

**ANTRIM BOROUGH COUNCIL,
ARDS BOROUGH COUNCIL,
BALLYMENA BOROUGH COUNCIL,
BELFAST CITY COUNCIL,
CARRICKFERGUS BOROUGH COUNCIL,
CASTLEREAGH BOROUGH COUNCIL,
DOWN DISTRICT COUNCIL,
LARNE BOROUGH COUNCIL,
LISBURN CITY COUNCIL,
NEWTOWNABBIEY BOROUGH COUNCIL,
NORTH DOWN BOROUGH COUNCIL,**

and

arc21

**Supplemental Agreement to the Terms of Agreement
dated 1 July 2003
for the Procurement and Management of the
Residual Waste Treatment Plant**

THIS AGREEMENT is made the _____ day of
2008

BETWEEN

ANTRIM BOROUGH COUNCIL of Civic Offices, 50 Stiles Way, Antrim, Co. Antrim, BT41 2UB;

ARDS BOROUGH COUNCIL of 2 Church Street, Newtownards, Co. Down, BT23 4AP;

BALLYMENA BOROUGH COUNCIL of Ardeevin, 80 Galgorm Road, Ballymena, Co. Antrim, BT42 1AB;

BELFAST CITY COUNCIL of City Hall, Belfast, BT1 5GS;

CARRICKFERGUS BOROUGH COUNCIL of Town Hall, Carrickfergus, Co. Antrim, BT38 7BL;

CASTLEREAGH BOROUGH COUNCIL of Bradford Court, Upper Galwally, Castlereagh, BT8 6RB;

DOWN DISTRICT COUNCIL of 24 Strangford Road, Downpatrick, Co. Down, BT30 6SR;

LARNE BOROUGH COUNCIL of Smiley Building, Victoria Road, Larne, Co. Antrim, BT40 1RU;

LISBURN CITY COUNCIL of The Island, Lisburn, Co. Antrim, BT27 4RL;

NEWTOWNABBEY BOROUGH COUNCIL of Mossley Mill, Newtownabbey, Co. Antrim, BT36 5QA;

NORTH DOWN BOROUGH COUNCIL of Town Hall, The Castle, Bangor, Co. Down, BT20 4BT;

AND

arc21 of Walsh House, Fortwilliam Business Park, 35 Dargan Road, Belfast, BT3 9LZ;

each a “Party” and together the “Parties”.

WHEREAS

- (a) Each of the Councils entered into the Terms of Agreement to form a joint committee on 1st July 2003 (a copy of which is contained in Annex A hereto). The Terms of Agreement imposes a number of obligations on the Councils in relation to the establishment of arc21 and sets out how arc21 should function. In the Terms of Agreement each Council also signed up to a Statement of Principles for arc21.
- (b) The joint committee established under the Terms of Agreement was constituted as a body corporate with the name, arc21, pursuant to The Local Government (Constituting a Joint Committee a Body Corporate) Order

(Northern Ireland) 2004 (S.R. 2004 No. 49) and the Local Government (Constituting a Joint Committee a Body Corporate) (Amendment) Order (Northern Ireland) 2007 (S.R. 2007 No. 505). The 2007 Order clarified the powers of arc21 and applied certain rights and powers applicable to the Councils to arc21 in its own capacity.

- (c) In connection with the award of the Contracts by arc21, arc21 and the Councils have resolved to further clarify the rights of the Councils both between themselves and in relation to arc21 and have resolved to work together to seek a long term solution to their needs and requirements.

IT IS HEREBY agreed as follows –

1. Interpretation

- 1.1 In this Agreement unless the context otherwise requires the following expressions have the following meanings –

“Agreement” means this Agreement comprising the terms and conditions together with the Annexes attached hereto. For the avoidance of doubt this Agreement supplements the Terms of Agreement.

References to **“the Councils”** shall be taken as references to Antrim Borough Council, Ards Borough Council, Ballymena Borough Council, Belfast City Council, Carrickfergus Borough Council, Castlereagh Borough Council, Down District Council, Larne Borough Council, Lisburn City Council, Newtownabbey Borough Council and North Down Borough Council and **“the Council”** shall mean one of the Councils.

“Commencement Date” means the date on which this Agreement is executed by the Parties.

“Contract” means any contract entered into by arc21 on behalf of the Councils in connection with the Projects.

“Contractor” means any contractor appointed by arc21 to a Contract in accordance with this Agreement.

“Department” means the Department of the Environment.

“Funder” means the funders to a Contractor in respect of a Project.

“Loss” includes any loss and liability directly suffered by a Party together with any damage, expense, liability or costs reasonably incurred in contesting any claim to liability and quantifying such loss and liability.

“Principles” means the principles stated in Clause 6.5 of this Agreement.

“Procurement” means the procurement of a Contract, and **“the Procurement Phase”** means that phase of a Project which relates to the procurement of the relevant Contract.

“Project” means any waste project procured by arc21 on behalf of the Councils relating to the Waste Management Plan.

“Service Phase” means the phase of a Project related to the management of a Contract.

“Statement of Principles” means the Statement of Principles contained in the Annex to the Terms of Agreement.

“Terms of Agreement” means the terms of agreement entered into by the Councils on 1st July 2003 (which for the avoidance of doubt includes the Statement of Principles).

“Waste Management Plan” means the Sub-regional Waste Management Plan which was jointly adopted in 2003 by the Councils as amended from time to time.

“Working Day” in respect to a Council, means any day other than weekends and bank or privileged holidays in Northern Ireland.

- 1.2 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted.
- 1.3 Words importing the singular include the plural words importing any gender include every gender, words importing persons include bodies corporate and unincorporated; and (in each case) vice versa.
- 1.4 Reference to Clauses and Annexes are references to clauses and annexes of this Agreement and any reference to a sub provision is unless otherwise stated a reference to a sub provision of the provision in which the reference appears.
- 1.5 The Clause and paragraph headings and titles appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

2. Term

This Agreement shall come into effect on the Commencement Date and shall continue in force until all residual liabilities of arc21 under all Contracts have been satisfied.

3. General Principles

- 3.1 This Agreement has been entered into by the Parties to establish and effect provisions for performance of the Projects and to clarify the Parties' responsibilities in respect thereof and to each other.
- 3.2 The Parties will work together in good faith and in an open, co-operative and collaborative manner for the duration of this Agreement. The Parties' members and officers will work together in the spirit of mutual trust in order to endeavour to procure the successful implementation of the Projects and will respond in a timely manner to all relevant requests from other Parties.

- 3.3 The Councils will continue to comply with the provisions of the Terms of Agreement (and in particular the Statement of Principles contained therein).
- 3.4 Each of the Parties hereby represents to the other that it has obtained all necessary consents sufficient to ensure the delegation of functions provided for by this Agreement for the purposes of the Projects.
- 3.5 The Parties shall use all reasonable endeavours to, at all times, act in the best interests of the Projects. The Parties expressly acknowledge that their members and officers involved in carrying out activities under this Agreement or otherwise in connection with the Projects will have regard to the benefits to all Parties and accordingly may be required to act in conflict with their duty to their relevant Party, and the Parties hereby authorise them to act in such a manner.
- 3.6 The Parties commit to share data and knowledge relevant to the Projects where appropriate.
- 3.7 Whilst this Agreement details the arrangements between the Parties for the Procurement Phase of Projects, the Parties agree to work together in good faith to agree such amendments and amplification of this Agreement as may be necessary to enable the Parties to work together throughout the Service Phase of such Projects.

4. Status of this Agreement

- 4.1 The Parties agree that this Agreement shall take the form of a legally binding relationship and mutual commitments between them created by this Agreement shall from the date hereof be construed accordingly.

5. Intellectual Property

- 5.1 All intellectual property in any material created by or on behalf of the Projects shall be owned jointly by the Parties and shall be available equally to each Party.
- 5.2 Each Party warrants that any intellectual property created by its officers for the purposes of any Project will not infringe any third party's intellectual property rights.
- 5.3 Where existing intellectual property of a Party has been used for the purpose of a Project, that Party agrees that, if such Project does not proceed, it will if requested licence the other Party on commercial terms to use that intellectual property for the purpose of its waste disposal functions.

6. Further Supplemental Agreement

- 6.1 The Parties will agree prior to entry into each Contract, a further Supplemental Agreement applying the following Principles.
- 6.2 Such supplemental agreement shall include:
 - (a) drafting based on the Principles;

- (b) such other provisions as the Parties agree (or as may be determined by the dispute resolution procedure in Clause 13) as a consequence of the terms of the relevant Contract; and
 - (c) a copy of the relevant Contract and any relevant direct agreements (as referred to in Clause 6.5(e) below).
- 6.3 The Parties will negotiate and agree such supplemental agreement prior to and in conjunction with the negotiation and agreement of the relevant Contract.
- 6.4 In respect of the obligations contained in this Clause 6 all Parties:
- (a) (without prejudice to paragraph 6.3) will at all times act in good faith;
 - (b) acknowledge that they have agreed the Principles but accept that they may need to be expanded to reflect the Contracts and, accordingly, no Party shall attempt to move significantly away from their intention or purpose;
 - (c) will ensure that sufficient time is set aside to conduct the negotiations on the terms of the Principles either through correspondence or by holding meetings or a combination of both to ensure that the terms of such supplemental agreements are agreed in a timely manner; and
 - (d) if a dispute or difference arises between the Parties in relation to a proposed provision of such supplemental agreements and such dispute or difference cannot be settled by the Parties within ten (10) Working Days of it first arising, any Party may refer such dispute or difference for determination in accordance with Clause 13.

6.5 Principles

The Principles are as follows:

(a) Exclusivity

Each Council will be required to provide all waste specific to each Contract that is collected in their Council area to the relevant Project.

(b) Contamination / Composition of Waste

Each Council will be required not to provide contaminated waste (outside of the specification agreed with the Councils) to the Projects. In the event that this does happen the Council will compensate arc21 for any Loss suffered in connection with the supply of the contaminated waste.

(c) Guarantee of arc21's obligations

- (i) Each Council will guarantee the obligations and liabilities of arc21 under the Contracts (including all payments to be made), making payments to arc21 in accordance with this Agreement.

- (ii) Each Council will also indemnify arc21 for any direct or indirect loss suffered by arc21 in carrying out its obligations under the Contracts.

(d) **Minimum Guaranteed Tonnage**

Each Council will commit a specified tonnage to arc 21 for each Contract, in order that arc21 can deliver its guaranteed minimum tonnage to a Contractor. If arc21 suffers Loss under any Contract as a result of a Council's failure to meet its tonnages, then arc21 shall pass on this liability to the relevant Council (pro-rata to its proportion of the overall shortage).

(e) **Collateral warranty to Contractor / Funder**

In addition to the execution of the further supplemental agreements with arc21, each Council will also enter into a collateral warranty (substantially in the form set out in Annex C hereto) with the relevant Contractor and/or the Funder (as required) whereby each Council will warrant the performance of such Council's obligations to arc21 under such further supplemental agreement.

(f) **Cross Indemnities and Liabilities**

Each Council will indemnify and guarantee that in the event that such Council (the "Defaulting Council") is responsible for a default by arc21 under the relevant Contract then such Defaulting Council will reimburse the other Councils to the full extent of their loss attributable to the individual Defaulting Council's actions.

(g) **Revenue Share**

If arc21 earns revenue under any Contract then such revenue will be returned to the Councils by arc21 in the proportion that each Council is responsible for providing tonnages or indemnifying arc21 in respect of other obligations under such Contract as more particularly set out in such Contract.

(h) **Changes in Legislation**

Any obligations and liabilities of arc21 arising from arc21's compliance with changes in legislation will be the responsibility of the Councils.

(i) **Residual Value of Capital Assets**

If arc21 is required to pay for the residual value of capital assets under the Contracts, this liability will be met by the Councils in accordance with the Assets and Borrowing Policy of arc21 which is contained in Annex B hereto and which must be complied with by all Parties.

7. Acquisition of Capital Assets by arc21

- 7.1 The Parties hereby agree that where capital assets are acquired by arc21 pursuant to the Contracts then the capital costs incurred by arc21 shall be passed on to the Councils on the basis set out in the

Assets and Borrowing Policy of arc21 which must be complied with by all Parties.

8. Remediation and Dispute Resolution

- 8.1 Where a Party is of the opinion that another Party is failing to comply with the provisions of this Agreement in respect of any matter, including the provisions of Clause 3.2 to work together in good faith and in an open, co-operative and collaborative manner, the Parties shall use their best efforts to resolve any such matter amicably without resort to the formal remediation and dispute resolution procedures set out below.
- 8.2 Notwithstanding Clause 8.1, above, at any time the Chief Executive of either Party (“the first Party”) may serve on the Chief Executive of the accused Party (“the second Party”) a “Default Notice”, alleging that the second Party has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the first Party has or is likely to suffer as a result of the alleged failure.
- 8.3 A Party in receipt of a Default Notice shall have 14 days within which to serve on the Chief Executive of the first Party 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 Party may have suffered or may suffer as a result of the failure or the reasons why that alleged failure is disputed.
- 8.4 Within 14 days of receipt of a Counternotice, the Chief Executive of the first Party shall send to the Chief Executive of the second Party a “Notice of Acceptance” of any proposals contained in the Counternotice in so far as those proposals are accepted by the first Party, and may send a “Notice of Dispute” in so far as no proposal satisfactory to the first Party is contained in the Counternotice, setting out in respect of each proposal which is not accepted by the first Party why it is considered to be unacceptable.
- 8.5 Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the second Party shall implement that proposal.
- 8.6 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 13.

9. Information Undertaking

- 9.1 The Councils hereby undertake that all information provided or to be provided by the Councils to arc21 in respect of the Projects (including but not limited to estimates of waste tonnages) are complete, accurate and correct. If any such information proves to be inaccurate or incorrect the Councils will indemnify arc21 fully for any Loss which arc21 suffers as a result of its reliance on such information.

10. Confidential Information

- 10.1 Subject to Clause 11, the Parties shall at all times use their reasonable endeavours to keep confidential and ensure that such information is used only for the purpose of the Projects (and to procure that their respective employees' agents, consultants, contractors and sub-contractors shall keep confidential and shall use such information only for the purpose of the Projects) all Confidential Information concerning the Projects or the business and affairs of the other Parties which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Parties, such consent not to be unreasonably withheld.
- 10.2 For the purpose of this Agreement "Confidential Information" means any information imparted to any Party or their employees agents, consultants, contractors or sub-contractors ("the Receiving Party") which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Party on the basis that it was to be kept confidential or is of commercial value in relation to a Project but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.
- 10.3 This Clause 10 shall not prevent the disclosure of any Confidential Information relating to the Projects which is reasonably disclosed for the furtherance of the Projects or the promotion of the Projects provided that the Party or person disclosing the information takes all steps that are commercially practicable to preserve the confidentiality of the information and shall not prevent the disclosure of any Confidential Information where required by law.

11. Compliance with Laws

- 11.1 The Parties agree that they will at all times comply with all laws including but not limited to the Data Protection Act 1998 and will, where appropriate maintain a valid and up to date registration or notification under such laws.
- 11.2 Each Council shall grant to the other Councils and arc21 the right of reasonable access to all records of Personal Data relevant to the Projects, as defined in the Data Protection Act 1998, and shall provide reasonable assistance at all times during the currency of this Agreement to ensure the quality and security of data collected.

12. Freedom of Information Act 2000 and Environmental Information Regulations 2004

- 12.1 Each Party acknowledges that the other Parties 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

and arc21 (at their own expense) to enable the other Councils and arc21 to comply with these information disclosure obligations.

12.2 Where a Party 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 Parties in relation to the Projects, it shall (and shall procure that its sub-contractors shall):

- (a) transfer the request for information to the other Parties as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
- (b) provide the other Party with a copy of all information in its possession or power in the form that the Party requires within ten Working Days (or such longer period as the Party may specify) of the Party requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the other Party to enable the Party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

12.3 Where a Party receives a request for information under the FOIA or the EIR which relates to the Agreement or the Projects, it shall inform the other Parties of the request for information as soon as practicable after receipt and in any event at least two Working Days before disclosure and shall use all reasonable endeavours to consult with the other Parties prior to disclosure and shall consider all representations made by the other Party in relation to the decision whether or not to disclose the information requested.

12.4 The Parties shall be responsible for determining in their absolute discretion whether any information requested under the FOIA or the EIR:

- (a) is exempt from disclosure under the FOIA or the EIR;
- (b) is to be disclosed in response to a request for information.

12.5 Each Party acknowledges that the other Parties may be obliged under the FOIA or the EIR to disclose information:

- (a) without consulting with the other Parties where it has not been practicable to achieve such consultation; or
- (b) following consultation with the other Parties and having taken their views into account.

13. Dispute Resolution

13.1 Upon service of a Notice of Dispute the relevant Parties will attempt to settle the issue in dispute ("Dispute") by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation, either Party may give notice in writing (a "Mediation Notice") to the other requesting mediation of the Dispute

and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the relevant Parties, asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. If there is any point in respect of the conduct of the mediation upon which the relevant Parties are unable to agree within ten (10) Working Days from the date of the Mediation Notice, CEDR will, at the request of either Party, decide that point for the relevant Parties, having consulted with them. The relevant Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or, in the absence of such determination, such costs will be shared equally.

- 13.2 No Party may commence any court proceedings in relation to any Dispute until they have attempted to settle it by mediation under Clause 13.1 and/or such mediation has terminated. The Parties will take no further steps in the court proceedings until any such mediation commenced under Clause 13.1 has terminated. Nothing in this Clause 13 shall prevent a Party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.
- 13.3 If the Dispute has not been resolved by the mediation procedure detailed in Clause 13.1 within one (1) month of the initiation of such procedure, the Dispute shall be referred to the courts for resolution.

14. Severance

- 14.1 If any condition, provision or Clause of this Agreement shall become or shall be declared by any court of competent jurisdiction to be void, invalid, illegal or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

15. Waiver

- 15.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 15.2 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.
- 15.3 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a Party from subsequently requiring compliance with the waived obligation.

16. General

- 16.1 Nothing contained or implied herein shall prejudice or affect the Parties' rights and powers duties and obligations in the exercise of (i) the Councils' functions as local Councils and (ii) arc21's functions as a

“Joint Committee” and/or in any other capacity and all rights powers discretions duties and obligations of the Parties under all laws may at all times be fully and effectually exercised as if the Parties were not Party to this Agreement and as if this Agreement had not been made.

- 16.2 The Parties shall only represent themselves as being an agent, partner or employee of any other Party to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of the other Parties except to the extent specified in this Agreement.
- 16.3 This Agreement shall be governed by and construed in accordance with the law of Northern Ireland and shall be subject to the jurisdiction of the Courts of Northern Ireland.
- 16.4 This Agreement is personal to the Parties and no Party 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.
- 16.5 No person other than the Parties shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 16.6 Any notice required or permitted to be given by a Party to another Party under this Agreement shall be in writing and addressed to the Chief Executive of each Party at his principal office.

IN WITNESS whereof this Agreement is attested to by the respective Chief Executives of the Participant Councils and by arc21 subscribing their signatures hereto in manner hereinafter appearing.

For Antrim Borough Council

For Ards Borough Council

For Ballymena Borough Council

For Belfast City Council

For Carrickfergus Borough Council

For Castlereagh Borough Council

For Down District Council

For Larne Borough Council

For Lisburn City Council

For Newtownabbey Borough Council

For North Down Borough Council

For arc21

ANNEX A

TERMS OF REFERENCE (INCLUDING STATEMENT OF PRINCIPLES)

Dated this 1st day of July 2003

EASTERN REGION WASTE MANAGEMENT GROUP

TERMS OF AGREEMENT

re: Proposal to establish a Joint Committee

arc 21

C Quigley
Director of Legal Services
City Hall
BELFAST
BT1 5GS

THIS AGREEMENT made this day of 2003
BETWEEN : -

1. **ANTRIM BOROUGH COUNCIL** of The Steeple, Antrim, Co. Antrim, BT41 1BJ
2. **ARDS BOROUGH COUNCIL** of 2 Church Street, Newtownards, Co. Down, BT23 4AP
3. **BALLYMENA BOROUGH COUNCIL** of Ardeevin, 80 Galgorm Road, Ballymena, Co. Antrim, BT42 1AB
4. **BELFAST CITY COUNCIL** of City Hall, Belfast, BT1 5GS
5. **CARRICKFERGUS BOROUGH COUNCIL** of Town Hall, Carrickfergus, Co. Antrim, BT38 7BL
6. **CASTLEREAGH BOROUGH COUNCIL** of Bradford Court, Upper Galwally, Castlereagh, BT8 6RB
7. **DOWN DISTRICT COUNCIL** of 24 Strangford Road, Downpatrick, Co Down, BT30 6SR
8. **LARNE BOROUGH COUNCIL** of Smiley Building, Victoria Road, Larne, Co. Antrim, BT40 1RU
9. **LISBURN CITY COUNCIL** of The Island, Lisburn, Co. Antrim, BT27 4RL
10. **NEWTOWNABBEY BOROUGH COUNCIL** of Mossley Mill, Newtownabbey, Co. Antrim, BT36 5QA
11. **NORTH DOWN BOROUGH COUNCIL** of Town Hall, The Castle, Bangor, Co. Down, BT20 4BT

1. DEFINITIONS

In this Agreement, the expressions:-

- 1.1 'the 1972 Act' means the Local Government Act (NI) 1972.
- 1.2 'the 1997 Order' means the Waste & Contaminated Land (NI) Order 1997.
- 1.3 'the Ancillary Functions' and 'the Core Functions' shall be construed in accordance with the provisions of the Principle of Functional Responsibilities, as set out in the Statement of Principles.
- 1.4 'the Department' means the Department of the Environment for Northern Ireland.
- 1.5 'ERWMG' means the Eastern Region Waste Management Group (described in Clause 2.3).

- 1.6 'the Joint Committee' means the Joint Committee agreed to be established by the Participant Councils pursuant to Clause 3 of these Terms of Agreement.
- 1.7 'the Participant Councils' mean those above-named district councils expressed to be parties to these Terms of Agreement.
- 1.8 'the Statement of Principles' means those principles as set out in the Annex to these Terms of Agreement.
- 1.9 'the Waste Management Plan' means the Sub-regional Waste Management Plan which has been jointly adopted in this year 2003 by the Participant Councils as further described in Clause 2.4.

2. BACKGROUND

- 2.1 Article 23 of the 1997 Order establishes a requirement for each district council in Northern Ireland to prepare a waste management plan, taking into account (inter alia) the Waste Strategy prepared by the Department pursuant to Article 19 of the 1997 Order, and including information as to (inter alia) what arrangements that council expects to make with other district councils.
- 2.2 The Department published its Northern Ireland Waste Management Strategy in May 2000, one of the objectives of which was stated therein as being to put in place a framework for preparation of joint waste management plans to develop an integrated network of regional waste management facilities which would be cost effective to the public.
- 2.3 In furtherance of the sub-regional approach promoted by the Department in its strategy, the Participant Councils agreed to form the Eastern Region Waste Management Group for the purpose of developing a joint waste management plan.
- 2.4 ERWGM have now jointly adopted, having consulted with the Department in accordance with the provisions of Article 23 of the 1997 Order, the Waste Management Plan which sets out the proposals of the Participant Councils as to how they would collectively deal with their waste arising over the period of the next 20 years.
- 2.5 The Participant Councils have agreed that, for the purpose of establishing an appropriate legal vehicle tasked with implementing those major procurement arrangements which will arise from the Waste Management Plan, they shall form a Joint Committee pursuant to the provisions of section 19 of the Local Government Act (NI) 1972.
- 2.6 As a preliminary step towards the formation of the Joint Committee, the Participant Councils have separately and effectively adopted the Statement of Principles as those fundamental principles which underpin the role and purpose of the Joint Committee, and which establish the parameters within which the Joint Committee shall function and operate.

3. ESTABLISHMENT OF JOINT COMMITTEE

- 3.1 The Participant Councils, acting pursuant to the powers conferred on them by section 19 of the 1972 Act, hereby collectively agree as follows: -

- 3.1.1 that they shall establish a Joint Committee for the purpose of implementing the policies set out in the Waste Management Plan;
- 3.1.2 that an application shall as soon as practicable be made to the Department to have the Joint Committee constituted a body corporate with perpetual succession by the name of 'Arc 21' with power to employ staff, enter into financing arrangements, including the borrowing of money, hold property and funds, and enter into contracts;
- 3.1.3 that the functions of the Joint Committee shall be fixed by reference to these Terms of Agreement (including the Statement of Principles);
- 3.1.4 that the Order to be made by the Department under section 19 of the 1972 Act shall make such further incidental and consequential provision as shall be reasonably necessary to implement the requirements of these Terms of Agreement, including provision that section 19 of the Interpretation Act (NI) 1954 shall apply to the Joint Committee.

4. DELEGATED POWERS

- 4.1 The Participant Councils hereby agree that the Joint Committee shall have delegated powers and responsibilities as more particularly described and delimited in the Statement of Principles.
- 4.2 In relation to the acquisition of assets or the incurring of liabilities, a threshold of £250,000 shall apply and over which the unanimous agreement of the Joint Committee and approval of all of the Participant Councils shall be required (as referred to in the 'Principle of Limit of Delegation')

5. ESTABLISHMENT AND OPERATING COSTS

- 5.1 In accordance with the Principle of Equitable Shared Funding, the costs of establishing and operating the Joint Committee (including contract administration and management costs) shall be borne by the Participant Councils by reference to their respective populations, the percentage calculations of which are set out in the Schedule to these Terms of Agreement, but which shall be reviewed by the Joint Committee every three years, and adjusted as appropriate.
- 5.2 The Joint Committee may (subject to the Principle of Consensus) award contracts for the provision of waste disposal and/or treatment facilities by external contractors on the basis that the costs of constructing the facilities will be amortised over the relevant contract periods or on the basis of such other commercial arrangements as might be appropriate. In determining the specifications of such contracts, the Joint Committee shall endeavour to ensure that:-
 - contracts are appropriately bundled to achieve best value for money for the ERWVG as a whole;
 - contracts shall provide for a suitable number of treatment facilities and waste transfer stations which shall, when taken with other contracts, reflect an equitable geographical distribution of such facilities and stations, having regard at all times to the overall objective of achieving due economies of scale;

- the pricing specification of each contract shall, where circumstances permit, provide for a standard waste tonnage acceptance charge at transfer stations, subject to an economic appraisal being commissioned by the Joint Committee to ensure that, when taken with the pricing structure of other contracts awarded by the Joint Committee, there is no material element of cross-subsidisation of costs within the Participant Councils.

- 5.3** In relation to those waste disposal and/or treatment facilities (including, where appropriate, waste transfer stations) which are procured by the Joint Committee at a capital cost ('the procured facilities'), the costs incurred shall be re-charged to the Participant Councils on the same basis as set out in Clause 5.1. The Joint Committee shall hold the procured facilities in trust for the Participant Councils on a basis commensurate in percentage terms with the costs so re-charged. Tonnage charges shall, unless otherwise agreed, be assessed by reference to the Joint Committee's costs of operating the procured facilities.

In establishing the charges for acceptance of waste at such facilities, the Joint Committee shall consider, where appropriate, the aggregate cost of operating groups of procured facilities of similar treatment types for the purpose of establishing a common rate, but ensuring that no material element of cross subsidisation of tonnage charges arises within the Participant Councils.

6. COMPOSITION AND PROCEDURE OF JOINT COMMITTEE

- 6.1** In accordance with the Principle of Equal Committee Representation, each of the Participant Councils shall have equal representation, agreed at 2 Members each.
- 6.2** The provisions of sections 19 – 22 and 142 and Schedules 2 and 7 of the 1972 Act shall apply to the Joint Committee.
- 6.3** The quorum of the Joint Committee shall be ten, provided that at least six of the Participant Councils are represented.
- 6.4** The proceedings of the Joint Committee shall be regulated by Standing Orders to be agreed and adopted by the Participant Councils.

7. DISPUTE RESOLUTION

In the event of any disagreement between the Participant Councils in relation to any matter arising pursuant to these Terms of Agreement, but entirely without prejudice to the provisions set out in the Statement of Principles (and in particular the Principle of Consensus), the Joint Committee may request the Department or such other body as it might agree to act as a conciliator in accordance with such procedure as shall be agreed by the parties, and to the intent that the parties shall endeavour to resolve their differences in the spirit of achieving the objectives of the Waste Management Plan.

8. EFFECTIVE DATE

These Terms of Agreement shall be deemed to come into effect on the day and year first herein written, being a date following the affixing hereto of all of

the signatures of the respective Chief Executives of all of the Participant Councils as hereinafter provided for.

IN WITNESS whereof this Agreement is signed by the respective Chief Executives of each of the Participant Councils and each subscribing his signature hereto in manner hereinafter appearing.

SCHEDULE

POPULATION JUNE 2001 (MID-YEAR ESTIMATES)

Council	Actual Population	% of Total
Antrim	48,761	5.28%
Ards	73,435	7.96%
Ballymena	58,801	6.37%
Belfast	277,170	30.02%
Carrickfergus	37,730	4.09%
Castlereagh	66,533	7.21%
Down	64,147	6.95%
Larne	30,811	3.34%
Lisburn	108,997	11.81%
Newtownabbey	80,144	8.68%
North Down	76,578	8.29%
Total	923,107	100%

Annex

STATEMENT OF PRINCIPLES ARC 21

PROPOSAL FOR ESTABLISHMENT OF A JOINT COMMITTEE

EASTERN REGION WASTE MANAGEMENT GROUP

The Participant Councils are the eleven district councils of the ERWVG (ARC 21). Subject to their joint adoption of this Proposal Statement and Statement of Principles, the Participant Councils shall then enter into a formal Collaborative Agreement which will contain such further detail as shall be necessary to give legal efficacy thereto. The terms of the Collaborative Agreement shall also be subject to the prior approval of the Participant Councils.

PROPOSAL STATEMENT - CONTEXT OF ESTABLISHMENT

The Joint Committee shall be established by the Participant Councils as a body corporate under section 19 of the Local Government Act (NI) 1972 (pursuant to statutory order). It shall be set up solely in the context of the policies of the Eastern Region Waste Management Group as described in the ARC21 Waste Plan (including the Procurement Plan and the Implementation Plan). As a corporate body, the Joint Committee will have a distinct legal status with power to employ staff, enter into financing agreements, including the borrowing of money, hold property and funds, and enter into contracts.

THE FIVE PRINCIPLES

- Principle of Consensus
- Principle of Limit of Delegation
- Principle of Functional Responsibilities
- Principle of Equitable Shared Funding
- Principle of Equal Committee Representation

PRINCIPLE OF CONSENSUS

It shall be an overarching principle that all policy decisions and decisions with significant financial implications for the Joint Committee shall be taken on the basis of the consensus of all the Participant Councils, within the framework of the Waste Plan and this Proposal and Statement of Principles. Accordingly, any material change in the Waste Plan or any decisions in relation to the acquisition or use of significant assets, or the incurring of significant liabilities will require the prior approval of the Participant Councils.

PRINCIPLE OF LIMIT OF DELEGATION

The Participant Councils shall delegate powers and functions to the Joint Committee to the extent necessary to enable it to carry out its Core Functions and Ancillary Functions. This delegation shall be with a view to achieving economies of scale and minimising of costs. No further functions are to be transferred to the Joint Committee except with the prior approval of the Participant Councils. The Collaboration Agreement shall specify thresholds in relation to the acquisition of assets or the incurring of liabilities over which the unanimous agreement of the Joint Committee or the referral back to the Participant Councils shall be required.

PRINCIPLE OF FUNCTIONAL RESPONSIBILITIES

The Joint Committee shall have Core Functions and Ancillary Functions. The Core Functions shall be the acceptance, treatment and disposal of waste in accordance with the Waste Plan. In relation to the Core Functions (as affecting both short and long-term contracts) the Joint Committee shall:-

- Develop specifications and award criteria for the contracts
- Obtain the approval of the Participant Councils to the specifications and award criteria
- Invite tenders for and award the contracts
- Operate the contracts
- Have the power to acquire, hold and use assets
- Recover the contract operating costs from the Participant Councils on an equitable basis.

The Ancillary Functions shall be matters such as waste minimisation schemes, education programmes and other initiatives as may be agreed from time to time with the individual Participant Councils and to be operated on the basis of annual programmes and/or service level agreements.

PRINCIPLE OF EQUITABLE SHARED FUNDING

- The costs of establishing and operating the Joint Committee shall be pre-estimated as far as possible by reference to a business plan, and/or operating plan, and shall be recovered on an equitable basis (by reference to respective populations) from the Participant Councils in accordance with the provisions of the Collaborative Agreement.
- The Joint Committee's net costs of operating the Core Functions shall be recovered on an equitable basis from the Participant Councils in accordance with the provisions of the Collaborative Agreement, having regard to all relevant cost factors arising in relation to the acceptance, treatment and disposal of waste of each of the Participant Councils.

- The costs of operating the Ancillary Functions shall be in accordance with the relevant annual service level agreements.

PRINCIPLE OF EQUAL COMMITTEE REPRESENTATION

The Joint Committee shall be constituted on the basis of equal representation, with ... member(s) to be nominated by each of the Participant Councils. The proceedings of the Joint Committee shall be regulated by Standing Orders to be set out in the Collaboration Agreement."

ANNEX B



ASSETS AND BORROWING POLICY

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REVIEW OF PUBLIC ADMINISTRATION

INTRODUCTION

Since becoming established in 2004, arc21 has incurred only revenue expenditure, receiving revenue funds from Member Councils to fund operational expenses, and contractual obligations.

As part of the ongoing development of the organisation, arc21 will soon become funded through Revenue and Capital sources of finance.

This document sets out the proposed treatment of Capital Assets and their associated funding. The policy will also be in accordance with Local Government Accounting Legislation, the Financial Reporting Standards, the DOE Accounting Directives, the Code of Practice on Local Authority Accounting in the United Kingdom: a Statement of Recommended Practice (SORP). In addition guidance will be taken from the Prudential Code.

GOVERNANCE ARRANGEMENTS

As a Local Government Body, arc21 is subject to the rules and regulations established by the Department of the Environment, in relation to Borrowing.

The Terms of the Agreement, under which arc21 operates, will also apply to the procedures for the acquisition and disposal of Capital Assets together with any borrowing associated therewith.

In general, a business case will be produced setting out the jurisdiction for the investment in Capital Assets together with the method of financing, for approval, subject to the Financial Limits as outlined in the Terms of Agreement, by the Steering Group, Joint Committee and Member Councils.

The role of Member Councils will be vital due to the substantial value of both the capital assets and associated long term borrowing involved. In order that Member Councils can take due account of the issues, particularly affordability considerations, consultation with the Finance Sub Group will form a key element of the governance arrangements. Comments from the Finance Sub Group will be presented to the Steering Group for consideration.

In addition, in accordance with the Statutory regulations, arc21 will require the approval of the Department to borrow and, as a consequence, will also be subject to the policies and procedures in place by the DOE - Local Government Division, required when seeking such approval.

DEFINITION OF CAPITAL ASSET

An asset will be treated as capital if it brings benefits to the organisation beyond one year.

In accordance with Financial Reporting Standard – FRS 15, all costs associated directly with the asset will also be treated as capital.

ACQUISITION OF CAPITAL ASSETS

The organisation may acquire a range of assets such as:

- Land
- Buildings
- Plant and Machinery
- Vehicles
- Long Term Contracts

Capital assets may be acquired for the purposes of the organisation in general, for example for use by the organisation for operational purposes, or may be specifically acquired for the purpose of carrying out contractual obligations on behalf of Member Councils, for example Land may be acquired in support of a specific waste facility.

ASSET REGISTER

All assets will be recorded on an asset register and will include the following information:

- The Type of Asset
- The name of the supplier (s)
- The date of acquisition
- The cost or value at the date of acquisition
- The estimated useful economic life
- The depreciation method and amount
- The revaluation details
- The method of financing
- The period of borrowing – if any
- The Loan Providers
- The terms of the Loan
- The repayments, including interest

DE MINIMIS VALUE

In general individual assets costing up to £5,000 will be purchased through revenue and will not be capitalised. In some circumstances, similar assets may be grouped and treated as capital although each individual item may be valued at less than £5,000.

REVALUATION

Assets will be revalued at least every five years and the Balance Sheet value adjusted accordingly. Any difference between the cost of the asset and its revaluation will be accounted for in the specific asset category and the Revaluation Reserve Account, in the Balance Sheet.

The revaluation will be conducted by the District Valuer or a suitably qualified valuer.

FINANCING OF CAPITAL ASSETS

Capital assets may be financed as follows:

- Loan Finance including Leasing
- Grant Aid
- Capital Receipts – proceeds from the sale of capital assets
- Capital Funds/Repairs and Renewals Funds
- Revenue Contribution

LOAN FINANCING – LOAN CHARGES

In the event that Capital Assets are acquired by Loans (including Leases), the amount so borrowed plus interest, known together as Loan Charges, will be charged to Member Councils on the following basis:

- Capital Assets acquired for General Use
 - Charges on Annual Population Basis
- Capital Assets acquired for Contractual Obligations:
(For those Councils taking part in the related contract)
 - (i) During the Construction Phase
 - Charged on Total Estimated Contract Tonnage
 - (ii) During the Operational Phase
 - Charged on Tonnage Delivered Basis

For cashflow purposes, the amount of Loan Charges payable during the year will be charged in advance to Member Councils to ensure that sufficient funds are available to meet the repayment commitments. Where the Loan Charges are estimated for the year, a year and reconciliation exercise will be undertaken and the appropriate adjustments made to Member Councils.

In terms of Loan Charges specifically related to contractual obligations, the charges applied to Member Councils, when the contract is operational, will be based on the estimated tonnage for the year with adjustments being made at the end of the year to reflect the actual tonnage delivered, subject to any minimum guaranteed tonnage.

GRANT AID

Receipts by way of Capital Grant will be wholly used to reduce the level of borrowing, if any, required to acquire a Capital Asset.

Subject to any repayment conditions, the Capital Grant will be taken to the Deferred Grants Reserve Account and then allocated over the estimated economic life of the asset.

In this way the amount chargeable to Member Councils by way of Loan Charges will be reduced by the Capital Grant.

CAPITAL RECEIPTS – PROCEEDS FROM THE SALE OF CAPITAL ASSETS

In the event of Capital Assets being disposed, the amount received from the proceeds of sale will be treated as a Useable Capital Receipt and, subject to the Legislation, will be utilised to repay any loans outstanding on the specific asset sold with any remaining amount applied to borrowings on other assets.

Any amount remaining after all debt has been repaid may then be used only for the purposes of acquiring other Capital Assets, subject to the approval of the Joint Committee.

CAPITAL FUND AND RENEWAL AND REPAIRS FUND

A Capital Fund and Renewal and Repairs Fund may be established for the purposes of acquiring Capital Assets or for the purposes of funding major Renewal and Repairs Programmes during the estimated useful economic life of Assets.

Where a Capital Asset has been subject to a major Renewal and Repairs Programme, its useful economic life will be reviewed and the Balance Sheet/Asset Register adjusted accordingly.

REVENUE CONTRIBUTIONS

Revenue Contributions will be made out of revenue reserves for the purposes of financing Capital Assets, including the repayment of Loans/Leases, subject to the approval of the Joint Committee.

REVIEW OF PUBLIC ADMINISTRATION

The ongoing Review of Public Administration (RPA) will impact upon the Assets and Liabilities of arc21 in the same way that it will impact on all other Local Government Bodies.

At this stage the impact is unknown and it is presumed that Legislation will be introduced in due course setting out the revised legal arrangements which will apply and at that time a review of the Capital Assets and Liabilities will be undertaken in accordance with RPA.

ANNEX C

FORM OF COLLATERAL WARRANTY

**ANTRIM BOROUGH COUNCIL,
ARDS BOROUGH COUNCIL,
BALLYMENA BOROUGH COUNCIL,
BELFAST CITY COUNCIL,
CARRICKFERGUS BOROUGH COUNCIL,
CASTLEREAGH BOROUGH COUNCIL,
DOWN DISTRICT COUNCIL,
LARNE BOROUGH COUNCIL,
LISBURN CITY COUNCIL,
NEWTOWNABBIEY BOROUGH COUNCIL,
NORTH DOWN BOROUGH COUNCIL,**

and

**arc21
and
[FUNDER]**

**Collateral warranty relating to a further supplemental agreement dated []
relating to the procurement and management of the
Residual waste treatment plant**

THIS DEED is made the

day of

2008

BETWEEN

ANTRIM BOROUGH COUNCIL of Civic Offices, 50 Stiles Way, Antrim, Co. Antrim, BT41 2UB;

ARDS BOROUGH COUNCIL of 2 Church Street, Newtownards, Co. Down, BT23 4AP;

BALLYMENA BOROUGH COUNCIL of Ardeevin, 80 Galgorm Road, Ballymena, Co. Antrim, BT42 1AB;

BELFAST CITY COUNCIL of City Hall, Belfast, BT1 5GS;

CARRICKFERGUS BOROUGH COUNCIL of Town Hall, Carrickfergus, Co. Antrim, BT38 7BL;

CASTLEREAGH BOROUGH COUNCIL of Bradford Court, Upper Galwally, Castlereagh, BT8 6RB;

DOWN DISTRICT COUNCIL of 24 Strangford Road, Downpatrick, Co Down, BT30 6SR;

LARNE BOROUGH COUNCIL of Smiley Building, Victoria Road, Larne, Co. Antrim, BT40 1RU;

LISBURN CITY COUNCIL of The Island, Lisburn, Co. Antrim, BT27 4RL;

NEWTOWNABBEY BOROUGH COUNCIL of Mossley Mill, Newtownabbey, Co. Antrim, BT36 5QA;

NORTH DOWN BOROUGH COUNCIL of Town Hall, The Castle, Bangor, Co. Down, BT20 4BT;

each a "Council" and together the "Councils"

AND

arc21 of Walsh House, Fortwilliam Business Park, 35 Dargan Road, Belfast, BT3 9LZ;

AND

[FUNDER] (the "Beneficiary")

each a "Party" and together the "Parties".

WHEREAS

- (a) Each of the Councils entered into the Terms of Agreement to form a joint committee on 1st July 2003 (a copy of which is contained in Annex A hereto). The Terms of Agreement imposes a number of obligations on the Councils in relation to the establishment of arc21 and sets out how arc21 should

function. In the Terms of Agreement each Council also signed up to a Statement of Principles for arc21.

- (b) The joint committee established under the Terms of Agreement was constituted as a body corporate with the name, arc21, pursuant to The Local Government (Constituting a Joint Committee a Body Corporate) Order (Northern Ireland) 2004 (S.R. 2004 No. 49) and the Local Government (Constituting a Joint Committee a Body Corporate) (Amendment) Order (Northern Ireland) 2007 (S.R. 2007 No. 505). The 2007 Order clarified the powers of arc21 and applied certain rights and powers applicable to the Councils to arc21 in its own capacity.
- (c) In connection with the award of the Contract by arc21, arc21 and the Councils entered into a supplemental agreement and the further supplemental agreement to further clarify the rights of the Councils both between themselves and in relation to arc21 and resolved to work together to seek a long term solution to their duties for the treatment of residual controlled waste by procuring a Contractor to construct, provide and operate facilities for the treatment and disposal of such residual waste for the Councils and for managing the resulting Contract on behalf of the Councils.
- (d) By an agreement ("the Finance Agreement") dated [] made between the Contractor (1) and the Beneficiary (2) the Beneficiary has subject to the terms and conditions thereof agreed to provide finance or re-finance to assist inter alia in carrying out the Contract.
- (e) It is a term of the Finance Agreement that the parties hereto enter into this Deed

IT IS HEREBY agreed as follows –

1. Defined terms

Defined terms shall have the meaning given in the further supplemental agreement, unless otherwise defined herein.

2. Warranties/Undertakings

The Councils hereby warrant and undertake to the Beneficiary that they have performed and shall continue properly and diligently to perform all of their obligations under the further supplemental agreement and will owe the same contractual duties (including without limitation duties of care) to the Beneficiary as those owed by the Councils to arc21.

3. Liability of Councils

The obligations of the Councils under or pursuant to clause 2 hereof shall be without prejudice to any other present or future liability of the Councils to the Beneficiary (including without prejudice to the generality of the foregoing any liability in negligence) and shall not be released diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Beneficiary.

4. Continuing Effect

Notwithstanding the termination of the further supplemental agreement or any part thereof this Deed shall continue to have effect, provided that no action or proceedings for any breach of this Deed shall be commenced against the Councils by the Beneficiary after the expiry of twelve (12) years from the date of termination of the Contract.

5. Arc21's Consent

Arc21 by its execution hereof agrees to the terms and conditions of this Deed.

6. Assignment

[This Agreement is personal to the Parties and no Party 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].

7. Limitation of Liability

The Councils shall owe no duty or have any liability under this deed which are greater or of longer duration than that which it owes to arc21 under the further supplemental agreement.

8. Governing law

This Agreement shall be governed by and construed in accordance with the law of Northern Ireland and shall be subject to the jurisdiction of the Courts of Northern Ireland.

9. Third party Rights

No person other than the Parties shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed by the Councils, arc21 and the Beneficiary and is intended to be and is hereby delivered on the day and year first above written

EXECUTED AS A DEED by)
[Councils])
acting by:-)

EXECUTED AS A DEED by)
[arc21])
acting by:-)

EXECUTED AS A DEED by)
[Beneficiary])
acting by:-)