

**DATED**

**2008**

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- (1) **THE COUNCIL OF THE CITY OF COVENTRY**
- (2) **SOLIHULL METROPOLITAN BOROUGH COUNCIL**
- (3) **WARWICKSHIRE COUNTY COUNCIL**

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**JOINT WORKING AGREEMENT**  
in relation to the joint procurement of a new waste treatment  
facility pursuant to Project Transform

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**BETWEEN**

- (1) **THE COUNCIL OF THE CITY OF COVENTRY** of Council House, Earl Street, Coventry, CV1 5RR ("**Coventry Council**")
- (2) **SOLIHULL METROPOLITAN BOROUGH COUNCIL** of PO Box 18, Council House, Solihull, West Midlands, B91 9QT ("**Solihull Council**")
- (3) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall, Warwick, CV34 4SA ("**Warwickshire Council**")

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

**BACKGROUND**

- (A) The Councils have agreed to work together in a partnering relationship to jointly procure a new residential waste treatment facility ("**the Facility**") through the Government's Private Finance Initiative to replace the existing energy from waste plant in Coventry in furtherance of the objectives of the Memorandum of Understanding and the project known as Project Transform ("**the Project**").
- (B) The Councils have agreed to enter into this Agreement to formalise their respective roles and responsibilities in relation to the joint working arrangements for the procurement of the Project and the agreement between the Councils that Coventry Council shall act as Lead Authority in carrying out the Procurement Milestones.
- (C) The Councils wish to enter into this Agreement and implement the Project pursuant to the powers conferred on them by Sections 51 and 55 of The Environmental Protection Act 1990, Section 19 of the Local Government Act 2000 and Regulation 7 Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000.
- (D) The Councils acknowledge that this Agreement shall regulate the procurement of the Project up to the end of the Procurement Milestones on the Procurement End Date and following the successful award of the Project Agreement, the Councils have agreed to enter into an agreement which will set out the respective rights and obligations of each Council in relation to the implementation and operational phases of the Project. Such agreement ("**the Second Joint Working Agreement**") is intended to reflect the terms of the Project Agreement and as such cannot be completed until the Councils have agreed the terms of the Project Agreement.
- (E) The Councils agree to act reasonably and in good faith to negotiate the terms of the Second Joint Working Agreement.

**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 8 (Accounting Periods) as may be amended from time to time in accordance with the terms of this Agreement

**"Bidder"** means any person who, following the issue of the OJEU Notice, expresses or has expressed an interest in being awarded the Project Agreement through the Procurement Milestones

<b>"Bid Process"</b>	means the process of procuring and appointing a contractor to carry out the Project on behalf of the Councils
<b>"Break Point"</b>	means each of the following:- <ul style="list-style-type: none"> <li>(a) the date of the meeting of the Project Board held to provisionally agree the long list of Bidders to go through to ISOS stage as set out at milestone 24 in Schedule 1 (Procurement Milestones);</li> <li>(b) the date of the meeting of the Project Board held to review and agree the evaluation and/or the selection of Bidders to go forward to a further stage of the Competitive Dialogue Procedure as such stages may be agreed from time to time in accordance with the relevant Procurement Milestone before the date of the meeting in Break Point (c) below;</li> <li>(c) the date of the meeting of the Project Board held to recommend closing the Competitive Dialogue Procedure and calling for final tenders as set out at milestone 40 in Schedule 1 (Procurement Exercise);</li> </ul>
<b>"Break Point Report"</b>	means a report prepared by the Lead Authority acting reasonably setting out the financial and resource commitments required of each Council at a Break Point including the items set out in Schedule 9 (Break Point Report)
<b>"Business Day"</b>	means any day other than a Saturday or Sunday or a public or bank holiday in England
<b>"CEDR"</b>	means the Centre for Dispute Resolution
<b>"CIWM"</b>	means the Chartered Institute of Waste Management
<b>"Commencement Date"</b>	means the date hereof
<b>"Competitive Dialogue Procedure"</b>	has the meaning given to it in the EU Procurement Regime
<b>"Confidential Information"</b>	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

<b>"Decision Period"</b>	means the period of 20 Business Days from the date of the relevant Break Point Report or such other time as is unanimously agreed by all the Councils
<b>"DEFRA"</b>	means the Department for Environment, Food and Rural Affairs of any replacement body
<b>"DPA"</b>	means the Data Protection Act 1998
<b>"EU Procurement Regime"</b>	means the Public Contracts Regulations 2006
<b>"Intellectual Property"</b>	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>"IP Material"</b>	the Intellectual Property in the Material
<b>"ISOS"</b>	means the Invitation to Submit Outline Solution stage of the Procurement Milestones
<b>"LAT"</b>	means the landfill Allowance Trading Scheme
<b>"Lead Authority"</b>	means the Council appointed under clause 3 whose duties are set out in clause 4
<b>"Local Authority"</b>	a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor of a principal councils
<b>"Material"</b>	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
<b>"Memorandum of Understanding"</b>	the memorandum of understanding dated 14 January 2008 and appended at Appendix A to this Agreement
<b>"Model Procedure"</b>	means the Centre for Dispute Resolution Model Mediation Procedure
<b>"OJEU Notice"</b>	has the meaning given to it in the EU Procurement Regime
<b>"Outline Business Case"</b>	means the outline business case dated on or about the date of this Agreement prepared by the Councils for submission to DEFRA for PFI support in relation to the Project
<b>"Personal Data"</b>	means the personal data as defined in the DPA

<b>"PFI"</b>	means the Government's Private Finance Initiative or any similar or replacement initiative
<b>"Procurement End Date"</b>	means the date that the Project Agreement (and any associated documentation) is executed by the Lead Authority pursuant to the Procurement Milestones
<b>"Procurement Milestones"</b>	means the procurement stages as set out in Schedule 1 (Procurement Milestones) to be carried out in order to procure the Project as such Procurement Milestones may be amended from time to time by the Councils in accordance with the terms of this Agreement
<b>"Project Agreement"</b>	means the PFI contract to be entered into by the Lead Authority (acting on behalf of the Councils) and the successful Bidder in accordance with the Procurement Milestones in connection with the Project
<b>"Project Board Meeting"</b>	means a meeting of the Project Board duly convened in accordance with Clause 7
<b>"Project Director"</b>	means [ • ] or such replacement person(s) appointed from time to time by the Project Board to represent the interests of all the Councils in respect of their operational requirements for the Project and who shall be called the Project Director and who shall be a member of the Project Board
<b>"Site"</b>	means the land edged in red on the plan attached at Appendix B to this Agreement and located on London Road, Coventry
<b>"WCA"</b>	means the waste collection authorities listed below:- <ul style="list-style-type: none"> <li>(a) Rugby Borough Council of PO Box 123, Town Hall, Rugby, CV21 2ZP;</li> <li>(b) Warwick District Council of PO Box 2178, Riverside House, Milverton Hill, Leamington Spa, CV32 5QH;</li> <li>(c) Nuneaton and Bedworth Borough Council of Town Hall, Coton Road, Nuneaton, CV11 5AA;</li> <li>(d) North Warwickshire Borough Council of PO Box 6, The Council House, South Street, Atherstone, CV9 1BG; and</li> <li>(e) Stratford on Avon District Council, Elizabeth House, Church Street, Stratford Upon Avon, CV37 6HX.</li> </ul>

## 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. **PRINCIPLES AND KEY OBJECTIVES**

- 2.1 The Councils intend this Agreement to be legally binding.
- 2.2 The Councils agree to work together to carry out the Procurement Milestones in accordance with the terms of this Agreement.
- 2.3 Without prejudice to the terms of this Agreement, the Councils agree that they will conduct their relationship in accordance with the following principles:-

### 2.3.1 **Openness and Trust**

In relation to this Agreement the Councils will be open and trusting in their dealings with each other, make information and analysis available to each other, 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;



### 2.3.2 **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 Project with drive, enthusiasm and a determination to succeed;

### 2.3.3 **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;

### 2.3.4 **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;

### 2.3.5 **Developing and Adaptive**

The Councils recognise that they are engaged in what could be a long term business relationship which needs to develop and adapt and 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;

### 2.3.6 **Reputation and Standing**

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

### 2.3.7 **Reasonableness of Decision Making**

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

### 2.3.8 **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; and

### 2.3.9 **Members and Officers**

The Council shall use all reasonable endeavours to procure that their respective members and officers who are involved in the Project shall at all time act in the best interests of the Project.

## **3. COVENTRY COUNCIL AS THE LEAD AUTHORITY**

3.1 The Councils (acting severally) have agreed, with effect from the Commencement Date, Coventry Council will be the Lead Authority for the carrying out of the Procurement Milestones which shall be carried out for and on behalf of the Councils

and Coventry Council agrees to act in that capacity subject to and in accordance with the terms and conditions of this Agreement.

- 3.2 If the Lead Authority defaults pursuant to Clause 12 or withdraws pursuant to Clause 13, then the replacement Lead Authority will be appointed by the Project Board and the withdrawing defaulting Lead Authority will not have the right to vote in regard to any such appointment.

#### **4. DUTIES OF COVENTRY COUNCIL AS THE LEAD AUTHORITY**

- 4.1 For the duration of this Agreement, Coventry Council shall act diligently and in good faith in all its dealings with the other Councils and it shall use its reasonable endeavours to carry out the Procurement Milestones in accordance with the EU Procurement Regime and any other applicable legislation.

- 4.2 Coventry Council shall enter into a lease together with any associated wayleave agreement or other agreements with the successful Bidder in relation to the Site on terms to be negotiated during the Procurement Milestones which are reasonably acceptable to Coventry Council by no later than the date of the Project Agreement.

- 4.3 For the duration of this Agreement, Coventry Council as the Lead Authority shall act as the primary interface with DEFRA and Partnerships UK on behalf of the other Councils.

#### **5. DUTIES OF THE OTHER COUNCILS**

- 5.1 For the duration of this Agreement, the other Councils shall act diligently and in good faith in all their dealings with Coventry Council and shall use their reasonable endeavours to assist Coventry Council to carry out the Procurement Milestones in accordance with the EU Procurement Regime and any other applicable legislation.

- 5.2 Warwickshire Council shall use all reasonable endeavours to negotiate and to agree an inter-Authority agreement prior to the date of the Project Agreement in form reasonably acceptable to the other Councils to ensure that waste is collected and delivered by the WCA to the Facility in a manner consistent with Warwickshire Council's obligations under this Agreement and the terms of the Second Joint Working Agreement.

#### **6. DECISION MAKING**

- 6.1 In terms of the need for decisions and other actions to be taken and carried out during the Procurement Milestones, the Councils have identified the following three categories together with the means by which they will be taken:-

6.1.1 **"Project Director Matter"** - being a matter which the Project Director shall have the authority to make a decision upon and have the authority to carry out on behalf of the Councils;

6.1.2 **"Project Board Matter"** – being a matter in which it is expected that any or all of the board officers of each Council appointed pursuant to Clause 7.3 will be able to make a decision upon and have the power to bind the Council it represents in doing so;

6.1.3 **"Matter Reserved To The Councils"** – being a matter which will have to be referred to each Council for and, for the avoidance of doubt, that matter requiring a decision would not be dealt with by the representatives of the Councils appointed pursuant to Clause 7.3 or the Project Director until the unanimous decision shall have been agreed by all of the Councils,

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

## 7. PROJECT BOARD

- 7.1 The Councils shall form the project board ("**Project Board**"), which shall, for the avoidance of doubt, supersede and replace the project board formed pursuant to the Memorandum of Understanding for the purpose of overseeing and co-ordinating the Procurement Milestones and to carry out the functions set out in Schedule 2 (Project Board Terms of Reference).
- 7.2 The Project Board shall not have power to approve any Matter Reserved To The Councils pursuant of Clause 6.1.3.
- 7.3 Each Council shall appoint three representatives to the Project Board. The Chairperson of the Project Board shall be such representative as appointed by the Project Board 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 Project Board in the absence of his or her corresponding principal.
- 7.5 Each Council 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. Such observers shall not have a vote.
- 7.6 Each Council may, at their discretion, replace their representatives (and their respective deputies) appointed to the Project Board, provided that:-
- 7.6.1 at all times, they have representatives appointed to the Project Board in accordance with the roles identified in Schedule 2 (Project Board Terms of Reference); and
- 7.6.2 any such replacement shall have no lesser status or authority than that set out in Schedule 2 (Project Board Terms of Reference) unless otherwise agreed by the Councils.
- 7.7 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.
- 7.8 The quorum necessary for a Project Board meeting shall be a board officer representative or appropriate deputy appointed pursuant to Clause 7.4 above or appropriate proxy (who shall be a board officer) from each Council.
- 7.9 At meetings of the Project Board each board officer or appropriate deputy appointed pursuant to Clause 7.4 above or appropriate proxy (who shall be a board officer) from each Council shall have one vote. The Chairperson shall not have a second or casting vote. Decisions at meetings of the Project Board will be taken by a majority vote. The Project Director shall not have a vote.
- 7.10 The aims and purposes and terms of reference of the Project Board are set out in Schedule 2 (Project Board Terms of Reference).
- 7.11 Each Council shall provide all information reasonably required upon request by the Project Board and shall comply with any decisions of the Project Board to request such information.
- 7.12 Each Council shall consult with the other Councils to ensure the diligent progress of the day to day matters relating to the Procurement Milestones.

## 8. STEERING GROUP

- 8.1 The Councils shall form a steering group ("**Steering Group**") working under the direction of the Project Director for the purposes of providing overall officer co-ordination and specialist support as required across the Project and any other related matters outside the scope of this Agreement.
- 8.2 The Steering Group shall not have power to approve a Project Director Matter, a Project Board Matter or a Matter Reserved To The Councils.
- 8.3 The Councils shall appoint such representatives and any other person(s) to the Steering Group as may be agreed by the Project Board from time to time.
- 8.4 The Councils may, at their discretion, replace their representatives appointed to the Steering Group, provided that such placement shall be on the same basis as the original appointee and provided further that no elected member of the Steering Group shall be removed or replaced by any Council without that Council giving prior written notice as soon as reasonably practicable and in any event within 10 (ten) Business Days of its intention to remove or replace that elected member of the Project Team.
- 8.5 The details of the ways of working, clerking and other operational matters of the Steering Group are set out in Schedule 6 (Steering Group Terms of Reference).

## 9. COMMITMENT OF THE COUNCILS AND CONTRIBUTIONS

- 9.1 The Councils agree and undertake to commit to the Project in accordance with the terms of this Agreement and not to commission and/or undertake any procurement and/or project that seeks or would procure the delivery of all or any part of the Project outside the terms of this Agreement unless and until it shall have withdrawn from the Project in accordance with Clause 13.
- 9.2 The costs associated with providing internal resources in relation to the Procurement Milestones shall, subject to Clause 9.7, be borne by the Council providing that internal resource. However, any additional costs and external costs required shall be shared in proportion to the tonnage volume of each Council's residual waste stream to be allocated to the Project (as more particularly described in the Outline Business Case).
- 9.3 Each Council shall be required to prepare accounts including details of any expenditure incurred pursuant to Schedule 7 (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 8 (Accounting Periods).
- 9.4 Each Council shall:-
- 9.4.1 in the Accounts make true and complete entries of all relevant payments made by it during the previous Accounting Period;
  - 9.4.2 within 10 Business Days of the end of each Accounting Period, Solihull Council and Warwickshire Council shall provide to Coventry Council unaudited Accounts for such Accounting Period together with certification that such Accounts comply with this Clause 9;
  - 9.4.3 nominate an individual to be responsible for ensuring that Council's own compliance with this Clause 9 and the name, address and telephone number of each individual nominated pursuant to this Clause 9.4.3 shall be notified to the other Councils in accordance with Clause 18; and
  - 9.4.4 Coventry Council shall within 10 Business Days of receipt of the Accounts submitted by Solihull Council and Warwickshire Council in accordance with

Clause 9.4.2 prepare a reconciliation statement identifying the payments made by each Council and the balance due from or owing to each. Coventry Council shall within twenty (20) Business Days of the preparation of the reconciliation statement send out a copy of the reconciliation statement together with either a balancing invoice or credit payments to each Council. A Council receiving an invoice for payment shall pay it in full within twenty (20) Business Days. Any error in a balancing invoice must be notified to Coventry Council within 5 Business Days of such balancing invoice being sent out. An amended balancing invoice will be issued by Coventry Council and the Council receiving such an invoice shall pay it in full within twenty (20) Business Days.

- 9.5 If an individual nominated by a Council pursuant to Clause 9.4.3 changes, that Council shall notify the other Councils forthwith of the replacement nominees.
- 9.6 The Councils hereby agree that if one of the Councils carries out any work or incurs any cost or expenses or requests the Steering Group (or any other elected member of the Steering Group) 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 Manager, be referred to the Project Board for a decision as to whether such work, cost or expense is part of the Project or whether such work, cost or expense should be the entire responsibility of the Council so carrying it out or requesting it (as the case may be).
- 9.7 The Councils hereby agree that if one of the Councils believes it is likely to incur disproportionate internal resource costs pursuant to Clause 9.2 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 Councils.
- 9.8 Where the actual costs associated with the Project are likely to exceed the approved annual budget of the Lead Authority held on behalf of the Councils by 5% (five percent) this will be a Matter Reserved to the Councils.

## **10. INTELLECTUAL PROPERTY**

- 10.1 Each Council will retain all Intellectual Property in its Material.
- 10.2 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 Procurement Milestones and any other purpose resulting from the Procurement Milestones whether or not the party granting the licence remains a party to this Agreement or the Procurement Milestones.
- 10.3 Without prejudice to Clause 10.1, 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.
- 10.4 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.

10.5 Each Council warrants that it has or will have the necessary rights to grant the licences set out in Clause 10.2 and 10.3 in respect of the IP Material to be licensed.

10.6 Each Council agrees to execute such further documents and take such actions or do such things as may be reasonably requested by any other Councils (and at the expense of the Council(s) making the request) to give full effect to the terms of this Agreement.

## **11. LIABILITY OF THE COUNCILS**

11.1 Coventry Council shall indemnify and keep indemnified each of the other Councils to this Agreement against any losses, claims, expenses, actions, demands, costs and liability suffered by that Council to the extent arising from any breach by Coventry Council of its obligations under this Agreement or any negligent act or omission in relation to such obligations.

11.2 No claim shall be made against Coventry Council to recover any loss or damage which may be incurred by reason of or arising out of the carrying out by Coventry Council of its obligations under this Agreement unless such loss or damage arises from any breach by Coventry Council of such obligations or any negligent act or omission in relation to such obligations.

11.3 Each of the other Councils (acting severally) shall indemnify and keep indemnified Coventry Council against all losses, claims, expenses, actions, demands, costs and liabilities which Coventry Council may incur by reason of or arising out of the carrying out by Coventry Council of its obligations under this Agreement for that Council or arising from any breach by a Council of its obligations under this Agreement or any negligent act or omission by a Council in relation to such obligations unless and to the extent that the same result from any breach by Coventry Council of any such obligations or any negligent act or omission by Coventry Council in relation to such obligations.

11.4 The Councils agree and acknowledge that the amount to be paid to Coventry Council by any of the other Councils in Clause 11.3 shall be borne by each of the Councils to the extent of its responsibility, however in the event that the responsibility is a shared one between the Councils (so that it is not reasonably practicable to ascertain the exact responsibility between the Councils) then the amount to be paid shall be divided amongst the Councils in proportion to the tonnage volume of each Council's residual waste stream to be allocated to the Project (as more particularly described in the Outline Business Case) with adjustment to take into account Coventry Council's percentage of total contribution will have to be reallocated amongst the other Councils for this purpose in proportion to the percentage of total contributions of those other Councils set. In the event of a claim in which it is not reasonably practicable to determine the extent of responsibility as between the Councils and Coventry Council then the amount would be divided amongst the Councils in proportion to the tonnage volume of each Council's residual waste stream to be allocated to the Project (as more particularly described in the Outline Business Case).

11.5 A Council who receives a claim for losses, expenses, actions, demands, costs and liabilities shall notify and provide details of such claim as soon as is reasonably practicable the other Councils.

11.6 No Council shall be indemnified in accordance with this Clause 11 unless it has given notice in accordance with Clause 11.5 to the other Council against whom it will be enforcing its right to an indemnity under this Agreement.

## **12. COMMENCEMENT, DURATION AND TERMINATION**

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

- 12.1.1 all the Councils agree in writing to its termination; or
  - 12.1.2 there is only one remaining Council who has not withdrawn from this Agreement in accordance with Clause 13; or
  - 12.1.3 date of execution of the Project Agreement.
- 12.2 Without prejudice to any other rights or remedies, this Agreement may be terminated in relation to any Council ("**Defaulter**") by the other Councils ("**Non-Defaulting Councils**") acting unanimously in giving written notice to the Defaulter effective on receipt where the Defaulter breaches any of the provisions of this Agreement and in the case of a breach capable of remedy fails to remedy the same within 5 Business Days (or such other period as agreed by the Council) of being notified of each breach in writing by the Non-Defaulting Councils and being required to remedy the same.

### 13. WITHDRAWAL

- 13.1 Any Council (including Coventry Council) may at any Break Point during the Procurement Milestones, withdraw from this Agreement in accordance with this Clause 13.
- 13.2 Coventry Council shall, 5 Business Days prior to the scheduled date of the Project Board preceding the date of each Break Point, provide to all the Councils a Break Point Report which shall be discussed by the Project Board at that Project Board Meeting.
- 13.3 Within the Decision Period each Council shall indicate either:-
- 13.3.1 that it withdraws from the Project and this Agreement; or
  - 13.3.2 that it wishes to continue with the Project and this Agreement.
- 13.4 Where a Council does not indicate its intentions as required by Clause 13.3 then it shall at the expiry of the Decision Period be taken to have indicated that they wish to continue with the Project and this Agreement.
- 13.5 Where a Council indicates that it wishes to withdraw from the Project in accordance with the terms of this Agreement, then:-
- 13.5.1 the Council who shall have indicated its wish to withdraw shall pay all amounts due to be paid by it in accordance with the Break Point Report and comply with its obligations to contribute to the Project up to the date of its withdrawal in accordance with Clause 9 including making any payments of any expenditure referred to in Schedule 7 (Heads of Expenditure) as at that date; and
  - 13.5.2 the Council who shall have indicated its wish to withdraw shall be responsible for a proportion of any Bidders claimed abortive costs (which have been substantiated by the Project Board) which may include Bidders costs of commissioning alternative provision for the Project which may be payable as a result of such withdrawal. Such proportion will be decided by the Project Board;
  - 13.5.3 if in the event of such a withdrawal the Project is delayed in terms of the Procurement Milestones then the Council who shall have indicated its wish to withdraw may be responsible for a proportion of the costs of delay to the other Councils or any costs or fines which may directly result in relation to any LATS liability or otherwise. Such proportion will be decided by the Project Board.

- 13.6 Unless agreed otherwise by the remaining Councils, the Council who shall have indicated its wish to withdraw from the Project shall not remove its appointees to the Steering Group for a period of not less than three (3) months commencing on the date of such Council's withdrawal, provided that the costs associated with those appointees to the Steering Group shall be borne by the remaining Councils to the Project and this Agreement in equal shares.

#### **14. CONCLUSION OF THE SECOND JOINT WORKING AGREEMENT**

- 14.1 The Councils will enter into the Second Joint Working Agreement on or before the date of the Project Agreement.
- 14.2 The Councils shall individually and jointly use all reasonable endeavours to negotiate and to agree the Second Joint Working Agreement in conjunction with the negotiation and agreement of the Project Agreement.
- 14.3 The reference to "all reasonable endeavours" in Clause 14.2 shall include a requirement on all Councils to:-
- 14.3.1 (without prejudice to Clause 2.3) at all times act in good faith;
  - 14.3.2 ensure that sufficient time is set aside to conduct the negotiations on the terms of the Second Joint Working Agreement either through correspondence or by holding meetings or a combination of both to ensure that the terms of the Second Joint Working Agreement are agreed in accordance with the timetable envisaged in Clause 14.1;
- 14.4 If a dispute or difference arises between the Councils in relation to a provision of the Second Joint Working Agreement and such dispute or difference cannot be settled by the Councils within ten (10) Business Days of it first arising, any Council may refer such dispute or difference for determination in accordance with Clause 26.

#### **15. CONSEQUENCES OF TERMINATION**

- 15.1 If the Agreement is terminated in accordance with Clause 12.1, save for the obligations set out in Clause 9, Clause 11 and Clause 16, the Councils shall be released from their respective obligations described in this Agreement.
- 15.2 Where a Council withdraws from the Project and this Agreement in accordance with Clause 13 or is a Defaulter and this Agreement is terminated in respect of that Council in accordance with Clause 12.2 any property acquired and/or secured and/or owned and provided by such withdrawing Council or Defaulter for the purposes of the Project will remain in the ownership of the withdrawing Council or Defaulter and the withdrawing Council or Defaulter will reimburse the remaining Councils their respective contributions (if any) together with any reasonable costs incurred as a result of the withdrawal or default.
- 15.3 The Councils acknowledge and agree that:-
- 15.3.1 the Project has been modelled on the basis of participation by the Councils and that there are considerable economic benefits to be achieved as a result of such joint working; and
  - 15.3.2 accordingly, save for the circumstances described in Clause 12.1 or Clause 13, in the event that this Agreement is terminated in relation to any Council pursuant to Clause 12.2 or that any Council fails to conclude the Second Joint Working Agreement pursuant to the provisions of Clause 14 such Defaulter shall, subject to Clause 15.4, be liable to the Non-Defaulting Council or Councils for their reasonable and properly incurred costs in the Project relating to any delay and arising from the withdrawal (including but



not necessarily limited to the costs of legal, financial and technical advice) and any costs, claims and damages payable by the Non-Defaulting Council or Councils arising from claims from Bidders in respect of any costs relating to any delay and arising from any withdrawal as determined by the Project Board.

- 15.4 Notwithstanding the provisions of Clause 15.3 the Councils 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.

## **16. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 16.1 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 Bidder which has come to its attention as a result of or in connection with this Agreement, (including the Bid Process), in particular (but without prejudice to the generality of the foregoing) Confidential Information relating to the Second Joint Working Agreement and/or the Project Agreement and/or the Bid Process.

- 16.2 The obligation set out in Clause 16.1 shall not relate to information which:-

16.2.1 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

16.2.2 is required to be disclosed by law; or

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

16.2.4 is required or recommended by the rules of any governmental or regulatory authority including any guidance from time to time as to openness and disclosure of information by public bodies; or

16.2.5 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.

- 16.3 Where disclosure is permitted under Clause 16.2.3 or 16.2.4, the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 16 and the disclosing Council shall make this known to the recipient of the information.

- 16.4 No Council 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 Joint Working Agreement and/or the Project Agreement without the prior written consent of the other Councils.

## **17. CONTRACTS (THIRD PARTY RIGHTS)**

- 17.1 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.

## **18. NOTICES**

18.1 Any notice or demand in connection with this Agreement shall be in writing and may be delivered by hand, prepaid first class post, special delivery post, facsimile or email, addressed to the recipient at the address or facsimile number as the case may be set out in Schedule 4 (Addresses of the Councils) or such other recipient address or facsimile number as may be notified in writing from time to time by any of the parties to this Agreement to all the other Councils to this Agreement.

18.2 The notice or demand shall be deemed to have been duly served:-

18.2.1 if delivered by hand, when left at the proper address for service;

18.2.2 if given or made by prepaid first class post or special delivery post, 48 hours after being posted (excluding days other than Business Days);

18.2.3 if given or made by facsimile, at the time of transmission;

18.2.4 if given or made by email, at the time of transmission,

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

18.3 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.

## **19. GOVERNING LAW**

19.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Clause 26, the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

## **20. ASSIGNMENTS**

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

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

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

## **21. WAIVER**

21.1 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.

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

## **22. ENTIRE AGREEMENT**

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

## **23. NOT USED**

## **24. COUNTERPARTS**

24.1 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.

## **25. RELATIONSHIP OF COUNCILS**

25.1 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.

## **26. DISPUTE RESOLUTION**

26.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Clause 26. 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.

26.2 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 Project Board who shall meet within 10 Business Days of notification of the occurrence of such dispute and attempt to resolve the disputed matter in good faith.

26.3 In relation to a dispute or disagreement relating to a Matter Reserved To The Councils, or if the Project Board fails to resolve a dispute or disagreement within 5 Business Days of meeting pursuant to Clause 26.2, or fails to meet in accordance with the timescales set out in Clause 26.2, then the Councils in dispute or the Project Board (as the case may be) may refer the matter for resolution to:-

26.3.1 the Chief Executive(a) or Council Leader(s) (as appropriate) of the Councils;  
or

26.3.2 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

- 26.3.3 the exclusive jurisdiction of the Courts of England otherwise.
- 26.4 Any dispute and/or disagreement to be determined by the Chief Executive(s) or Council Leaders (as appropriate), CIWM or the Courts of England 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.
- 26.5 The Councils shall on request promptly supply to the Chief Executive(s) or Council Leaders 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.
- 26.6 If the CIWM is appointed to determine in dispute pursuant to Clause 26.4, 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.
- 26.7 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 Council Leaders (as appropriate), CIWM or the Courts of England (as the case may be).

## **27. DATA PROTECTION**

- 27.1 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 Procurement Milestones.
- 27.2 Each Council:
- 27.2.1 shall process Personal Data belonging to any other Council only on the instructions of that Council (subject to compliance with applicable law);
  - 27.2.2 shall only undertake processing of Personal Data reasonably required in connection with the Procurement Milestones and shall not transfer any Personal Data to any country or territory outside the European Economic Area; and
  - 27.2.3 shall use all reasonable endeavours to procure that all relevant sub-contractors and Bidders comply with this Clause 27.2. For the avoidance of doubt a relevant sub-contractor or Bidder is one which processes Personal Data belonging to the one or any of the Councils.
- 27.3 The Councils shall not disclose Personal Data to any third parties other than:
- 27.3.1 to employees and sub-contractors and Bidders to whom such disclosure is reasonably necessary in order for the Councils to carry out the Procurement Milestones; or
  - 27.3.2 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 Bidders under Clause 27.3.1 shall be made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 27 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 Bidders are required to make under Clause 27.3.2 immediately they are aware of such a requirement.

27.3.3 The Councils shall bring into effect and maintain and shall use all reasonable endeavours to ensure that all relevant sub-contractors and Bidders 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 Bidders having access to the Personal Data.

27.3.4 Any Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by any other Council and the relevant sub-contractors referred to in Clause 29.3.1. Within 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 Bidders also comply with such request from any other Council.

27.4 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.

27.5 If:-

27.5.1 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

27.5.2 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.

27.6 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:-

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

27.6.2 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.

27.7 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.

## **28. FREEDOM OF INFORMATION AND ENVIRONMENT INFORMATION**

28.1 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.

28.2 Where a Council receives a request for information under either the FoIA or the EIR in relation to information which it is holding on behalf of any of the other Councils in relation to the Project, it shall:

28.2.1 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;

28.2.2 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

28.2.3 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.

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

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

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

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

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

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

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

## **29. 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.

## **30. STATUTORY RESPONSIBILITIES**

30.1 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.

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

**SCHEDULE 1**

**PROCUREMENT MILESTONES**

<b>MILESTONE</b>	<b>PROJECT DIRECTOR MATTER</b>	<b>PROJECT BOARD MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
1. Procurement of external advisers to the Project	Yes		
2. Approval and confirmation of external advisers to the Project		Yes	
3. Approve the Draft Outline Business Case to be submitted to DEFRA			Yes
4. Recommendation as to Site Appraisal		Yes	
5. Approval of Site Appraisal			Yes
6. Decision to acquire an Option and/or Site.			Yes
7. Recommendation to procure remediation works on a Site	Yes		
8. Agreement as to recommendation to procure remediation works on a Site.		Yes	
9. Decision to procure remediation works on a Site			Yes
10. Drafting Prior Indicative Notice	Yes		
11. Agreeing Prior Indicative Notice		Yes	
12. Issuing Prior Indicative Notice	Yes		
13. Preparation of Pre Qualification Questionnaire ("PQQ")	Yes		
14. Agreeing final version of PQQ		Yes	
15. Drafting OJEU Notice	Yes		
16. Agreeing OJEU Notice		Yes	
17. Issuing OJEU Notice	Yes		
18. Preparation of Evaluation Criteria for all stages of the procurement process.	Yes		
19. Review Evaluation Criteria for all stages of the procurement process		Yes	

<b>MILESTONE</b>	<b>PROJECT DIRECTOR MATTER</b>	<b>PROJECT BOARD MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
20. Agreeing Evaluation Criteria for all stages of the procurement process.			
21. Issuing the PQQ and organising any open days prior to return of PQQ's and expression of interest.	Yes		
22. Arrange any interviews/bidder presentations.	Yes		
23. Evaluation and long listing of bidders to go through to ISOS stage	Yes		
24. Provisional agreement to long list of bidders to go through to ISOS stage		Yes	
25. Final agreement to long list of bidders to go through to ISOS stage			Yes
26. Drafting letters informing bidders that they are successful in reaching the ISOS/ISDS/ISRS stages	Yes		
27. Reviewing letters informing bidders that they are successful in reaching the ISOS/ISDS/ISRS stages		Yes	
28. Issuing letters informing bidders that they are successful in reaching the ISOS/ISDS/ISRS stages	Yes		
29. Drafting ISOS, ISDS, and ISRS and all accompanying documentation.	Yes		
30. Reviewing ISOS, ISDS, and ISRS, and all accompanying documentation.		Yes	
31. Agreeing ISOS, ISDS, and ISRS, and all accompanying documentation.			Yes
32. Issue of ISOS, ISDS, and ISRS, and all accompanying documentation.	Yes		
33. Organising clarification and dialogue meetings	Yes		
34. Evaluation and Provisional selection of Bidders to go to each stage of Competitive Dialogue	Yes		



<b>MILESTONE</b>	<b>PROJECT DIRECTOR MATTER</b>	<b>PROJECT BOARD MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
35. Review of evaluation and selection of Bidders to go to each stage of Competitive Dialogue Procedure.		Yes	
36. Final approval of evaluation and selection Bidders to go to each stage of Competitive Dialogue Procedure.			Yes
37. Recommend closing Competitive Dialogue Procedure and Call for Final Tenders (CFT)		Yes	
38. Decision to close Competitive Dialogue Procedure and CFT			Yes
39. Drafting letter and CFT	Yes		
40. Reviewing letter and CFT		Yes	
41. Issuing letter for CFT	Yes		
42. Evaluation of final tenders and recommendation of Preferred Bidder (by applying the award criteria and identifying the Most Economically Advantageous Tender)	Yes		
43. Agreement of Preferred Bidder		Yes	
44. Selection of Preferred Bidder			Yes
45. Drafting Preferred Bidder letter	Yes		
46. Reviewing Preferred Bidder letter		Yes	
47. Issuing Preferred Bidder letter	Yes		
48. Financial Close			Yes
49. Dispatch of Alcatel Letters	Yes		
50. Agreement and execution of Project Agreement and Second Joint Working Agreement			Yes
51. Collation of information and provision of information in respect of Project Agreement award procedures required under the Public Contracts Regulations (SI 2006/5)	Yes		
52. Approval of additional expenditure for the Project in excess of 5% of the approved			Yes

MILESTONE	PROJECT DIRECTOR MATTER	PROJECT BOARD MATTER	MATTER RESERVED TO AUTHORITIES
annual budget of the Lead Authority held on behalf of the Councils			
53. Approval of changes/additions to the Procurement Milestones	Yes		
54. Entry into the lease by Coventry Council for the purposes of Clause 4.2 of this Agreement.			Yes
55. Entry into the Second Joint Working Agreement for the purposes of Clause 13.2 of this Agreement			Yes

## SCHEDULE 2

### PROJECT BOARD TERMS OF REFERENCE

#### Project Board Terms of Reference

##### Aims/Purpose

1. To oversee the progress and implementation of the Project and to give the Project strategic direction.
2. The Board will be the key body to oversee the Project and to represent the interests of the Councils and its stakeholders. The Project Board will also be responsible for monitoring project progress and managing the political dimensions of the Project.
3. It is recommended that the Project Board will carry out the following functions:
  - Act as a representative for each of the Corporate Management Teams of the Councils to ensure consistency with individual objectives and visions
  - Monitor Project performance, management and working arrangements
  - Ensure that sufficient resources are committed to the Project
  - Arbitrate on any conflicts within the programme or negotiate a solution to any problems between the programme and external bodies
  - Communicate and provide progress on strategic issues within the Project
  - Agree final version of PQQ, OJEU, ISOS, ISDS and ISRS
  - Agree Evaluation Criteria for all stages of the Procurement Milestones
  - Recommend the selection of the long list, short-list of ISOS, ISDS and ISRS Bidders and selection of Bidders to go through to the Final Stage to Cabinet/ Elected Mayor
  - Recommend the ISOS, ISDS and ISRS (including all contractual documentation) to Cabinet/ Elected Mayor
  - Select and recommend the Preferred Bidder and Final Business Case to Cabinet/Elected Mayor.

##### Terms

4. At the start of the Project, to agree:
  - The project plan
  - Decision-making process prior to making recommendations to Cabinet/Elected Mayor
5. During the planning and development stages, to:
  - Review Project status against the project plan
  - Monitor the management of project budget, risks and quality
  - Promote and support the project among relevant stakeholders and where appropriate obtain their consent.
  - Seek to resolve disputes where these cannot be resolved satisfactorily through other means
  - Ensure that the proposals are affordable and deliver maximum value for money for the public sector.
6. At the start of the procurement, to agree:
  - Measures against which the benefits realisation should be measured
  - Arrangements for quality assurance and risk management
  - Arrangements for communications
  - Arrangements for procurement launch

7. As the procurement progresses, to:
  - Review the Project status against the project plan
  - Monitor the management of procurement budget, risks and quality
  - Agree progression through key stages (eg OJEU, PQQ shortlist, ISOS, ISDS, ISRS, preferred bidder) and obtain all associated 'sign-offs'.
  - Agree draft procurement documents (output specification, project agreement)
  - Agree the process for evaluating bids and the detailed evaluation criteria and scoring
  - Report to the Cabinet/Elected Mayor on the progress of the procurement
  - Act as the ambassadors for the procurement and the project it facilitates
  
8. At the end of the procurement, to:
  - Ensure that the expected products have been delivered satisfactorily
  - Ensure that the pre contract risk review is completed
  - Agree the FBC and recommend it to Cabinet/Elected Mayor
  - Recommend award of contract to Cabinet/ Elected Mayor and obtain all final 'sign-offs'.

**SCHEDULE 3**

**NOT USED**

## SCHEDULE 4

### ADDRESSES OF THE COUNCILS

<b>RECIPIENT'S NAME</b>	<b>ADDRESS</b>	<b>FAX NO.</b>	<b>EMAIL</b>
Coventry Council: Chris West	Christchurch House, Coventry	[•]	[•]
Solihull Council: [•]	[•]	[•]	[•]
Warwickshire Council: [•]	[•]	[•]	[•]

**SCHEDULE 5**

**NOT USED**

**SCHEDULE 6**  
**STEERING GROUP**



## Steering Group Terms of Reference

### Steering Group Terms of Reference

#### Aims/Purpose

1. To oversee detailed work and implementation of the Project and ensuring that the strategic direction set by the Project Board is followed.
2. The Steering group will be the central operational group for the Project bringing together the Officers responsible for the Project and the strategic leads for the Project.
3. The Steering Group will require reports from the Councils and ensure that there is a coherent strategic overview of the progress that assists the Project Director in reviewing the project plan.
4. The Steering Group will make decisions on the following functions, recommending the decision to the Project Board:
  - the Outline Business Cases;
  - the selection of the short-list of Bidders;
  - the ISOS, ISDS and ISRS (including all contractual documentation);
  - the selection of the Preferred Bidder following the Call for Final Tenders;
  - the Final Business Case;

#### Terms

5. At the start of the Project, to develop:
  - The project plan
  - Decision-making process for the Project prior to making recommendations to Cabinet for each Council
6. During the planning and development stages, to:
  - Meet at least monthly to monitor work of the Project Board
  - Receive reports from all project teams
  - Set direction to the Lead Authority and the Council ensuring clear outcomes are specified with specific timescales
  - Monitor the project budget, risks and quality
  - Institute and ensure working with other partners both in and outside the Council to ensure delivery of the Project
  - Ensure effective communication with all stakeholders.
  - Produce proposals that are affordable and deliver maximum value for money for the public sector
  - Develop the Outline Business Case (OBC) and recommend it to Cabinet for each Council
7. At the start of the procurement, to develop:
  - Objectives and scope of the procurement strategy
  - The Procurement Plan
  - The Procurement strategy
  - The Contract strategy
  - Measures against which the benefits realisation should be measured
  - Arrangements for quality assurance and risk management
  - Arrangements for procurement launch

8. As the procurement progresses, to:
  - Adapt, review and evaluate the project plan as procurement progresses.
  - Monitor the management of procurement budget, risks and quality
  - Develop a clear progression through key stages (e.g. OJEU, shortlist, ISOS, ISDS, ISRS, CFT, preferred bidder) and obtain all associated 'sign-offs'.
  - Develop draft procurement documents (output specification, project agreement)
  - Develop the process for evaluating bids and the detailed evaluation criteria and scoring
  - Report to the Project Board on the progress of the procurement
  
9. At the end of the procurement, to:
  - Ensure expected products have been delivered satisfactorily
  - Review the pre contract risk
  - Develop the FBC and recommend it to the Project Board
  - Select final contractor and recommend award of contract to Project Board and obtain all final 'sign-offs'.

## SCHEDULE 7

### HEADS OF EXPENDITURE

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

#### Internal expenditure (staff costs and associated overheads)

Project management / technical & admin support  
Financial advisors  
Legal advisors  
Other professional services (including asset management, architects, QS, surveyors, procurement, and planning)  
Communications

#### External expenditure (staff costs and associated overheads)

Project management / technical & admin support  
Financial advisors  
Technical advisors  
Insurance advisors  
Legal advisors  
Other professional services (including asset management, architects, QS, surveyors, procurement, site investigation, remediation and planning)  
Waste analysis  
ICT  
Communications

Associated overheads may include such expenses as travel expenses, room hire, printing, accommodation, and ICT costs.

Agreement to the incurring of costs and the appropriateness of sharing such costs between the Councils will be in accordance with clause 9 of this Agreement.

**SCHEDULE 8**  
**ACCOUNTING PERIODS**

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

**SCHEDULE 9**

**BREAK POINT REPORT**

The Break Point Report shall include (but shall not be limited to) irrecoverable expenditure incurred and committed, resulting from the withdrawal of one or more Councils, in relation to the following:

	<b><u>Amount</u> (all figures in round pounds)</b>
Procurement Costs	
Costs associated with from delays and having to revisit procurement such as :-  Landfill cost  LATS fines	
PFI Credits – costs incurred if PFI credits are reduced disproportionately to capital expenditure	
Diseconomies of scale - any disproportionate costs incurred as a result of facilities being downsized to accommodate lower tonnage throughput	
Land costs – costs associated with identifying and procuring land	
Staff costs (and associated overheads) in progressing the scheme:-  a) Consultancy / Advisors fees  b) Internal Project Management and monitoring  c) Internal Professional advice	
Other costs such as those outlined at Schedule 7 (Heads of Expenditure)	

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

\_\_\_\_\_  
(Date)

**APPENDIX A**  
**MEMORANDUM OF UNDERSTANDING**

**APPENDIX B**

**SITE PLAN**

The Common Seal of **THE COUNCIL OF** )  
**THE CITY OF COVENTRY** was )  
hereunto affixed in the presence of:- )

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

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