS**

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

## **33 COSTS**

The Authorities shall be responsible for paying their own respective costs and expenses in relation to the preparation, execution and implementation of this Agreement, except as expressly provided in this Agreement.

**IN WITNESS WHEREOF** this Deed has been executed on the day and year first above written.

The Common Seal of the  
**Hartlepool Borough**  
is hereunto affixed in the presence of

.....

The Common Seal of the  
**Y Council**  
is hereunto affixed in the presence of

.....

The Common Seal of the  
**Z Council**  
is hereunto affixed in the presence of

.....

**SCHEDULE 1****PROCUREMENT MILESTONES****Procurement Milestones**

<b>MILESTONE KEY PROCUREMENT FUNCTION</b>	<b>PROJECT DIRECTOR MATTER</b>	<b>PROJECT BOARD MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
<b>1.</b> Procurement of external advisers to the Project	Yes		
<b>2.</b> Approval and confirmation of external advisers to the Project		Yes	
<b>3.</b> Review of the Outline Business Case		Yes	
<b>4.</b> Agreement as to recommendation for the Authorities to procure an Option and/or Site.		Yes	
<b>5.</b> Decision to acquire an option on or any or all of the Sites			Yes
<b>6.</b> Drafting and issuing Prior Indicative Notice	Yes		
<b>34</b> Preparation of the Descriptive Document and Selection Questionnaire ("SQ")	Yes		
<b>35</b> Agreeing final version of the Descriptive Document and SQ		Yes	
<b>36</b> Drafting Procurement Notice	Yes		
<b>37</b> Agreeing Procurement Notice		Yes	
<b>38</b> Issuing Procurement Notice	Yes		
<b>39</b> Preparation of Evaluation Criteria for all stages of the procurement process	Yes		
<b>40</b> Agreeing Evaluation Criteria for all stages of the procurement process		Yes	
<b>41</b> Organising open days prior to return of SQ's and Expressions of Interest	Yes		

<b>MILESTONE KEY PROCUREMENT FUNCTION</b>	<b>PROJECT DIRECTOR MATTER</b>	<b>PROJECT BOARD MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
<b>42</b> Evaluation and Long-listing of Bidders	Yes		
<b>43</b> Agreement of long list		Yes	
<b>44</b> Inform successful and unsuccessful applicants.	Yes		
<b>45</b> Drafting Invitation to Participate in Dialogue (“IPD”)	Yes		
<b>46</b> Reviewing IPD		Yes	
<b>47</b> Agreeing IPD			Yes
<b>48</b> Issue IPD	Yes		
<b>49</b> Arrange the interviews/bidder presentations	Yes		
<b>50</b> Evaluation and short listing of IPD bidders	Yes		
<b>51</b> Provisional agreement to IPD shortlist		Yes	
<b>52</b> Final agreement to IPD shortlist			Yes
<b>53</b> Provisional selection of Bidders to go to Final Stage	Yes		
<b>54</b> Review of evaluation and selection of Bidders to go to Final Stage.		Yes	
<b>55</b> Final approval of evaluation and selection bidders to go to Final Stage			Yes
<b>56</b> Evaluation of final Bids and selection of Preferred Bidder	Yes		
<b>57</b> Review of final Bids and selection of Preferred Bidder		Yes	
<b>58</b> Agreement to selection of Preferred Bidder			Yes
<b>59</b> Clarification and Final Close	Yes		Yes
<b>60</b> Dispatch of Alcatel letters			

<b>MILESTONE KEY PROCUREMENT FUNCTION</b>	<b>PROJECT DIRECTOR MATTER</b>	<b>PROJECT BOARD MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
<b>61</b> Agreement and execution of Project Agreement and Second Inter Authority Agreement			Yes
<b>62</b> Collation of information and provision of information in respect of Project Agreement award procedures required under Regulation 23 Public Services Contracts Regulations	Yes		
<b>63</b> Approval of additional expenditure for the Project in excess of the £ million budget referred to in the Outline Business Case			Yes

NB Gateway Reviews to be included in the Milestones.

**SCHEDULE 2**

**Project Board**

**Hartlepool Borough**

**Z Council**

**Y Council**

Or appropriate deputies

### SCHEDULE 3

#### Project Team

Project Team Role	Name	Organisation	Position
Project Director			
Waste Manager			
Adviser			
Lead Finance Adviser			
Lead Communications Adviser			
Lead Legal Adviser			
Lead Planning Adviser			

Note: To include all advisers.



**SCHEDULE 4**

*[Drafting Note: to be inserted]*

**PART 1 OPTIONS ON SITES**

<b>Location of Site</b>	<b>Acquiring Party</b>	<b>Contributing Parties</b>	<b>Pro-rata Contribution</b>
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**PART 2 SITES**

<b>Location of Site</b>	<b>Acquiring Party</b>	<b>Contributing Parties</b>	<b>Pro-rata Contribution</b>
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## SCHEDULE 5

### Heads of Terms

The following heads of terms have been agreed between the Authorities to be expanded to become the Second Inter Authority Agreement to be negotiated and entered into in accordance with the provisions of this agreement. These heads of terms are intended to explain in plain language the intentions and roles of the Authorities.

The Authorities accept responsibility for costs in relation to the Project on the equitable basis of not actively seeking betterment out of the Inter Authority Agreement to the detriment of the other parties, thus attaining pecuniary advantage.

#### 1 **Joint Decision-Making**

It is essential at construction and operational phases of the Project to have joint decision-making at both member and officer level. The Authorities are using the Lead Authority model in the IAA for the procurement phase. The Lead Authority Model will also be adopted in the Second Inter Authority Agreement.

There will be a graded set of decision classifications so that decision making is at an appropriate level through delegated authorities, reserving critical (executive) decisions for all three Authorities. Timescales for decision making will be introduced.

On-going management of the Project will involve a number of areas that require consents or approvals. Some of these may fall to be decided by a single Authority (for example, where only its operations or facilities are affected). Others will require unanimity (for example, changes in key sub-contractors by the contractor or in its funding arrangements). Other areas may permit majority voting, but these are likely to be few.

#### 2 **Appointment of one Authority as sole contracting Authority<sup>4</sup>**

[The Authorities will need to authorise the appointment of an Authority as the sole contracting Authority and that each of the other *[insert number]* Authorities would indemnify the contracting Authority accordingly. Reciprocal indemnities would be given by the contracting Authority to the other *[insert number]* authorities.]

#### 3 **Project and Financial Management**

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<sup>4</sup> Identical resolutions in respect of indemnities to be passed by each authority are recommended. Note that authorities will need to carefully consider this clause depending on which parties are entering into the Project Agreement with the Contractor.

The contracting Authority shall appoint a contract manager to manage the Project Agreement and the Project generally.

Best practice Project Management arrangements will also be in place.

A single interface will be essential in the contract management of the construction phase(s) of the Project and, and a common approach, will need to be considered in the context of matters requiring consent of the Authorities under the Project and areas such as Changes in requirements. There will need to be a coordinated approach between the Authorities in respect of the day to day management of the operational phase(s) of the ultimate waste solution(s).

The *[insert number]* Authorities will need to devise a method of payment of the Unitary Charge to the Contractor.

4 **Allocation of Contract Operational and Capital/Borrowing Costs of Ultimate Waste Solution, and Third Party or other Income.**

All Costs (whether revenue including taxation or capital including land/property) associated with the Project waste solution, or third party income, profit share, refinancing gains derived from the Agreement will be shared between the Authorities in proportions which accord with their relative tonnages of waste which are subject to this Project Agreement at its date of commencement, and if more than one ultimate waste solution then in the proportions which accord with their relevant tonnages of waste delivered to each solution at the date of commencement of operation of that solution. This may be subject to the Change Protocol particularly in terms of tonnages of waste.<sup>5</sup>

5 **Volume Obligations relating to the Contract Waste**

There will be an obligation on the Authorities to commit all its residual waste in volume to be agreed for the purposes of meeting the tonnage requirements under the Project Agreement except for a de minimis level of residual waste that by its nature in terms of composition or structure must go to landfill. The Authorities will undertake to each other not to commission and or undertake any procurement and/or project that seeks or would procure the delivery of all or any part of the Project outside the terms of the Project Agreement subject to partial termination at Paragraph 9 below.

6 **Single approach, Changes in the Project, and dispute resolution**

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<sup>5</sup> It is acknowledged that there may be circumstances where departures from the adjustment to the simple tonnage formula may be considered for specific local circumstances.

To maximise the economies of scale within the Project, the Authorities will need to determine a level of commonality in the Project documentation (for example, in the Construction Requirements and Service Specifications) and provide a single interface (wherever possible) with the Contractor.

There will be a Change Protocol in the Project Agreement (changes may include for e.g. in-service levels, waste tonnages, sites and opening hours). In requesting a Change, however, the impact on the other Authorities would need to be considered and addressed (as appropriate) by the Authority requesting the Change.

Where an Authority requests an a change and said change relates to a Services used exclusively by the requesting Authority then the total cost will be paid by that Authority.

Where an Authorities Change concerns a Services which together are not exclusively used by one Authority then the total cost will be shared by those Authorities using benefiting from the Change

There may be grounds where a Change is not feasible, perhaps where this would prejudice the operations of one of the Authorities. An example might be a change in policy/strategy of one Authority which impacts on the individual business cases at financial close of the other *[insert number]* Authorities. Matters such as these may require a “veto” right for the Authority that would be prejudiced.

A method of dispute resolution will need to be settled in case of disputes arising between the Authorities and a single approach by the Authorities in a dispute with the Contractor.

## 7 **Termination**

The Authorities will need to agree the level of compensation payable by an Authority wishing to terminate on a voluntary basis and how it is to be paid and received by the other Authorities.

## 8 **Payment Mechanism and Performance Monitoring**

The extent to which each Authority is liable to contribute to the Unitary Charge will need to be addressed and agreed. This may be on a straight tonnage basis or on a composition of the waste supplied to the Contractor.

Where the Service is deficient or there are incidences of deductions, there may be an abatement to the Unitary Charge or there may be increased costs due to the alternative costs of disposal. Deductions from payments may be incapable of individual attribution to any particular Authority and will need to be

apportioned on an agreed basis across the payments. Areas where direct attribution can be made will need to be discussed and settled.

To the extent that defaults can arise in relation to a single Authority (as opposed to across all Authorities), the relevant triggers for remedies will need to be settled on an individual and aggregate basis.

## 9 **Liability to the Contractor caused by one of the Authorities**

Actions taken by one Authority may give rise to a liability for that Authority or all other Authorities to the Contractor. The extent of recompense to the Contractor and/or to the other Authorities will need to be settled.

Some liabilities will need to be shared on a straight percentage of tonnage basis where they cannot be attributed to the actions of a single Authority. Others, for example, failure to grant access to a site by one Authority, are clearly the responsibility of a single Authority. Such a failure to give access may cause delay in the construction programme for all Authorities and the Contractor may claim a Delay Event or Compensation Event. In addition to payments to be made to the Contractor as a result of this, the other Authorities may incur additional costs. The Authority “at fault” would need to pay for these, as appropriate.

## 10 **TUPE**

Where staff are transferred under TUPE to the Contractor by all Authorities, the costs will be blended into the Unitary Charge. The extent to which there should be any cross accounting between the Authorities to recognise the differences in terms and conditions between these staff will need to be considered. The Contractor is likely to upgrade all staff transferred to the highest level to avoid claims of constructive dismissal and in order to comply with the Code on Two Tier Workforces. Consideration will need to be given to the staff on termination, partial termination or expiry of the Project Agreement.

## 11 **Insurance**

Insurance issues for each of the Authorities in respect of their liabilities to the Contractor and/or each other will need to be considered in detail. It will be necessary to determine the handling and application of Insurance proceeds.

## 12 **Site risks**

Whether risks associated with ground conditions or contamination that do not fall to be borne by the private sector fall to be borne by one, two or all three Authorities will depend upon which ultimate waste solution is located at that

Site and which Authority proposes to use that solution. Sharing of the liability for these issues will need to be addressed.

The Authorities may need to agree a mechanism which evaluates and moderates the impact of the final Site(s) for the ultimate waste solution(s) as between the three Authorities.

Planning and Licensing are regulatory matters for each Authority. Additional and/or external costs associated with applications in respect of Sites will be Costs associated with the ultimate waste solution and will be allocated in accordance with Paragraph 4 above.

13 **Destination of assets on expiry or early termination**

The Authorities will need to agree between themselves the ultimate destination and ownership of assets on expiry or earlier termination of the Project. During the Project, appropriate land arrangements can be put into place. On termination or expiry, however, continued access to the facilities should be considered and planned. This is another area of potential complication where part of the Project could terminate early as opposed to termination of the whole Project. The Authorities will need to agree responsibility for the remediation of land after expiry, or termination of the Project Agreement.

14 **Legislative change**

Any costs/risks associated with a Change in Law will be shared between the Authorities in proportions which accord with their relative tonnages of waste which are subject to the Project Agreement, and if more than one ultimate waste solution, then in the proportions which accord with their relevant tonnages of waste delivered to each solution proportionately according to the level of costs/risks brought about by the change in law in relation to each solution.

15 **Interfaces with Other Waste Projects:**

Consideration will need to be given to the interface between this Project and other waste projects across all *[insert number]* Authorities outside the scope of this Agreement and associated timescales and risks. The Authorities will need to ensure that their commercial arrangements for Waste Collection align with the service under the Project Agreement

16 **Boiler Plate Clauses<sup>6</sup>**

Definitions and interpretation

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<sup>6</sup> Authorities to insert boiler plate clauses here.

Recitals

Commencement and duration

Assignment

Complete agreement

Maladministration, Fraud and Anti corruption

Notices

Jurisdiction

Waiver

Third party rights

FoI/ EIR

Confidentiality and DPA

No agency/partnership (otherwise than under the agreement)

Severability

Force Majeure

Variation.

17 **Step Down**

Agreement as to what level of detail should be included in terms of stepping down the rights and liabilities from the PA needs to be reached by the authorities.

**SCHEDULE 6**

*[Drafting Note: to be inserted]*

**Accounting Period (Financial Year [ / ])**

<b>Year</b>	<b>Month</b>	<b>Start of Accounting Period</b>	<b>End of Accounting Period</b>
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## SCHEDULE 7

### Heads of Expenditure

*[DN : To be inserted]*

Authority:

Accounting Period:

Certified Correct \_\_\_\_\_  
(Signed) (Date)

## **SCHEDULE 8**

### **Part 1 - Role of Project Director**

*[Drafting Note: to be inserted]*

### **Part 2 – Duties of Project Director**

*[Drafting Note: to be inserted]*

## **SCHEDULE 9**

### **Project Board Terms of Reference**

***[Drafting Note: to be inserted – to include formal reporting back to the constituent authorities.]***

**SCHEDULE 10**

**Communications Strategy**

**SCHEDULE 11**

**Outline Business Case**

**SCHEDULE 12**

**Services and Duties**