

WEST MERCIA ENERGY – JOINT AGREEMENT

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20

**BETWEEN**

- (1) SHROPSHIRE COUNCIL (hereinafter referred to as “SC”)
- (2) THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL (hereinafter referred to as “HC”)
- (3) WORCESTERSHIRE COUNTY COUNCIL (hereinafter referred to as “WCC”)
- (4) THE BOROUGH OF TELFORD & WREKIN (hereinafter referred to as “Telford & Wrekin Council”)

(hereinafter referred to as “the Member Authorities or “the Member Authority” as the context determines)

**WHEREAS**

- i) A local authority or any public body may under the Local Authority (Goods and Services) Act 1970 (hereinafter referred to as “the 1970 Act”) enter into an agreement for the supply of any goods material or services within the meaning of the 1970 Act to any body or authority referred to in the 1970 Act.
- ii) The Member Authorities have each introduced executive arrangements under the provisions of the Local Government Act 2000.
- iii) Following the sale by the Member Authorities of the stationery supplies business operated under the Joint Committee known as West Mercia Supplies, the Executives of each of the Member Authorities have agreed to form a Joint Committee for the purposes of s.101 Local Government Act 1972 (hereinafter called “the 1972 Act”) and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 made under s.20 of the Local Government Act 2000 and the Executives of each of the Member Authorities wish to enter this Agreement
- iv) Section 103 of the 1972 Act provides that the expenses incurred by a Joint Committee of two or more local authorities shall be defrayed by those authorities in such proportions as they may agree or in the case of disagreement as may be determined by a single arbitrator appointed by the member authorities on the nomination of the President for the time being of the Chartered Institute of Public Finance and Accountancy in accordance with and subject to the provisions of the Arbitration Act 1996’
- v) The Member Authorities have agreed that the Joint Committee shall have the power to appoint staff and that one Member Authority shall be referred to as the Lead Authority. The Lead Authority shall employ the staff and hold property employed, on behalf of the Member Authorities, for the purposes of the Joint Committee.

Definitions

1. In this agreement where the context so permits the following words shall have the meanings shown:-

- |      |                             |   |
|------|-----------------------------|---|
| 1.1  | Member Authority            | shall mean each authority included in Schedule 1 hereto and the phrase "Member Authorities" shall be interpreted accordingly.   |
| 1.2  | Lead Authority              | shall mean Shropshire Council or such other Member Authority as may from time to time be agreed by a majority of the Member Authorities in writing.                               |
| 1.3  | Delegated Functions         | shall mean those functions, powers and responsibilities set out in Schedule 2 hereto subject to the restrictions expressed therein and otherwise in this agreement.               |
| 1.4  | Director                    | shall mean the officer, so designated under paragraph 1(iv) of Schedule 2, employed to operate and manage WME.  |
| 1.5  | West Mercia Energy or "WME" | shall mean West Mercia Energy business operated under the authority of the Joint Committee.   |
| 1.6  | Strategic Policies          | shall mean the Policies referred to in Clause 5.2.  |
| 1.7  | Annual Business Plan        | shall mean the Plan referred to in Clause 5.3 and 5.4   |
| 1.8  | Joint Committee             | shall mean the Joint Committee established by this agreement referred to at paragraph 2.1   |
| 1.9  | Chief Executive             | shall mean the Head of Paid Service of each Member Authority or such other officer as each Member Authority shall determine.  |
| 1.10 | Executive Elected Member    | shall mean any person duly elected to be a Council Member of any of the Member Authorities who is also a Member of the Executive of that Member Authority.                        |
| 1.11 | Joint Committee Member      | shall mean an Executive Elected Member who shall from time to time be nominated by a Member Authority to represent the executive of that Member Authority on the Joint Committee. |

- 1.12 Chair shall mean such person as shall from time to time be duly elected to be the Chair of the Joint Committee in accordance with Clause 3.9.
- 1.13 Vice-Chair shall mean the person from time to time elected to be Vice-Chairman of the Joint Committee in accordance with Clause 3.9
- 1.14 Any reference to a statutory provision, subordinate legislation or other enactment includes reference to it as amended, extended or replaced from time to time and includes any subordinate legislation, byelaw or other enactment made under it.
- 1.15 Where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'.
- 1.16 This Agreement shall be governed by English Law and where the context so admits the words contained in the Definitions Section shall bear the meanings specified therein.

**NOW IT IS HEREBY AGREED** as follows:

The Joint Committee

- 2.1 The Executives of the Member Authorities agree to form a Joint Committee which shall arrange for the discharge of their functions in connection with this Agreement under the name West Mercia Energy.
- 2.2 The Member Authorities agree that the role of the Joint Committee shall be strategic in nature and that whilst the Joint Committee shall maintain a strategic oversight of the business of WME the day to day running of that business and the implementation of any strategy agreed by the Joint Committee shall be delegated to the appointed Director.
- 2.3 The Joint Committee shall have the power to appoint sub-committees comprising Joint Committee Members or officers of the Member Authorities, and the Joint Committee may delegate such of its functions to a sub-committee as it deems reasonably necessary.
- 2.4 The Lead Authority shall appoint from its officers a Secretary and a Treasurer to the WME Joint Committee. The Secretary and Treasurer shall liaise with the monitoring officers and the Treasurers of the Member Authorities to enable those officers to comply with their responsibilities under Section 5 of the Local Government and Housing Act 1989 and Section 151 of the Local Government Act 1972.
- 2.5 The Secretary shall be responsible for the production and compilation of the Joint Committee's agenda and minutes and shall provide legal advice and services to the Committee.
- 2.6 The Treasurer shall provide financial advice and, in conjunction with the Director, shall prepare an annual budget for the Joint Committee.

- 2.7 The Joint Committee may purchase other services from wheresoever it considers such services are most efficiently and effectively provided.
- 2.8 The costs of all services mentioned in 2.4 shall be a charge levied on the annual budget of WME.

### Membership

- 3.1 Membership of WME shall run from 1<sup>st</sup> October 2012 until 31<sup>st</sup> March 2016 and thereafter may be extended by agreement between the Member Authorities.
- 3.2 Wherever in this Agreement the Member Authorities have the power to decide any matter by majority vote then each Member Authority shall have such number of votes as that Member Authority has representatives (or an entitlement to representatives) on the Joint Committee. Unless otherwise stated, any reference in this Agreement to the 'approval' of the Joint Committee shall be taken to mean approval provided by the Joint Committee by way of a majority vote.
- 3.3 Each Member Authority shall be entitled to appoint that number of their Executive Elected Members as specified in Schedule 1 hereto to serve on the Joint Committee for a term expiring upon the retirement of the Executive Elected member following Council elections or unless earlier replaced by the appointing Member Authority following written notice to the Secretary.
- 3.4 A Joint Committee Member appointed in accordance with 3.3 shall nevertheless cease to be a Joint Committee Member when he or she ceases to be an Executive Elected Member of the Member Authority by whom he or she is appointed.
- 3.5 Appointments should be notified formally in writing to the Secretary of the Joint Committee by the Chief Executive or other nominated officer for each Member Authority.
- 3.6 Any Joint Committee Members who are absent from meetings of the Joint Committee for three consecutive meetings (unless excused by the Joint Committee) or who communicate in writing to the Secretary to the Joint Committee a wish to resign shall thereupon cease to be Joint Committee Members.
- 3.7 Notices of meetings and accompanying documents shall be sent to the members and officers of the Joint Committee and to the Chief Executive of each Member Authority by the Secretary of the Joint Committee.
- 3.8 There shall be an Annual Meeting of the Joint Committee in September of each year and at least one further ordinary meeting in February of each year for the approval, inter alia, of the Annual Business Plan unless the Joint Committee shall agree that further meetings are required at such time or times as shall be deemed necessary by the Joint Committee. A Special Meeting may be requisitioned by the Chief Executive of a Member Authority, such requisition to set out the business to be transacted at

the meeting and to be delivered to the Secretary of the Joint Committee in normal circumstances at least ten clear working days prior to the date of the meeting. Where it is certified that the business to be transacted is urgent business the time limit for delivery of such requisition may be waived by the Secretary of the Joint Committee following consultation with the Chair of the Joint Committee.

- 3.9 At the meeting in February 2013 and thereafter every year at the ordinary meeting in February the Joint Committee shall elect by majority vote one of their members to be Chair for the ensuing 12 month period and another member to be Vice-Chair for the same term. The Chair and Vice-Chair shall not be from the same Member Authority nor any person hold office for longer than one term consecutively.
- 3.10 The Chair and Vice-Chair shall hold office until the appointment of their successors as provided for in clause 3.9 above or until such earlier date as they shall cease to be an Executive Elected Member of their respective Member Authorities in which case the respective office shall be filled at the next meeting of the Joint Committee. In the absence of both the Chair and Vice-Chair from a meeting the members present shall before any other business is transacted elect, by majority vote, one of their number to preside at that meeting.
- 3.11 A substitute member shall only be entitled to attend, speak and vote as if an ordinary member of the Joint Committee where, at least one clear working day prior to the date of the meeting, notice has been given to the Secretary that:
- (i) it is impracticable for the named ordinary member of the Joint Committee to attend a specified meeting;
  - (ii) the named substitute member will attend in place of their named ordinary members; and
  - (iii) the named substitute member is also an Executive Elected Member.
- 3.12 The quorum of the Joint Committee shall be two members from at least two separate member authorities.
- 3.13 The proceedings of the Joint Committee shall not be invalidated by any vacancy in their number or by any defect in the appointment or qualification of any Joint Committee Member whose appointment is properly notified to the Secretary of the Joint Committee.
- 3.14 With the agreement of the Chair of the Joint Committee, or in his absence the Vice-Chair, or the member elected so to act in accordance with 3.10, any Elected Member of the Member Authorities or authorised officers from the Member Authorities or WME may attend and speak but not vote at meetings of the Joint Committee. The Executive Member responsible for procurement policy of each Member Authority or the Leader of the Member Authority shall have the right to attend and speak but not vote if they are not the nominated Joint Committee member.

Objectives

- 4.1 The objectives of the Joint Committee shall be to maintain effective, efficient and economic arrangements for the purchase and supply of energy at the request of and to the satisfaction of the Member Authorities and to other public bodies where it is permitted by law and is to the benefit of Member Authorities to do so.
- 4.2 The Joint Committee shall be responsible for the discharge of the functions of the Member Authorities in relation to those matters delegated by the Member Authorities set out in Schedule 2 hereto.
- 4.3 The Joint Committee shall make available the above services of WME in accordance with the approved Annual Business Plan, the interests of Member Authorities and the law.

Procedure

- 5.1 WME shall, following approval by the Joint Committee, adopt and operate a set of financial procedures and regulations for the procurement of goods and services.
- 5.2 The Joint Committee shall produce and thereafter keep under review Strategic Policies for adoption (with or without revision) and shall conduct its affairs in conformity with the provisions of such Strategic Policies or subsequent amendment. The Strategic Policies shall comprise:-
  - i) the Lead Authority's Equal Opportunities Policy;
  - ii) the Lead Authority's Health and Safety Policy;
  - iii) pay and conditions for staff;; and
  - iv) the Lead Authority's policies relating to modern environmental practices and sound environmental sustainability in the sourcing of its products and services from suppliers.
- 5.3 The Joint Committee shall approve an Annual Business Plan. The Annual Business Plan shall be recommended to the Joint Committee by the Chief Executives of the Member Authorities. The Chief Executives of the Member Authorities may recommend any material variations to the Annual Business Plan to the Joint Committee, including the acquisition of new customer markets not already referred to therein.
- 5.4 The Annual Business Plan shall comprise a comprehensive statement of the business aims and proposed actions of the Joint Committee for the ensuing financial year and inter alia shall include:-
  - i) business and financial objectives
  - ii) performance standards
  - iii) marketing strategy
  - iv) indicative staffing levels and changes
  - v) proposed main activities
  - vi) permitted trading and customer markets that the Director has authority to engage in

- 5.5 The Joint Committee shall agree its own detailed budgets for internal use by the Joint Committee at a level of detail by the Treasurer and Director as necessary to exercise proper management control of the activities of WME. Such budgets shall be in accordance with the Annual Business Plan.
- 5.6 The Joint Committee (or the Director as provided in the Scheme of Delegation) shall be empowered to make any necessary operational decisions necessary for the effective operation of WME including the virement of budgets and appointment of staff provided any such actions are consistent with the approved Standing Orders, Financial Regulations, Annual Business Plan and Strategic Policies.

### Reports

- 6.1 The Joint Committee shall receive in each year at each September annual meeting the report of the Director and the Treasurer in respect of the twelve months ending the Thirty first day of March of that year and a copy thereof shall be forwarded to the Chief Executive of each Member Authority.
- 6.2 The reports shall include, inter alia:-
- a) A statement showing progress in achieving the objectives in the Annual Business Plan including a report and financial statement on the operation of WME.
  - b) A summary revenue account and statement of capital spending including the recommendations as to the distribution or use of any revenue surplus and the financing of any capital expenditure.
- 6.3 At each meeting of the Joint Committee the Joint Committee shall consider whether it will be appropriate to task the Director with the holding of meetings or the undertaking of reviews on any matter (at the absolute discretion of the Joint Committee) upon which it shall require a formal report to be presented at its next or any subsequent meeting. .

### Overheads, Pricing and Financial Requirements

- 7.1 The costs of all overheads including staffing costs and liabilities shall be recovered as an oncost on any energy or services sold.
- 7.2 The prices at which energy and services shall be sold shall be at the discretion of the Director. The Director will fix prices with a view to attaining the following objectives:-
- a) Meeting budgeted operating costs for the ensuing year.
  - b) Achieving the projected surplus of income over expenditure in accordance with the agreed Annual Business Plan.

- 7.3 a) The Joint Committee shall determine the level of accumulated surplus that shall be retained for contingency, for future investment or for other reserve purposes, having considered the recommendations of the Treasurer and Director; and
- b) The whole or any part of any remaining accumulated surplus balance (not otherwise retained for contingency, future investment or reserve purposes) shall be distributed to the Member Authorities in the manner described in clause 8 hereto
- 7.4 Interest due or accrued on credit or debt balances with the Lead Authority shall be accounted for.
- 7.5 The accounts and records of WME shall be subject to a continuous process of audit by the Treasurer to the Joint Committee and shall also be subject to audit in accordance with the provisions of Sections 2 and 3 of the Audit Commission Act 1998. The Member Authorities agree to recommend to the Commission that the same auditors should be appointed to audit the accounts of the Lead Authority and the Joint Committee.
- 7.6 The accounts and records of WME shall be open for inspection by the Chief Finance Officer or other nominated officer of any Member Authority.

Distribution of Surplus

- 8.1 In each year the accumulated surplus identified in clause 7.3(b) shall be distributed in accordance with the relevant provisions of this clause 8.
- 8.2 The accumulated surplus identified for distribution in September 2012 shall be distributed to each Member Authority in accordance with clause 8.5.
- 8.3 The accumulated surplus identified for distribution in September 2013 shall be distributed to each Member Authority in proportions calculated using the arithmetic mean of the proportions identified by the distribution method stated in clause 8.5 and proportions identified by the distribution method stated in clause 8.6
- 8.4 The accumulated surplus identified for distribution in September 2014 and in September of each subsequent year during the term of this Agreement shall be distributed to each Member Authority in accordance with clause 8.6.
- 8.5 In respect of clause 8.2 the balance of the accumulated surplus shall be distributed as follows:
- a) the proportion of the accumulated surplus identified as arising from sales and receipts generated by transactions other than with a Member Authority shall be divided and distributed between the Member Authorities in equal shares (which for the avoidance of doubt shall be a 25% share for each of the Member Authorities)
- b) the amount of the accumulated surplus identified which is attributable to the use of WME (or its predecessor West Mercia Supplies) by transactions with the Member



Authorities shall be divided between the Member Authorities in a ratio equal and rounded to the nearest 0.5% percentile equivalent of their respective previous five year purchasing history of each Member Authority from WME (or its predecessor West Mercia Supplies)

- 8.6 In respect of clause 8.4 the balance of the accumulated surplus identified for distribution shall be divided and distributed to each Member Authority as follows:
- a) each Member Authority shall receive a percentage share of the accumulated surplus identified for distribution arising from transactions with the Member Authorities calculated in accordance with the percentage of the gross profit generated by the receiving Member Authority's transactions with WME during the financial year prior to the date of distribution; and
  - b) each Member Authority shall receive 25% of the accumulated surplus identified for distribution generated by transactions with non-Member Authority customers during the financial year prior to the date of distribution .

#### Obligations of Member Authorities

- 9.1 Each Member Authority shall defray the expenses of their own respective Joint Committee Members.
- 9.2 Subject to clause 9.3, the Member Authorities shall be jointly liable in equal shares and shall indemnify the Lead Authority for the liabilities of WME in respect of all claims, liabilities and costs incurred by the Lead Authority in respect of the staff employed or previously employed by the Lead Authority for the purposes of WME or its predecessor West Mercia Supplies.
- 9.3 Contracts entered into in the name of WME (or in its previous name of West Mercia Supplies or 'WMS) shall be the joint and several liability of all Member Authorities. Where contracts are entered into by WME on behalf of a named body it shall be presumed that WME acts as agent for that body unless the contrary can be shown.
- 9.4 Clauses 9.2 and 9.3 shall survive the termination of this agreement.

#### Termination

- 10.1 For the avoidance of doubt the Member Authorities agree that they may not withdraw from membership during the term of this agreement.
- 10.2 If the Member Authorities at any time jointly and unanimously decide that it is expedient to discontinue WME any assets vested in it or in the Lead Authority in trust for the Member Authorities shall be distributed amongst the Member Authorities at the time of such discontinuance in such manner as the Member Authorities may jointly determine to be fair and reasonable after payment of all expenses or liabilities properly incurred. For the avoidance of doubt all expenses and liabilities shall include any redundancy costs or pension fund deficit, actuarially assessed at the

date of termination, or any such related costs payable by the Lead Authority in respect of the employees of WME Any deficit arising at such time shall be borne by the Member Authorities in equal shares.

Disputes

- 11.1 Any dispute arising under or out of this Agreement shall be referred by a Member Authority, by notice in writing to the others, to the Chief Executives of the Member Authorities, who shall co-operate in good faith to resolve the dispute as amicably as possible within 30 days of service of the notice.
- 11.2 If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators.
- 11.3 If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be England and Wales. The arbitration shall be governed by both the Arbitration Act 1996 and Rules as agreed between the parties. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary.
- 11.4 Nothing in this clause shall be construed as prohibiting a party from applying to a court for interim injunctive relief.

Amendment

- 12. This Agreement may be varied from time to time by the unanimous decision of the Member Authorities who remain in membership at the time of such amendments such amendments being recorded in memoranda to be attached hereto and executed under the hands of the duly authorised Officers on behalf of the Member Authorities.

**IN WITNESS** whereof Shropshire Council, Herefordshire County, Worcestershire County Council and Wrekin Council have caused their respective common seals to be hereunto fixed the day and year first before written.

THE COMMON SEAL of SHROPSHIRE )  
 COUNCIL was hereunto )  
 affixed in the present of: )  
 the date and year first before written )

THE COMMON SEAL of THE COUNTY )  
OF HEREFORDSHIRE DISTRICT COUNCIL )  
was hereunto affixed in the presence of: )  
the date and year first before written )

THE COMMON SEAL of THE COUNTY )  
OF WORCESTERSHIRE COUNTY COUNCIL )  
was hereunto affixed in the presence of: )  
the date and year first before written )

THE COMMON SEAL of TELFORD & )  
WREKIN COUNCIL was hereunto affixed in the )  
presence of: )  
the date and year first before written )

## SCHEDULE 1

MEMBER AUTHORITIES

Name of Member Authority	Number of Joint Committee Members
The County of Herefordshire District Council	2
Shropshire Council	2
Worcestershire County Council	2
Borough of Telford and Wrekin	2

**SCHEDULE 2**

**DELEGATIONS**

1. The following matters are delegated to the Joint Committee by the Member Authorities:-
  - (i) To determine the strategic direction and have oversight of WME on behalf of the Member Authorities and in so doing exercise all powers and responsibilities of the Member Authorities to that end.
  - (ii) To purchase on behalf of the Member Authorities such energy and utility services as the Member Authorities may from time to time require WME to procure.
  - (iii) To purchase such energy and utility services as may from time to time be required by any approved public body being a public body within the meaning of the Local Authorities (Goods and Services) Act 1970 which is listed as approved in the current Annual Business Plan or is specifically approved by the Joint Committee provided always that the extent of such trading shall be contained within any limit or restrictions contained in the Annual Business Plan.
  - (iv) To appoint a Director with responsibility to report to the Joint Committee such officer to be employed and line managed by the Lead Authority which shall on the recommendation of and in consultation with the Director employ such staff, equipment and premises as may be required in connection therewith and in respect of which budget provision has been made in accordance with the Annual Business Plan.
  - (v) To introduce by consultation or negotiation as appropriate revised terms and conditions for WME employees but making it clear at all times that they remain employees of Shropshire Council as the lead authority as a matter of employment law.

DATED

2012

SHROPSHIRE COUNCIL (1)

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL (2)

WORCESTERSHIRE COUNTY COUNCIL (3)

TELFORD AND WREKIN COUNCIL (4)

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WEST MERCIA ENERGY  
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