

DATED \_\_\_\_\_

SOMERSET COUNTY COUNCIL  
and  
MENDIP DISTRICT COUNCIL  
and  
SEDGEMOOR DISTRICT COUNCIL  
and  
SOUTH SOMERSET DISTRICT COUNCIL  
and  
SOMERSET WEST AND TAUNTON COUNCIL

---

INTER AUTHORITY AGREEMENT  
relating to the Somerset Waste Board

---

Nabarro  
Lacon House  
84 Theobald's Road  
London WC1X 8RW

Tel: +44(0)20 7524 6000

**Contents**

<b>Clause</b>	<b>Subject matter</b>	<b>Page</b>
1	DEFINITIONS AND INTERPRETATION	
2	COMMENCEMENT AND DURATION	
3	FORMATION OF THE SOMERSET WASTE BOARD	
4	ADMINISTRATIVE SUPPORT TO THE BOARD AND THE APPOINTMENT OF THE OFFICERS OF THE BOARD	
5	ROLE AND RESPONSIBILITIES OF THE ADMINISTERING AUTHORITY	
6	ROLE AND RESPONSIBILITIES OF THE PARTNER AUTHORITIES	
7	REPLACEMENT OR REMOVAL OF THE ADMINISTERING AUTHORITY	
8	THE SINGLE CLIENT GROUP	
9	THE MANAGING DIRECTOR	
10	STRATEGIC MANAGEMENT GROUP	
11	BUSINESS PLAN	
12	ANNUAL BUDGET	
13	CONTRIBUTIONS TO THE ANNUAL BUDGET AND TO THE BOARD'S COSTS BY THE PARTNER AUTHORITIES	
14	CESSATION OF MEMBERSHIP	
15	DISSOLUTION OF THE BOARD	
16	ACCOUNTS, AUDIT AND REPORTING	
17	ARRANGEMENTS INSURANCE, INDEMNITIES AND CONDUCT OF CLAIMS	
18	THE DISPOSAL CONTRACTS	
19	COLLECTION CONTRACT	
20	REVIEW OF AGREEMENT	
21	CONFIDENTIALITY	
22	EQUAL OPPORTUNITIES	
23	LOCAL COMMISSIONER	
24	DATA PROTECTION	
25	WAIVER AND SEVERABILITY	
26	NO PARTNERSHIP	
27	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	
28	ENTIRE AGREEMENT	
29	EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE	
30	VARIATIONS	
31	PREVENTION OF CORRUPTION	
32	DISPUTE RESOLUTION	
33	GOVERNING LAW AND ENFORCEMENT	
34	NOTICES	
35	COUNTERPARTS	
	• SCHEDULE 1 The Constitution	
	• SCHEDULE 2 Transition arrangement	
	• APPENDIX 1 Asset List	
	• APPENDIX 2 Transferring Employees	
	• SCHEDULE 3 Change of Administering Authority	
	• SCHEDULE 4 Form of Annual Budget	
	• SCHEDULE 5 Budget & Cost Sharing Agreement	
	• SCHEDULE 6 Exit arrangements	
	• SCHEDULE 7 Collection Contract	

## INTER-AUTHORITY AGREEMENT

**DATE 30<sup>TH</sup> SEPTEMBER 2007**

### **PARTIES**

- (1) SOMERSET COUNTY COUNCIL of County Hall, Taunton, Somerset TA1 4DY (the "**County Council**"); and
- (2) MENDIP DISTRICT COUNCIL of Cannards Grave Road, Shepton Mallet, Somerset BA4 5BT ("**Mendip**"); and
- (3) SEDGEMOOR DISTRICT COUNCIL of Bridgwater House, King Square, Bridgwater, Somerset TA6 3AR ("**Sedgemoor**"); and
- (4) SOUTH SOMERSET DISTRICT COUNCIL of PO Box 25, The Council Offices, Brympton Way, Yeovil, Somerset BA20 2DS ("South Somerset"); and
- (5) SOMERSET WEST AND TAUNTON COUNCIL of The Deane House, Belvedere Road, Taunton, Somerset, TA1 1HE ("Somerset West and Taunton").

### **IT IS AGREED AS FOLLOWS:**

#### **RECITALS:**

- (A) The County Council is the waste disposal authority for the County of Somerset under section 30(2) of the Environmental Protection Act 1990 and the other Partner Authorities are the waste collection authorities for their respective districts under section 30(3) of the Environmental Protection Act 1990.
- (B) The Partner Authorities wish to create a statutory joint committee to be known as the Somerset Waste Board to manage all waste collection and waste disposal services on behalf of the Partner Authorities and to improve the quality and efficiency of their waste collection, recycling, waste disposal and allied services.
- (C) The Partner Authorities have each agreed to form a joint committee under sections 101(5) and 102 of the Local Government Act 1972 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (S.I. 2000 No. 2851) as amended by the Local Authorities (Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001 (S.I. 2001 No. 3961) made under section 20 of the Local Government Act 2000 and any other enabling legislation.
- (D) The Partner Authorities wish to establish a clear and accountable framework under which they can work together in delivering their waste disposal and waste collection responsibilities and to promote the economic, environmental and social well-being of their respective areas. They wish to be able to respond in a more effective and co-ordinated way in relation to the development and implementation of the Joint Waste Management Strategy and to introduce and promote joint working arrangements that will be in the best interests of the Council Tax payers of the Partner Authorities.
- (E) Each of the Partner Authorities recognises in particular the need to address central government and European targets for waste minimisation, recycling and recovery of waste and the promotion of sustainable development including the use of waste as a resource.

## Status of Partnership The Inter-Authority Agreement 2007 October 11 Somerset Waste

- (F) The Partner Authorities have an aspiration to move towards the creation of a joint waste authority when legislation permits.
- (G) The Partner Authorities have each resolved to:
1. form the Board with effect from the date of this Agreement;
  2. delegate to the Board their statutory functions in relation to waste disposal or waste collection and the recycling of waste as set out in appendix 1 of the Constitution; and
  3. to agree the Constitution.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:

**"2000 Act"**

means the Local Government Act 2000;

**"2000 Regulations"**

means the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (S.I. 2000 No. 2851) as amended by the Local Authorities (Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001 (S.I. 2001 No. 3961) made under Section 20 of the 2000 Act;

**"Administering Authority"**

means the authority referred to in **clause 5.1**;

**"Agreement"**

means this agreement (including its schedules);

**"Aims and Objectives"**

means the aims and objectives set out in appendix 2 to the Constitution;

**"Annual Action Plan"**

means a plan for the performance by the Board of its functions and activities in any Financial Year pursuant to paragraph 10 of the Constitution to be contained in the Business Plan prepared for that Financial Year and including an audit plan and risk register;

**"Annual Budget"**

means the annual budget of the Board for a Financial Year approved or amended by the Partner Authorities in accordance with **clause 12** and paragraph 11 of the Constitution;

**"Authority"**

means any Partner Authority;

**"Best Value"**

means the duty of best value authorities under section 3(1) of the Local Government Act 1999 to make arrangements to secure continual improvement in the way in which its functions are exercised having regard to economy, efficiency and effectiveness;

**"Board"**

means the joint committee established pursuant to **clause 3.1** known as 'The Somerset Waste Board';

**"Business Day"**

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in

the City of London;

**"Business Plan"**

means the rolling five year business plan approved by the Board from time to time in accordance with paragraph 10 of the Constitution together with the First Business Plan as set out in appendix 4 of the Constitution;

**"CEDR"**

means the Centre for Effective Dispute Resolution;

**"Chief Executive"**

means the Chief Executive or the head of paid service of the Partner Authority(ies);

**"Clerk of the Board" or "Clerk"**

means the clerk of the Board appointed pursuant to **clause** 4.1.1;

**"Collection Contract"**

means the contract for the collection and recycling or disposal of household waste for the County of Somerset to be entered into by the Administering Authority on behalf of the Board, and the Collection Contractor;

**"Collection Contractor"**

means ECT Recycling CIC (or such other contractor as may be appointed under the terms of the Collection Contract from time to time);

**"Commencement Date"**

means the date of this Agreement;

**"Confidential Information"**

means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988;

**"Constitution"**

means the constitution of the Board as set out in **Schedule** 1 (The Constitution);

**"Disposal Contracts"**

means together the following contracts:

- (a) the core services contract;
- (b) the NWTF contract;
- (c) the tonnage agreement; and
- (d) the strategic partnering agreement,

entered into by the County Council and Viridor Waste Management Limited and dated 13 May 2006 or any contracts subsequently entered into by the Administering Authority replacing such contracts;

**"DPA"**

means the Data Protection Act 1998;

**"EIR"**

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;

**"EPA 1990"**

means the Environmental Protection Act 1990;

**"Financial Year"**

means a calendar year commencing on 1st April in any year;

**"First Business Plan"**

means the outline business plan for the first Financial Year of the operation of the Board contained in appendix 4 of the Constitution;

**"FOI Act"**

means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Act;

**"Joint Waste Management Strategy"**

means the joint municipal waste management strategy adopted by the Board from time to time as required under section 32 of the Waste and Emissions Trading Act 2003;

**"LGA 1972"**

means the Local Government Act 1972;

**"Managing Director"**

means the head of the Single Client Group appointed by the Board pursuant to **clause 9** and paragraph 17.2 of the Constitution;

**"Material Change"**

means a change proposed to this Agreement or to the operation of the Board which a Partner Authority (acting reasonably) considers to be a material change to the nature or operation of the Board (including a change which has a material impact on service design or the cost of the services provided under the Principal Contracts) and which it considers must be subject to approval by elected members of the Partner Authority;

**"Monitoring Officer"**

means the officer appointed pursuant to **clause 4.1.3**;

**"Partner Authority"**

means any one of the County Council, Mendip, Sedgemoor, South Somerset and Somerset West and Taunton whilst ever they remain as Partner Authorities and such other local authorities which from time to time become Partner Authorities in accordance with **clause 14.5** and paragraph 16.8 of the Constitution;

**"Personal Data"**

means personal data as defined in the DPA which is supplied to a contractor by the Board, the Administrating Authority or a Partner Authority or obtained by a contractor in the course of performing services to the Board;

**"Precept Dates"**

means the dates set each year for payment of the Council Tax precept to the County Council;

**"Principal Contracts"**

means the Collection Contract and the Disposal Contracts and any contracts replacing such contracts and such other contracts as the Board may administer from time to time on behalf of the Partner Authorities;

**"Prohibited Act"**

means:

- (a) offering, giving or agreeing to give to any servant of a Partner Authority any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement, the Principal Contracts or in relation to the operation and administration of the Board; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement, the Principal Contracts or in relation to the operation and administration of the Board;
- (b) entering into this Agreement or any other contract with a Partner Authority or other public body relating to this Agreement or the Board in connection with which commission has been paid or has been agreed to be paid by a Partner Authority or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the other Partner Authorities;
- (c) committing any offence relating to this Agreement, the Principal Contracts or in relation to the operation and administration of the Board:
  - (i) under the Prevention of Corruption Acts 1889 -1916;
  - (ii) under the LGA 1972;
  - (iii) under legislation creating offences in respect of fraudulent acts; or
  - (iv) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with a Partner Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud a Partner Authority in relation to this Agreement, the Principal Contracts or in relation to the operation and administration of the Board;

**"Review Notice"**

means a notice served by any Partner Authority in accordance with **clause 20.1**;

**"Review Report"**

means a report of a review referred to in **clause 20.3**;

**"Single Client Group" or "SCG"**

means the group of officers employed by the Administering Authority appointed from time to time pursuant to **clause 8**;

**"Standing Orders and Rules of Procedure"**

means the standing orders and rules of procedure for meetings of the Board and its sub-committees together with the financial regulations and contract procedure rules for the Board (which shall be those of the Administering Authority), subject to such amendments or additions as the Board sees fit except amendments to the financial regulations and contract procedure rules which shall be those of the Administering Authority;

**"Strategic Management Group" or "SMG"**

means the group comprising the Directors of Environment (or equivalent) from the Partner Authorities formed in accordance with, and having the role and responsibilities set out in **clause 10**;

**"SWB Member"**

means a member of the Board nominated by a Partner Authority in accordance with paragraph 4 of the Constitution;

**"Treasurer"**

means the treasurer of the Board appointed pursuant to **clause 4.1.2**;

**"TUPE"**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time;

**"VAT"**

means value added tax;

**"Workforce Code"**

means the Annex D, the "Code of Practice on Workforce Matters in Local Authority Service Contracts", in "Best Value and Performance Improvement" (ODPM Circular 03/2003) (as the same may be amended, supplemented, replaced and/or reissued from time to time).

**1.2 Interpretation**

1.2.1 In this Agreement (unless the context requires otherwise):

- (a) references to clauses and schedules are to the clauses and schedules of this Agreement. Any reference to a sub-clause is to the relevant sub-clause of the clause in which it appears;
- (b) references to paragraphs and appendices are to the paragraphs and appendices of the Constitution;
- (c) the table of contents and headings are not part of this Agreement and are not to be taken into account in the interpretation of this Agreement;
- (d) the use of the masculine gender alone includes the feminine and neuter genders and the singular includes the plural and vice versa;
- (e) references to legislation (including subsidiary legislation), determinations, and directions include all amendments, replacements, or re-enactments thereof and all regulations, determinations, directions and statutory guidance made or given under them save that the treatment under this Agreement of any such amendment or modification that imposes any new or extended obligation or liability adversely affecting the parties or any of them shall be determined by the Board after consultation with the Partner Authorities, provided that where any Partner Authority (acting reasonably) considers such amendment or modification would result in a Material Change, the amendment or modification shall require the approval of the Partner Authority;
- (f) any reference to a requirement for "consent" or "approval" shall be taken to be the prior written consent or approval of the relevant person or body;
- (g) the terms "including" and "in particular" are illustrative only and are not intended and shall not limit the meaning of the relevant words that precede them;
- (h) the term "persons" means individuals, companies, industrial and provident societies, limited liability partnerships, statutory bodies, or other bodies with a legal personality and includes H.M. Government, government departments, and the European Union and its constituent parts; and
- (i) the Schedules to this Agreement are to have effect as if set out in full in the body of this Agreement and references to this Agreement include the Schedules.

1.2.2 The principles set out in this **clause** 1.2 shall be borne in mind and applied so far as appropriate in the interpretation of this Agreement and in the resolution of any disputes under this Agreement.

**2. COMMENCEMENT AND DURATION**

This Agreement and the rights and obligations of the Partner Authorities under this Agreement shall take effect on the Commencement Date and shall continue until terminated or they expire in accordance with **clause** 15.



### **3. FORMATION OF THE SOMERSET WASTE BOARD**

- 3.1 The Partner Authorities have each agreed and resolved to form the Board with effect from the Commencement Date.
- 3.2 The Partner Authorities have each agreed and resolved that the Board should discharge their respective statutory functions with respect to waste disposal, waste collection and the recycling of waste which statutory functions are set out in appendix 1 part I of the Constitution.
- 3.3 In the performance of the statutory functions delegated to the Board the Partner Authorities hereby agree that the Board shall undertake on behalf of the Partner Authorities the activities set out in appendix 1 part II of the Constitution.
- 3.4 The Partner Authorities have agreed that the Board may perform all, or some of, its functions through contracts with third party contractors (including the Principal Contracts) and that the Administering Authority shall be a party to these contracts on behalf of the Board.
- 3.5 The Partner Authorities acknowledge that the powers, duties and functions of the waste disposal authority in respect of sections 6 to 8 of the Waste and Emissions Trading Act 2003 remain with the County Council, and that sections 9, 12, 31 and 32 have been delegated to the Board. In accordance with paragraph 2.7 of the Constitution and **clause** 13.8 and **Schedule 5** (Budget and Cost Sharing Agreement) the Partner Authorities agree that the Single Client Group and the Board will work in close consultation with and support and advise the County Council with regard to trading under LATS. The County Council shall remain responsible for trading, liable for the purchase of allowances or payment of any penalties arising as a result of exceeding allowances and shall retain the benefit of any income received from trading under LATS, and will work in close consultation with and support and advise the Single Client Group and the Board with regard to the waste strategy implications of its trading activities and plans.
- 3.6 The Board shall operate and be governed in accordance with the Constitution as may be amended from time to time in accordance with paragraph 12 of the Constitution.
- 3.7 The Administering Authority shall procure that the Managing Director shall notify the Chief Executives of the Partner Authorities of any proposed amendments to the Constitution in accordance with paragraph 12.3 of the Constitution. Each Partner Authority shall consider any such proposed amendments in good faith and act reasonably in deciding whether or not any proposed amendments amount to a material change (as defined in the Constitution).
- 3.8 The Board shall continue in existence unless and until dissolved in accordance with **clauses** 7.3, or 15 or paragraph 16.6 of the Constitution.

### **4. ADMINISTRATIVE SUPPORT TO THE BOARD AND THE APPOINTMENT OF THE OFFICERS OF THE BOARD**

#### **Appointment**

- 4.1 The Partner Authorities hereby agree with effect from the Commencement Date that:
- 4.1.1 the Clerk of the Board shall be the 'Group Manager Democratic Services' of the Administering Authority for the time being, or such other officer as the Administering Authority shall determine having regard to the nature and responsibilities of the role;
- 4.1.2 the Treasurer of the Board shall be the section 151 officer of the Administering Authority or a suitably qualified Deputy; and
- 4.1.3 the Monitoring Officer of the Board shall be the Monitoring Officer of the Administering Authority.

#### **Roles of the Officers**

4.2 The role of the Clerk shall be as set out in paragraph 4 of appendix 6 of the Constitution.

4.3 The role of the Treasurer shall be as set out in paragraph 4 of appendix 6 of the Constitution.

#### **Administrative support to the Board**

4.4 Legal advice and services shall be provided to the Board by the Administering Authority. In the event of conflict of interest or potential conflict of interest between the interests of the Board and the interests of the Administering Authority, the Board shall appoint the Head of Legal Services of one of the other Partner Authorities to advise and act on behalf of the Board.

4.5 Human resources advice and services shall be provided to the Board by the Administering Authority.

4.6 The Administering Authority shall provide or arrange such additional administrative services, resources and office facilities that may be reasonably necessary to enable the Single Client Group and the Board to discharge their roles and functions.

4.7 The costs of providing the above advice and services shall form part of the Annual Budget of the Board and shall be funded by the Partner Authorities in accordance with the principles set out in **Schedule 5** (Budget and Cost Sharing Agreement).

#### **5. ROLE AND RESPONSIBILITIES OF THE ADMINISTERING AUTHORITY**

5.1 The Partner Authorities agree that the County Council shall be the Administering Authority for the purposes of this Agreement until removed or replaced in accordance with **clause 7**.

5.2 The Administering Authority shall:

5.2.1 arrange for the Single Client Group to discharge its roles and functions as set out in **clause 8**;

5.2.2 receive each Partner Authority's share of the Annual Budget calculated in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement);

5.2.3 make the payments due under the Principal Contracts;

5.2.4 ensure that the Board operates in accordance with the Constitution and Standing Orders and Rules of Procedure including notifications for meetings of the Board;

5.2.5 arrange for the Treasurer to promptly and diligently perform the role of accounting officer for all funds held on account of the Board and to make and provide all appropriate banking and accounting arrangements and services required for the due and proper receipt holding and application of such funds and to assist the Board in the discharge of its functions;

5.2.6 arrange for the Monitoring Officer to promptly and diligently perform the role of monitoring officer in relation to the Board and to notify the monitoring officers of the other Partner Authorities should it appear to him at any time that any proposal decision or omission of the Board constitutes or may give rise to a contravention of any enactment or rule of law or maladministration under Part III of the Local Government Act 1974;

5.2.7 subject to **clause 4.4**, provide or arrange promptly and diligently such legal advice as requested by the Board from time to time;

5.2.8 provide or arrange promptly and diligently such human resources advice and services as requested by the Board from time to time;

5.2.9 provide or arrange promptly and diligently such additional administrative services, resources and office facilities that may be reasonably necessary to discharge the Board's functions;

- 5.2.10 where agreed by the Board hold any capital assets in respect of the Principal Contracts and the Single Client Group on behalf of the Board and/or the Partner Authorities;
- 5.2.11 be the contracting authority on behalf of the Board;
- 5.2.12 to carry out any functions delegated to it by the Board; and
- 5.2.13 instigate and defend legal proceedings on behalf of the Board, the other Partner Authorities (subject to obtaining the prior written consent of the relevant Partner Authority(ies)) and itself as appropriate.
- 5.3 The Administering Authority shall be responsible for the appointment, employment and management of the staff of the Single Client Group (save that the Managing Director shall be appointed by the Board in accordance with paragraph 17.2 of the Constitution) and for the payment of the salaries, wages, income tax, national insurance contributions, and all other payments and emoluments of such staff provided that such payments shall not, without the approval of the Board exceed the amount specified within the Annual Budget for such expenditure.
- 5.4 The Administering Authority shall provide such administrative services, resources and arrange or provide such office facilities that may be reasonably necessary to enable the Single Client Group to carry out its functions and activities.
- 5.5 The Administering Authority shall ensure that all contracts entered into by it on behalf of the Board shall contain provisions enabling them to be novated to all or any of the Partner Authorities, at no cost to the Partner Authorities other than reasonable legal costs incurred in completing such novations.

## **6. ROLE AND RESPONSIBILITIES OF THE PARTNER AUTHORITIES**

- 6.1 Each Partner Authority acknowledges the role and responsibilities of the Administering Authority and each Partner Authority's obligations to share in good faith the costs of the Board in accordance with this Agreement and the Constitution.
- 6.2 The Partner Authorities acknowledge and agree that they shall promptly pay any money properly due in accordance with this Agreement and the Constitution (including but not limited to their contributions to the Annual Budget) to the Administering Authority.
- 6.3 Where any Partner Authority (acting in good faith) disputes all or any part of any sum due the undisputed amount of such sum shall be paid to the Administering Authority in accordance with **clause** 13 and the principles set out in **Schedule** 5 (Budget and cost sharing agreement) and the provisions of **clause** 32 shall apply in respect of the disputed amount.
- 6.4 Following resolution of the dispute in question any amount agreed or determined to have been payable shall be paid forthwith to the Administering Authority together with any additional amount calculated in accordance with **clause** 13.6.
- 6.5 The Partner Authorities shall use all reasonable endeavours to make any decisions or ratify any decisions of the Board as required by this Agreement or the Constitution as soon as reasonably practicable.
- 6.6 Each Partner Authority shall consider any proposed amendments to the Business Plan (including the Annual Action Plan) under paragraph 10.7 of the Constitution in good faith and act reasonably in considering whether or not the proposed amendments amount to a material change (as defined in the Constitution) requiring the approval of the Partner Authority.
- 6.7 Each Partner Authority shall consider any such proposed amendments to the Annual Budget under paragraph 11.5 of the Constitution in good faith and act reasonably in considering whether or not to approve any proposed amendments.

6.8 Each Partner Authority shall grant to the Administering Authority leases and give consent to the grant of underleases to the Collection Contractor (in forms to be agreed by the relevant Partner Authority and the Administering Authority) of its respective depot(s) or part thereof as may be reasonably required by the Collection Contractor for the provision of the services under the Collection Contract and as agreed by the relevant Partner Authority acting reasonably and taking into account any other operational requirements for which the depot is or may be required.

6.9 The Partner Authorities shall comply with their obligations as set out in **Schedule 2** (Transition arrangements).

## **7. REPLACEMENT OR REMOVAL OF THE ADMINISTERING AUTHORITY**

### **7.1 Resignation of the Administering Authority**

7.1.1 The Administering Authority may upon giving at least one year's written notice to the Managing Director and to the Chief Executives of the other Partner Authorities resign from the position of Administering Authority.

7.1.2 The Partner Authorities shall upon receipt of such notice as soon as possible agree (in consultation with the Board) that one of the other Partner Authorities shall replace the resigning Administering Authority with effect from the expiry of such notice.

7.1.3 The provisions of **Schedule 3** (Change of Administering Authority) shall apply as to the novation of the Principal Contracts (but excluding the Disposal Contracts which shall remain with the County Council) and the arrangements for the transfer of the staff of the Single Client Group and all assets, property, rights and liabilities of the outgoing Administering Authority held by it or undertaken on behalf of the Board to the incoming Administering Authority.

### **7.2 Removal of the Administering Authority**

7.2.1 If the Administering Authority:

- (a) commits a substantial or persistent breach of the terms of this Agreement or of the provisions of the Constitution; or
- (b) fails to redress substantial or persistent under-performance of its duties under this Agreement or fails to meet the reasonable requirements of the Board; or
- (c) commits gross misconduct contrary to the provisions of local government legislation or contrary to proper practices and conduct,

a majority of the other Partner Authorities may terminate the appointment of the Administering Authority under this Agreement by not less than six months' written notice to the Administering Authority whereupon following the service of such notice, the other Partner Authorities shall as soon as possible agree (in consultation with the Board) that one of the other Partner Authorities shall take over the duties of the Administering Authority with effect from the date of expiry of such notice and the provisions of **Schedule 3** shall apply.

7.3 In the event that the Administering Authority has resigned or its appointment has been terminated (in accordance with this **clause 7**) and no other Partner Authority wishes to assume the role of the Administering Authority, the Partner Authorities shall be deemed to have agreed to the dissolution of the Board on the effective date of the resignation or termination and the provisions of **clause 15** and **Schedule 6** (Exit arrangements) shall apply.

## **8. THE SINGLE CLIENT GROUP**

8.1 The Administering Authority shall establish the Single Client Group headed by the Managing Director to carry out on behalf of the Board the following activities:

## Status of Partnership The Inter-Authority Agreement 2007 October 11 Somerset Waste

- 8.1.1 to monitor and manage the performance of the Principal Contracts;
  - 8.1.2 in conjunction with support provided by the Administering Authority to prepare monitor and control the progress of the Business Plan, Annual Action Plans and the Annual Budget to ensure they continue to fulfil business needs;
  - 8.1.3 to advise the Board generally on waste management initiatives (both local and national) and the progress in delivering the Aims and Objectives;
  - 8.1.4 prepare reports and recommendations for consideration by the Board, support the setting of the strategic direction of the Board and the context within which waste services are developed, managed and operated;
  - 8.1.5 ensure that where any information is received from or requested by a supplier or contractor under the Principal Contracts, the dissemination, collation and provision of information is effected within a timescale which is compatible with any time provisions detailed in the Principal Contracts and in any event as soon as is reasonably practicable;
  - 8.1.6 refer any requests from contractors for a consent or approval to appropriate officers, the Board or the Managing Director as appropriate and then communicate any decision back to the contractors under the Principal Contracts. Such communications shall be within a timescale which is compatible with any time provisions detailed in the Principal Contracts and in any event as soon as reasonably practicable;
  - 8.1.7 to prepare and make recommendations to the Board on waste management issues involving central government and other external agencies;
  - 8.1.8 to provide a full assessment of the short, medium and long term financial, resource, service, legal and contractual implications of waste management services for the Board, the Administering Authority and each Partner Authority; and
  - 8.1.9 prepare and submit for approval by the Board an annual internal audit plan. Regularly report on the findings of any audits undertaken to the Board and to the section 151 officers of all of the Partner Authorities; and
  - 8.1.10 prepare a strategic risk register relating to the functions of the Board and regularly submit this, together with details of any mitigation actions implemented, to the Board.
- 8.2 The provisions of **Schedule 2** (Transition agreement) shall apply in relation to the transfer of staff, assets and equipment from the other Partner Authorities to the Administering Authority in respect of the establishment of the Single Client Group with effect from the Commencement Date.

### **9. THE MANAGING DIRECTOR**

- 9.1 The Partner Authorities agree that the Managing Director shall be appointed by the Board in accordance with paragraph 17.2 of the Constitution and shall report to the Board.
- 9.2 The duties and functions delegated to the Managing Director shall be agreed by the Board in accordance with the scheme of delegation adopted by the Board in accordance with paragraph 8.1 of the Constitution.

### **10. STRATEGIC MANAGEMENT GROUP**

- 10.1 The Partner Authorities shall with effect from the Commencement Date form the SMG.
- 10.2 The SMG shall meet as and when required and the Partner Authorities shall share (in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement)

the administrative costs and arrangements required for the SMG.

- 10.3 The Partner Authorities agree that the SMG shall have the following roles and responsibilities:
- 10.3.1 to ensure that the legal duties and statutory functions of the Partner Authorities delegated to the Board in accordance with the Constitution are being discharged effectively in accordance with relevant legislation and with due economy, efficiency and effectiveness;
- 10.3.2 to ensure that the duties of the Partner Authorities with respect to Value for Money are complied with including any duties under the Workforce Code;
- 10.3.3 to review each Business Plan and Annual Action Plan prepared by the Single Client Group and make recommendations for any changes it deems necessary (acting reasonably) in accordance with paragraph 10 of the Constitution prior to submission to the Board for approval;
- 10.3.4 to review the Annual Budget prepared by the Treasurer and where relevant make recommendations for any changes it deems necessary (acting reasonably) in accordance with paragraph 11 of the Constitution before submission to the Board and each Partner Authority for approval;
- 10.3.5 to consider the reports submitted by the Managing Director regarding the performance of the Board; and
- 10.3.6 to review the effectiveness of the Board in:
- (a) helping each Partner Authority to meet its statutory and local targets; and
  - (b) achieving efficiency savings on behalf of all of the Partner Authorities,
- following which it shall report and, where appropriate, make recommendations to the Partner Authorities on the effectiveness of the Board and any changes or amendments necessary to improve the effectiveness of the Board.

## **11. BUSINESS PLAN**

- 11.1 The Partner Authorities acknowledge the requirements of paragraph 10 of the Constitution in respect of the preparation and agreement of the Business Plan and the Annual Action Plan.
- 11.2 The Partner Authorities shall comply with the requirements of paragraph 10 of the Constitution and provide such reasonable assistance as is necessary to each other, the Board and the Administering Authority to assist in delivering the Business Plan and the Annual Action Plan.

## **12. ANNUAL BUDGET**

- 12.1 The Partner Authorities acknowledge the requirements of paragraph 11 of the Constitution in respect of the preparation and agreement of the Annual Budget.
- 12.2 The Partner Authorities shall comply with the requirements of paragraph 11 of the Constitution and provide such reasonable assistance as is necessary to each other, to the Board and to the Administering Authority to assist in preparing the Annual Budget.

## **13. CONTRIBUTIONS TO THE ANNUAL BUDGET AND TO THE BOARD'S COSTS BY THE PARTNER AUTHORITIES**

- 13.1 The Partner Authorities shall contribute to the Annual Budget in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).

- 13.2 The amount of each Partner Authority's annual contribution towards the costs of the Board in any Financial Year shall be such amounts as shall be specified for that Partner Authority in the schedule of payments attached to the Annual Budget for that Financial Year.
- 13.3 Subject to clause 13.3A each Partner Authority shall pay to the Administering Authority on behalf of the Board monthly instalments each equal to one twelfth of the annual sum payable by it to the Board in accordance with this **clause 13** and **Schedule 5** (Budget and cost sharing agreement) on the Precept Dates.
- 13.3A Where income is payable from the Administering Authority to a Partner Authority in accordance with **Schedule 5** the Administering Authority will pay such income in the proportion and at the frequencies set out in **Schedule 5**.
- 13.4 Where any Partner Authority (acting in good faith) disputes all or any part of any sum due the undisputed amount of such sum shall be paid to the Administering Authority forthwith and the provisions of **clause 32** shall apply in respect of the disputed amount.
- 13.5 Following resolution of the dispute in question any amount agreed or determined to have been payable shall be paid forthwith to the Administering Authority together with the reasonable costs and compensation for any losses incurred by the Administering Authority calculated in accordance with **clause 13.6**.
- 13.6 In the event of any Partner Authority failing to make a payment under **clause 13.3** on the relevant Precept Date, it shall pay to the Administering Authority reasonable costs and compensation for any losses incurred by the Administering Authority in respect of the outstanding instalments such amount to be calculated on a daily basis (commencing from the first Business Day after the relevant Precept Date) for each day a Partner Authority is late in making such payment.
- 13.7 Before the start of each Financial Year, the Administering Authority shall issue to each Partner Authority an annual payment and invoicing schedule for the forthcoming Financial Year, identifying the twelve monthly payments due on the Precept Dates.
- 13.8 NOT USED
- 13.9 The Partner Authorities agree to keep under review the structure of the payment of contributions under this Agreement to minimise any adverse VAT implications for any of the Partner Authorities.

#### **14. CESSATION OF MEMBERSHIP**

- 14.1 Any of the Partner Authorities can withdraw from membership of the Board in the manner set out in paragraph 16 of the Constitution.
- 14.2 In the event that a Partner Authority withdraws from the Board that Partner Authority shall continue to meet in full:
- 14.2.1 its contributions in respect of any period during which that Partner Authority was a member of the Board in accordance with **clause 13** including any arrears of such contributions;
- 14.2.2 any additional contractual or other financial commitments and liabilities incurred by the Board on its behalf not covered within its contributions under **clause 13**; and
- 14.2.3 its ongoing contributions and liabilities in respect of the Principal Contracts as notified from time to time by the Administering Authority and shall remain subject to this Agreement in respect of such ongoing contributions and liabilities calculated in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).
- 14.3 A Partner Authority withdrawing from the Board shall be entitled to receive its fair share of

any assets held by or on behalf of the Board at the date of their withdrawal when those assets are realised or sold by or on behalf of the Board unless the remaining Partner Authorities decide to retain such assets in which event they shall compensate the withdrawing Authority for its share of the market value of such assets.

- 14.4 If more than one Partner Authority gives notice of withdrawal from membership of the Board in any Financial Year the provisions of paragraph 16.4 of the Constitution shall apply.
- 14.5 If it is agreed by all Partner Authorities that another local authority should be permitted to join the Board then pursuant to Regulation 11(2)(c) of the 2000 Regulations the Board shall be dissolved and this Agreement terminated with a view to a new Board being established and a replacement agreement on similar terms to this Agreement (as varied by agreement of the proposed Partner Authorities) being completed with effect from the date of termination of this Agreement.

## **15. DISSOLUTION OF THE BOARD**

- 15.1 A majority of the Partner Authorities may at any time (whether as a result of the Board's recommendations or otherwise) agree (by formal resolutions by each of them) that the Board should be dissolved with effect six months from the date of the decision or the date on which the agreement referred to in **clause** 15.2 below is completed if later.
- 15.2 In the event of agreement that the Board should be dissolved or in the event of the termination of this Agreement in accordance with **clause** 31 the Partner Authorities shall (acting reasonably) negotiate and seek to agree and execute a legally binding agreement dealing with the novation or termination of the Principal Contracts (excluding the Disposal Contracts) and the allocation amongst the Partner Authorities of the property, assets, rights, staff and liabilities held or employed by the Administering Authority on behalf of the Board. Such agreement shall include, as a minimum, provisions to deal with the matters listed in **Schedule** 6 (Exit arrangements).
- 15.3 This Agreement shall terminate upon the relevant date the agreement entered into by the Partner Authorities in accordance with **clause** 15.2 above becomes legally binding or upon such date as the Partner Authorities agree unanimously that no further liabilities, assets or ongoing obligations, including those under the terms of the Principal Contracts, shall exist in relation to the Board.

## **16. ACCOUNTS, AUDIT AND REPORTING**

- 16.1 The Administering Authority shall procure that the Treasurer shall maintain the accounts of the Board in accordance with best accounting practice and with the CIPFA Code of Practice and with the requirements of relevant central government departments, H.M. Revenue and Customs and all other applicable requirements.
- 16.2 NOT USED
- 16.3 The Administering Authority shall procure that the Treasurer shall provide sufficient financial information to the section 151 officer of each Partner Authority to enable each Partner Authority to report on the financial status of the Board against the relevant Annual Budget.

## **17. ARRANGEMENTS INSURANCE, INDEMNITIES AND CONDUCT OF CLAIMS**

### **Indemnities**

- 17.1 Excluding any liabilities in respect of the Collection Contract (which shall be subject to **clause** 19.5) insofar as the Administering Authority shall perform its obligations and functions as Administering Authority in accordance with the provisions of this Agreement, the Partner Authorities hereby agree to be bound by and comply with any or all outcomes of



the exercise of such obligations and functions and each Partner Authority hereby undertakes to pay to the Administering Authority its appropriate share of any additional costs, contributions to claims or liabilities which may arise as a result of the performance by the Administering Authority of its obligations under this Agreement in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).

- 17.2 Each of the Partner Authorities shall indemnify the others of them from and against any damages or awards (including legal expenses on an indemnity basis) paid by them to their employees or their personal representatives or to third parties in settlement of any claims arising from a breach by that Partner Authority of this Agreement, negligence of that Partner Authority or its employees or agents acting in the course of their employment, damage to real and personal property or injury to persons including injury resulting in death.
- 17.3 Neither the Administering Authority nor any other Partner Authority shall be responsible or obliged to indemnify any other Partner Authority for:
- 17.3.1 any liability which arises as a direct result of a Partner Authority acting on the instructions of the Partner Authority claiming under any indemnity in this Agreement (to the extent that the other Partner Authority is entitled to give such instructions); or
- 17.3.2 any injury, loss, damage, cost and expense caused by the negligence, willful misconduct or a breach of this Agreement by the Partner Authority claiming under any indemnity in this Agreement or an agent, contractor or employee of that Partner Authority.
- 17.4 None of the Partner Authorities shall be liable in tort to any other or others of the Partner Authorities for any negligent act or omission of that other Partner Authority or those other Partner Authorities relating to this Agreement and the only remedy of such other Partner Authority or Authorities is under this Agreement. Each Partner Authority shall use reasonable endeavours to procure that no agent, contractor or employee of it brings a claim in tort or otherwise against any of the other Partner Authorities.
- 17.5 Any indemnity under this **clause 17** shall be without prejudice to any indemnity by the same Partner Authority under any other provision of this Agreement.
- 17.6 None of the indemnities under this Agreement shall apply, and there shall be no right to claim damages for breach of this Agreement whatsoever to the extent that any loss claimed is for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential or for indirect loss of any nature allegedly suffered by any Partner Authority.

#### **Insurance**

- 17.7 The Administering Authority shall take out and maintain the following insurances (or make suitable provision to self-insure) in respect of the employees, premises and equipment allocated to the Single Client Group:
- 17.7.1 public liability insurance;
- 17.7.2 employees liability insurance;
- 17.7.3 buildings and/or contents insurance; and
- 17.7.4 any other insurances required by law or agreed by the Board to be appropriate.
- 17.8 In relation to the insurances referred to in **clause 17.7**:
- 17.8.1 the interests of the other Partner Authorities shall be noted on the policies;
- 17.8.2 none of the Partner Authorities shall take any action or fail to take any action nor allow anything to occur which would entitle an insurer to refuse a claim under any of the insurance policies or which may render such a claim wholly or partially repayable; and

- 17.8.3 the Administering Authority shall provide on request to the other Partner Authorities copies of insurance policies referred to in this **clause 17.7** and evidence of the payment of the premiums and that the insurances are in full force and effect.
- 17.9 The Administering Authority may (subject to the prior agreement of the Board and the other Partner Authorities) decide to self insure in respect of any risks or interest as defined and agreed by the Board and the other Partner Authorities on the basis that the Partner Authorities through their funding of the Board under this Agreement shall meet that liability as if the Board were an insurer of such risks or interest.
- 17.10 Each Partner Authority shall assist each of the other Partner Authorities in respect of the insurance requirements and obligations in this Agreement.
- 17.11 This **clause 17.11** shall apply to the conduct, by a Partner Authority from whom an indemnity is sought under this Agreement, of claims made by a third person against a Partner Authority having (or claiming to have) the benefit of the indemnity. The Partner Authority having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the Partner Authority giving the indemnity is referred to as the "**Indemnifier**". Accordingly:
- 17.11.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Agreement, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable having regard to any timescale imposed by a notice, demand, letter or any other form of document received by the Beneficiary;
- 17.11.2 subject to **clauses 17.11.3, 17.11.4 and 17.11.5** below, on the giving of a notice by the Beneficiary pursuant to **clause 17.11.1** above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of at least half of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with an indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action (over and above those which the Beneficiary would otherwise have borne if the Indemnifier had no entitlement to conduct the relevant claim) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- 17.11.3 with respect to any claim conducted by the Indemnifier pursuant to **clause 17.11.2** above:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
  - (c) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- 17.11.4 the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- (a) the Indemnifier is not entitled to take conduct of the claim in accordance with **clause 17.11.2** above; or above; or
  - (b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 20 Business Days of the notice from the Beneficiary under **clause 17.11.2** above or notifies the Beneficiary that it does not intend to take conduct of the claim; or
  - (c) the Indemnifier fails to comply in any material respect with the provisions of **clause 17.11.3** above;
- 17.11.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal

of any claim (or of any incidental negotiations) to which **clause** 17.11.2 above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this **clause** 17.11.5 then the Indemnifier shall be released from any liability under its indemnity under **clause** 17 (as the case may be) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to **clause** 17.11.2 in respect of such claim;

17.11.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity; and

17.11.7 any Body taking any of the steps contemplated by **clauses** 17.11.2 to 17.11.5 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

## **18. THE DISPOSAL CONTRACTS**

18.1 The Administering Authority shall be responsible for the management, monitoring and administration of the Disposal Contracts.

18.2 The Partner Authorities acknowledge the provisions of paragraph 2.5 of the Constitution that the Board shall not make any decisions the effect of which would be to put the Administering Authority in breach of the Principal Contracts.

18.3 The Partner Authorities acknowledge that any decision by the Board which puts the Administering Authority in breach of the Disposal Contracts shall not be effective and that any costs or losses incurred by the Administering Authority arising from any decision of the Board which puts the Administering Authority in breach of the Disposal Contracts shall be apportioned between the Partner Authorities in accordance with the principles set out in **Schedule** 5 (Budget and cost sharing agreement).

18.4 In the event of the replacement or removal of the County Council as Administering Authority in accordance with **clause** 7, the Disposal Contracts shall not be novated or assigned and the County Council shall retain all its obligations, benefits and liabilities under the Disposal Contracts.

## **19. COLLECTION CONTRACT**

19.1 The Administering Authority shall enter into the Collection Contract on behalf of the Board and each of the other Partner Authorities.

19.2 Each Partner Authority acknowledges that it accepts the terms of and agrees to be bound by the Collection Contract.

19.3 The Partner Authorities agree that the provisions of this **clause** 19 and **Schedule** 7 (Collection Contract) shall apply in respect of the administration of the Collection Contract.

19.4 The Administering Authority shall (acting as a reasonable local authority) administer the

Collection Contract in accordance with its terms.

- 19.5 The Administering Authority shall indemnify the other Partner Authorities in respect of any claims, losses or liabilities incurred by a Partner Authority as a result of the Administering Authority:
- 19.5.1 wilfully breaching the terms of the Collection Contract;
- 19.5.2 negligently administering the Collection Contract;
- 19.5.3 failing to act as a reasonable local authority in administering the Collection Contract; and/or
- 19.5.4 wilfully failing to ensure that the information compliance and enforcement requirements necessary for the Partner Authorities to meet their obligations under the Workforce Code are met.
- 19.6 Each of the other Partner Authorities hereby undertakes to pay to the Administering Authority its appropriate share of any additional costs, contributions to claims or liabilities which may arise as a result of the performance by the Administering Authority of its obligations under the Collection Contract in accordance with **clause 13** and the principles set out in **Schedule 5** (Budget and cost sharing agreement).
- 19.7 The Partner Authorities agree that any decision taken by the Board which puts the Administering Authority in breach of the Collection Contract shall not be implemented and that in the event that any costs or losses are incurred by the Administering Authority (arising from any decision of the Board which puts the Administering Authority in breach of the Collection Contract) they shall be apportioned between the Partner Authorities in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).

## **20. REVIEW OF AGREEMENT**

- 20.1 At any time any one or more of the Partner Authorities may seek a review of this Agreement and the operation of the Board and its performance of its functions and activities by giving notice thereof to the other Partner Authorities and to the Managing Director.
- 20.2 A meeting of the SMG shall be convened within 20 Business Days from the date of service of the Review Notice and the SMG in consultation with the Partner Authorities shall determine the terms of reference of the review and the person or persons (which may include members of the SMG or one or more of the Chief Executives) by whom it is to be conducted and the timescale for its completion.
- 20.3 On production of the Review Report copies thereof shall be supplied to the Board and each of the Partner Authorities for them to comment thereon in accordance with such reasonable timescale as the SMG shall decide.
- 20.4 On receipt of comments from each of the Partner Authorities within the timescale referred to in **clause 20.3** (or any extension thereof agreed by or on behalf of the SMG), the Board shall meet to consider the content and recommendations of the Review Report in the light of the comments received from the Partner Authorities and determine the amendments (if any) it recommends should be made to this Agreement or to the operation of or the services managed by the Board and report to the Partner Authorities with its recommendations.
- 20.5 Where the Board proposes any amendments in accordance with **clause 20.4** above, the Managing Director shall forthwith notify the Chief Executive of each of the Partner Authorities of such proposal. Each Partner Authority shall have a period of 25 Business Days from receipt of the proposal in which to consider it and where a Partner Authority (acting reasonably) considers the proposed amendment is a Material Change it shall forthwith notify the Managing Director.

- 20.6 Where no Partner Authorities serve notice (in accordance with **clause 20.5**) on the Managing Director, the Board may implement such proposed amendment, acting on behalf of and with the authority of the Partner Authorities. Provided that where the proposed amendment involves a variation to this Agreement it shall require the written approval of all of the Partner Authorities in accordance with **clause 30**.
- 20.7 Where one or more of the Partner Authorities has notified the Managing Director that it considers the proposed amendment is a Material Change under **clause 20.5**, the Board shall not implement such amendment unless and until each notifying Partner Authority has approved the proposed amendment and informed the Managing Director that it has approved such proposed amendment or not.

## **21. CONFIDENTIALITY**

### **Confidentiality**

- 21.1 Without prejudice to **clause 21.2** and subject to **clauses 21.4** to **21.8**, each Partner Authority shall during the currency of this Agreement and at all times following termination keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) save as provided by this Agreement any confidential information about the business of or belonging to any other Partner Authority or any party to the Principal Contracts or other contract entered into on behalf of the Board which has come to its attention as a result of or in connection with this Agreement or the functions or operation of the Board provided always that this obligation shall not relate to any such information which:
- 21.1.1 comes into the public domain or is subsequently disclosed to the public (other than through default on the part of the relevant Partner Authority or any other person to whom the Partner Authority is permitted to disclose such information under this Agreement); or
- 21.1.2 is required to be disclosed by law (including, but not limited to, any request of or inquiry by the Information Commissioner); or
- 21.1.3 was already in the possession of the Partner Authority (without restrictions as to its use) on the date of receipt.
- 21.2 Each Partner Authority shall be entitled to use or disclose any confidential information about the content or operation of this Agreement insofar as this is reasonably necessary for the discharge of that Partner Authority's functions.
- 21.3 Each Partner Authority acknowledges that any other of the Partner Authorities may be obliged to disclose information relating to this Agreement pursuant to a request for such information made by a third party under the FOI Act or the EIR as the case may be (a "**Request**").
- 21.4 Where a Partner Authority (the "**Requesting Party**") receives a Request in relation to information in another Partner Authority's possession, the Requesting Authority shall notify the relevant Partner Authority (the "**Receiving Party**") in writing of the Request and the Receiving Party shall provide that Requesting Party at no charge with any information which is in the Receiving Party's possession and such other assistance as the Requesting Party may reasonably require which is needed from the Receiving Party to enable it to respond to the Request.
- 21.5 Where a Requesting Party requires information from a Receiving Party as envisaged by **clause 21.4**, the Requesting Party shall notify the Receiving Party in writing as soon as possible, after receiving the Request, of the information and/or assistance required, the form in which it should be provided and the date by which it is needed. The Receiving Party shall provide the information to the Requesting Party in accordance with the Requesting Party's notice. The Receiving Party shall notify the Requesting Party forthwith if it does not hold the requested information.
- 21.6 The Partner Authorities shall not disclose any information relating to this Agreement or

the Principal Contracts that it considers in its unfettered discretion, is exempt as described in Part II of the FOI Act or Part II of the EIR (as the case may be).

- 21.7 A Receiving Party shall not respond directly to any Request notified to it pursuant to **clause** 21.4 unless expressly authorised to do so by the Requesting Partner.
- 21.8 A Requesting Party shall notify the Receiving Authority as soon as practicable but in any event within five Business Days of receiving the Request.
- 21.9 A Partner Authority shall inform the other Partner Authorities in writing as soon as reasonably practicable (and in any event within five Business Days) whenever it receives a Request relating to this Agreement setting out:
- 21.9.1 the nature of the Request;
- 21.9.2 where possible, the identity of the person making the Request;
- 21.9.3 what information relating to this Agreement is covered by the Request;
- 21.9.4 whether and to what extent the relevant Partner Authority intends to disclose the information requested (including the intention to disclose any information relating to this Agreement); and
- 21.9.5 a reasonable timescale in which the other Partner Authorities may make any representations to the Partner Authority receiving the Request.
- 21.10 Subject to **clauses** 18.3 and 19.7, a Partner Authority shall not be responsible to the other Partner Authorities for any loss, damage, harm or detriment howsoever caused, arising from or in connection with the disclosure of any information in respect of any Request.

#### **Announcements**

- 21.11 Subject to the terms of this Agreement, a Partner Authority shall not make any public statement or issue any press release or publish any other public document relating to, connected with or arising out of this Agreement or the matters contained therein without obtaining the other Partner Authorities' prior approval as to the contents thereof and the manner of its presentation and publication.
- 21.12 The provisions of this **clause** 21 shall survive termination or expiry of this Agreement.

#### **22. EQUAL OPPORTUNITIES**

- 22.1 The Board shall adopt a policy to comply with its statutory obligations under the Race Relations Act 1976 (as amended), the Sex Discrimination Act 1975 (as amended), the Disability Discrimination Act 1995 (as amended), the Equality Act 2006, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Sex Discrimination) Regulations 2005, the Employment Equality (Age) Regulations 2006, or any other relevant legislation relating to discrimination in the employment of employees and accordingly will not unlawfully treat one group of people less favourably than others because of their colour, race, disability, sex, sexual orientation, nationality, ethnic origin or age in relation to decisions to recruit, train, promote, discipline or dismiss its personnel.
- 22.2 In the event of any finding of unlawful discrimination being made against the Board, the Administering Authority or a contractor of the Administering Authority in respect of any matter relating to this Agreement by any court or industrial tribunal, or of any adverse finding in any formal investigation by the Commission for Equality and Human Rights the Administering Authority shall inform the other Partner Authorities of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 22.3 The Board or as the case may be the Administering Authority shall, on request, provide the

other Partner Authorities with details of any steps taken under **clause 22.2**.

- 22.4 The Board or, as the case may be, the Administering Authority shall set out its policy on the prevention of unlawful discrimination:
- 22.4.1 in instructions to those concerned with recruitment, training and promotion;
- 22.4.2 in documents available to its personnel, recognised trade unions or other representative groups of its personnel; and
- 22.4.3 in recruitment advertisements and other literature.
- 22.5 The Board or as the case may be the Administering Authority shall observe as far as possible, and at least in accordance with the Administering Authority's published criteria, the Code of Practice relevant to employment matters issued by the Commission for Equality and Human Rights (or its predecessor organisations).
- 22.6 The Board or as the case may be the Administering Authority shall provide such information as the other Partner Authorities may reasonably request for the purpose of assessing the compliance of the Board or as the case may be the Administering Authority with this **clause 22**.
- 22.7 The Board or as the case may be the Administering Authority shall procure that any contractors or sub-contractors (including the contractors and sub-contractors under the Principal Contracts) providing services to the Partner Authorities comply with the obligations set out in **clauses 22.1 and 22.3 to 25.5** (inclusive).

### **23. LOCAL COMMISSIONER**

- 23.1 Where any investigation by the Commission for Local Administration in England takes place the Partner Authorities shall:
- 23.1.1 provide any information requested in the timescale allotted;
- 23.1.2 attend any meetings as required and permit their personnel so to attend;
- 23.1.3 promptly allow access to and investigation of any documents deemed to be relevant;
- 23.1.4 allow themselves and any employee deemed to be relevant to be interviewed;
- 23.1.5 allow themselves and any employee to appear as witnesses in any ensuing proceedings; and
- 23.1.6 co-operate fully and promptly in every way required by the Commission during the course of that investigation.

### **24. DATA PROTECTION**

- 24.1.1 In relation to all Personal Data, the Board, the Administering Authority and the other Partner Authorities shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with this Agreement.
- 24.1.2 The Board or as the case may be the Administering Authority and the other Partner Authorities shall only undertake processing of Personal Data reasonably required in connection with this Agreement and shall not transfer any Personal Data to any country or territory outside the EEA.

- 24.1.3 The Board, the Administering Authority and the other Partner Authorities shall not disclose Personal Data to any third parties other than:
- (a) to the other Partner Authorities to whom such disclosure is reasonably necessary in order for the other Partner Authorities to carry out their obligations under this Agreement; or
  - (b) to the extent required under a court order,

provided that disclosure under **clause** 24.1.3(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this **clause** 24 and that the Board, the Administering Authority and the other Partner Authorities shall give notice in writing to the other Partner Authorities of any disclosure of Personal Data which any Partner Authority is required to make under **clause** 24.1.3(b) immediately upon becoming aware of such a requirement.

- 24.1.4 The Board, the Administering Authority and the other Partner Authorities shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including taking reasonable steps to ensure that staff who have access to the Personal Data are adequately trained and competent.

## 24.2 **Indemnity**

Each of the Partner Authorities shall indemnify and keep indemnified the other Partner Authorities against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by them in respect of any breach of this **clause** 24 by any act or omission of that Partner Authority.

## 25. **WAIVER AND SEVERABILITY**

### 25.1 **Waiver**

- 25.1.1 No term or provision of this Agreement shall be considered as waived by any Partner Authority unless a written waiver is given by that Partner Authority.
- 25.1.2 No waiver under **clause** 25.1.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

### 25.2 **Severability**

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

## 26. **NO PARTNERSHIP**

- 26.1 Nothing in this Agreement is to constitute or be deemed a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other legislation concerning partnerships or limited liability partnerships.
- 26.2 None of the Partner Authorities shall hold itself out as the agent of any one or more of the other Partner Authorities or to have any authority to bind any one or more of the other Partner Authorities except to the extent that this Agreement expressly provides otherwise.

## 27. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**



- 27.1 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

**28. ENTIRE AGREEMENT**

- 28.1 Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Partner Authorities in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

**29. EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE**

- 29.1 Nothing in this Agreement is to require any of the Partner Authorities to act in any way that is inconsistent with its obligations or duties as a local authority.
- 29.2 Each of the Partner Authorities undertakes (subject to **clause 29.1**) to do all things and execute all further documents that may reasonably be required by one or more of the other Partner Authorities to give effect to this Agreement.

**30. VARIATIONS**

- 30.1 Subject to the express provisions of this Agreement, no variation of this Agreement will be valid or effective unless agreed unanimously by the Partner Authorities and recorded in writing.

**31. PREVENTION OF CORRUPTION**

**31.1 Corrupt gifts and fraud**

Each Partner Authority warrants that in entering into this Agreement it has not committed any Prohibited Act.

**31.2 Termination for corrupt gifts and fraud**

- 31.2.1 If a Partner Authority or a SWB Member (or anyone employed by or acting on behalf of any of any of them) or any of its or their agents commits any Prohibited Act, then any Partner Authority shall be entitled to act in accordance with the provisions of this **clause 31**.
- 31.2.2 Upon discovering that a Prohibited Act has occurred any Partner Authority may serve notice on the Managing Director of the Prohibited Act that has occurred and the Partner Authority affected. Upon receiving such notice of a Prohibited Act the Managing Director shall serve a notice on the Chief Executive of the Partner Authority subject to the Prohibited Act copied to the Chief Executives of all of the other Partner Authorities (a "**Notice of a Prohibited Act**").
- 31.2.3 Upon receipt of a Notice of a Prohibited Act the Partner Authority subject to the Prohibited Act shall have 3 months to take such steps and actions as are reasonable and are agreed by the Board taking account of the nature of the Prohibited Act which may include suspending the relevant employee and taking action under the Partner Authority's disciplinary procedure or where the Prohibited Act relates to an SWB Member removing its SWB Member from the Board.
- 31.2.4 Where a Partner Authority fails to take action in accordance with clause 31.2.2 the other Partner Authorities shall meet to decide what further action to take against the Partner Authority and may by unanimous vote agree to:
- (a) where the Partner Authority subject to a Notice of a Prohibited Act is the Administering Authority the Administering Authority shall be removed and the provisions of **clause 7.2** (Removal of the Administering Authority) and **schedule 3**

(Change of Administering Authority) shall apply unless within 3 months of the vote the Administering Authority takes such steps and actions as are reasonable and are agreed by the Board in accordance with **clause** 31.2.3;

- (b) where the Partner Authority subject to a Notice of a Prohibited Act is not the Administering Authority then the IAA shall terminate and the provisions of **clause** 15 (Dissolution of the Board) shall apply unless within 3 months of the vote the Partner Authority subject to a Notice of a Prohibited Act takes such steps and actions as are reasonable and are agreed by the Board in accordance with **clause** 31.2.3; or
- (c) take such other action or steps as are reasonable taking into account the nature of the Prohibited Act and its effect on the Board.

## **32. DISPUTE RESOLUTION**

- 32.1 Any dispute arising from the interpretation and operation of this Agreement shall in the first instance be referred to the SMG, which shall, acting in good faith, attempt to resolve such dispute.
- 32.2 Where either the SMG is unable to resolve such dispute, or where in the opinion of the SMG such dispute might be more effectively resolved in another forum, the SMG may refer such dispute to the following bodies/forums (listed in order of referral) until such dispute is resolved:
  - 32.2.1 a meeting of the Chief Executives and/or leaders of each of the Partner Authorities; then
  - 32.2.2 a mediator appointed by the Partner Authorities in accordance with **clause** 32.3; then
  - 32.2.3 an arbitrator appointed by the Partner Authorities in accordance with **clause** 32.4.
- 32.3 **Mediation**
  - 32.3.1 A referral of a dispute to mediation shall be in accordance with the CEDR Model Mediation Procedure.
  - 32.3.2 If the Partner Authorities cannot agree on a mediator, the Partner Authorities shall appoint a mediator nominated by CEDR.
  - 32.3.3 The Partner Authorities shall use their reasonable endeavours to conclude the mediation within 40 Business Days of referral of the dispute to mediation.
  - 32.3.4 The Partner Authorities shall each bear their own costs incurred in relation to any mediation and any costs incurred by the Administering Authority acting on behalf of the Board shall be shared in accordance with the principles set out in **Schedule** 5 (Budget and cost sharing agreement).
- 32.4 **Arbitration**
  - 32.4.1 If the dispute is not resolved in accordance with **clause** 32.3 within 40 Business Days of referral of the dispute to mediation, any Partner Authority may (by service of a written notice on the other Partner Authorities within 10 Business Days of expiry of the period for mediation) refer the dispute to an arbitrator who shall be of not less than 10 years standing or qualification.
  - 32.4.2 If the Partner Authorities cannot agree on an arbitrator within 15 Business Days of service of the written notice referred to in **clause** 32.4.1 above, the Partner Authorities shall appoint an arbitrator nominated by the President for the time being of the Chartered Institute of Arbitrators.
  - 32.4.3 Any reference to arbitration in accordance with this **clause** 32.4 shall be conducted in accordance with the Rules of the London Court of International Arbitration and the arbitration shall be held at a venue agreed by the arbitrator.

32.4.4 The arbitrator's decision shall be final and binding on the parties.

32.4.5 The costs of the arbitration shall be paid as directed by the arbitrator.

### **33. GOVERNING LAW AND ENFORCEMENT**

33.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to **clause** 32, the English courts shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

### **34. NOTICES**

#### **34.1 Form and service of notices**

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, or leaving the same at:

#### **The Board**

County Hall, Taunton, Somerset TA1 4DY

01823 356113

#### **Partner Authority**

##### **Somerset County Council**

County Hall, Taunton, Somerset TA1 4DY

01823 356113

##### **Sedgemoor District Council**

Bridgwater House, Kings Square, Bridgwater,  
Somerset TA6 3AR

01278 446412

##### **Somerset West and Taunton Council**

The Deane House, Belvedere Road,  
Taunton, Somerset TA1 1HE

01823 356329

#### **Partner Authority**

##### **Mendip District Council**

Cannards Grave Road, Shepton Mallet,  
Somerset BA4 5BT

01749 344050

##### **South Somerset District Council**

PO BOX 25, The Council Offices, Brympton  
Way, Somerset, BA20 2DS

01935 462188

#### **34.2 Provision of information to representatives**

Where any information or documentation is to be provided or submitted to the Clerk of the Board, a SWB Member or a Partner Authority's representative, it shall be provided or submitted by sending the same by first class post, facsimile or by hand, or leaving the same at the addresses set out in **clause** 34.1 marked for the attention of the Clerk of the Board, the relevant SWB Member, or the relevant Partner Authority's representative.

#### **34.3 Change of details**

A Partner Authority shall notify any change of its nominated address or facsimile number by prior notice to the other Partner Authorities.

34.4 **Notices by post**

Notices given by post shall be effective upon the earlier of actual receipt and five Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

34.4.1 within two hours after sending, if sent on a Business Day between the hours of 9 a.m. and 4 p.m.; or

34.4.2 by 11 a.m. on the next following Business Day, if sent after 4 p.m. on a Business Day but before 9 a.m. on that next following Business Day.

35. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

**IN WITNESS** whereof this Agreement has been duly executed as a deed and has been delivered on the date that appears at the front of this Agreement.

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

The Common Seal of )  
**MENDIP DISTRICT COUNCIL** )  
was hereunto affixed in the presence of: )

Authorised Officer

The Common Seal of )  
**SEDGEMOOR DISTRICT COUNCIL** )  
was hereunto affixed in the presence of: )

Authorised Signatory

The Common Seal of )  
**SOUTH SOMERSET DISTRICT COUNCIL** )  
was hereunto affixed in the presence of: )

Authorised Signatory

The Common Seal of )  
**SOMERSET WEST AND TAUNTON COUNCIL** )  
was hereunto affixed in the presence of: )

Chief Solicitor



**SCHEDULE 1**

The Constitution

## SCHEDULE 2

### Transition arrangement

#### 1. DEFINITIONS

Definitions used in this **Schedule 2** shall be the same as those set out in the Agreement, with the following additional definitions:

##### **"Relevant Employees"**

means employees who are assigned (for the purposes of TUPE) to the provision of the management of waste disposal, treatment, collection and recycling services or any services which are substantially the same as the management of waste disposal, treatment, collection and recycling services or any part thereof (including for the avoidance of doubt the Transferring Employees);

##### **"Relevant Transfer"**

means a relevant transfer for the purposes of TUPE;

##### **"Transfer Date"**

means the Commencement Date;

##### **"Transferring Employees"**

means those employees employed by the Partner Authorities immediately prior to the Transfer Date in the provision of the management of waste disposal, treatment, collection and recycling services, whose names are listed in **Part 2 of Appendix 2** (Transferring Employees);

#### 2. TRANSFER OF ASSETS

2.1 The assets required by the Collection Contractor are identified in the list attached as **Appendix 1** to this **Schedule 2** and shall be transferred at nil cost from the relevant Partner Authorities into the possession and ownership of the Administering Authority on the service commencement date of the Collection Contract in order that they can be made available by the Administering Authority to the Collection Contractor in accordance with the Collection Contract.

2.2 Where any additional assets are required to be transferred to the Administering Authority, the relevant Partner Authority(ies) shall promptly cooperate with the Board in the transfer of such assets to the Administering Authority.

#### 3. TRANSFER OF EMPLOYEES

##### 3.1 **Application of TUPE**

The Partner Authorities agree that TUPE applies to this Agreement, whether or not it shall be determined by an employment tribunal or a court of any instance or jurisdiction that TUPE does not apply as a matter of law.

##### 3.2 **Administering Authority's responsibilities**

The Administering Authority shall:

3.2.1 subject to the right of any Transferring Employee to object to being employed by the Administering Authority, accept into employment the Transferring Employees on 0:01am on

the Transfer Date upon the same terms and conditions of employment and length of service as they enjoyed immediately prior to the Transfer Date;

- 3.2.2 become responsible for the payment of all salaries and provision of other contractual benefits (including those implied through custom and practice) and making any deductions from the salaries of any Relevant Employees with effect from the Transfer Date.
- 3.2.3 If any contract of employment of a person other than a Transferring Employee has effect as if originally made between the Administering Authority and such person as a result of TUPE, then the Administering Authority will consult with the Board to establish whether the person shall be deployed within the Single Client Group or be given notice to terminate such contract of employment where such action is permitted by law.

### 3.3 **Partner Authorities' responsibilities**

The Partner Authority who employed the relevant Transferring Employees immediately prior to the Transfer Date shall be responsible for all emoluments and outgoings in respect of the relevant Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Transfer Date (whether or not due for payment at the Transfer Date).

## 4. **EXISTING CONTRACTS FOR WASTE COLLECTION AND RECYCLING**

- 4.1 The Partner Authorities acknowledge that apart from the County Council each Partner Authority has in place existing arrangements for the provision of waste collection and recycling services, which will come to an end upon the service commencement date of the Collection Contract.
- 4.2 Each Partner Authority shall remain responsible for its current waste collection and recycling arrangements until the service commencement date under the Collection Contract or such other date as agreed by the Partner Authorities in consultation with the Board.
- 4.3 Each Partner Authority shall have due regard to any comments made by the Board in respect of the operation of its current waste collection and recycling services and shall not make any significant change to its current arrangements without consulting the Board.

## 5. **DEPOTS**

- 5.1 The Partner Authorities each acknowledge that the Administering Authority needs to secure access from the relevant Partner Authorities to the depots required by the Collection Contractor under the Collection Contract.
- 5.2 Each relevant Partner Authority shall promptly grant, in accordance with **clause 6.8**, to the Administering Authority or to the Collection Contractor as directed by the Managing Director such tenancy at will or lease (in a form to be agreed by the relevant Partner Authority and the Administering Authority) of the relevant depot or part thereof and take such steps as are required to secure access for the Collection Contractor to perform the Collection Contract from the service commencement date for the Collection Contract.
- 5.3 Where a Partner Authority grants only temporary access to the relevant depot or part thereof under **paragraph 5.2** above it shall subsequently grant a lease to the Administering Authority and give consent to the grant of an underlease to the Collection Contractor (in forms to be agreed by the relevant Partner Authority and the Administering Authority) of the relevant depot or part thereof in accordance with **clause 6.8**.



### SCHEDULE 3

#### Change of Administering Authority

#### Part 1

#### 1. INTRODUCTION

- 1.1 This **Schedule 3** describes the duties and responsibilities of the Partner Authorities in respect of the transfer of the rights and obligations from the Outgoing Administering Authority to the Replacement Administering Authority (as defined below).
- 1.2 Definitions used in this **Schedule 3** shall be the same as those set out in the Agreement, with the following additional definitions:

#### "Administering Authority Obligations"

means the obligations of the Administering Authority under this Agreement which for the avoidance of doubt shall include the Collection Contract Obligations and any other contracts or agreements (including, but not limited to, loan agreements) entered into by the Administering Authority exclusively ;

#### "Board Assets"

means any assets purchased by the Outgoing Administering Authority using (a) the funds of the Board (including any assets transferred at the Commencement Date); or (b) any funds loaned to the Outgoing Administering Authority for the purpose of the fulfilment of its functions under this Agreement;

#### "Collection Contract Obligations"

means the obligations of the Administering Authority as party to the Principal Contracts (excluding the Disposal Contracts);

#### "Exit Assistance"

means the provision of advice, training, assistance, information, data (and format thereof) and actions as are reasonably requested by the Replacement Administering Authority to effect a smooth transfer (and continued operation) of any of the Administering Authority Obligations from the control and provision of the Outgoing Administering Authority to the Replacement Administering Authority;

#### "Exit Plan"

means the agreed plan for the transfer and transition arrangements, setting out the timetable and scope of required activities as set out in this **Schedule 3**, for transferring all or part of the Administering Authority Obligations from the control and provision by the Outgoing Administering Authority to the control and provision of the Replacement Administering Authority;

#### "Exiting Employee"

means an Outgoing Administering Authority Employee who is listed in the Exiting Employees List and who is intended to transfer to a Replacement Administering Authority on a Handover Date;

#### "Exiting Employees List"

means the list of Outgoing Administering Authority Employees agreed between the Outgoing Administering Authority and the Replacement Administering Authority in accordance with this **Schedule 3** (as such list is updated before the relevant Handover

Date by agreement between the Parties);

**"Exiting Personnel"**

means a member of the Outgoing Administering Authority Personnel who is listed in the Exiting Personnel List;

**"Exiting Personnel List"**

means the list of Exiting Personnel agreed between the Outgoing Administering Authority and the Replacement Administering Authority in accordance with this **Schedule 3** (as such list is updated before the relevant Handover Date by agreement between the Parties);

**"Handover Date"**

means the date of transfer from the Outgoing Administering Authority to the Replacement Administering Authority in accordance with this **Schedule 3**;

**"Key Personnel"**

means the positions and/or individuals of the Outgoing Administering Authority Personnel identified by the Replacement Administering Authority from time to time, and agreed with the Outgoing Administering Authority, as important to the provision of the Administering Authority Obligations;

**"Novation Date"**

means the date of novation of the Collection Contract to the Replacement Administering Authority in accordance with this **Schedule 3** and the Collection Contract;

**"Novation Notice"**

means the notice served on the Collection Contractor in accordance with this **Schedule 3** and the Collection Contract;

**"Ordinary Course of Business"**

means either:

- (a) acts, omissions or conduct which are consistent in all respects with the prevailing pattern, or course of conduct, or management used by the Outgoing Administering Authority in the delivery of the Administering Authority Obligations or which are undertaken in order to comply with the applicable obligations under this Agreement; or
- (b) acts, omissions or local conduct which a well-managed local authority would undertake (assuming that such local authority is acting in a prudent and reasonable manner) in relation to the delivery of the Administering Authority Obligations, or which are undertaken in order to comply with all applicable obligations under this Agreement;

**"Outgoing Administering Authority Assets"**

Means together:

- (a) those assets owned by the Outgoing Administering Authority prior to the commencement of this Agreement and used for the purposes of performing its functions as a local authority and which have not been subject to a payment or compensation from the other Partner Authorities; and
- (b) any assets purchased by the Outgoing Administering Authority whilst performing its functions as Administering Authority using its own funds;

**"Outgoing Administering Authority Employees"**

means any employee of the Outgoing Administering Authority assigned from time to time to deliver or assist in delivering all or part of the Administering Authority Obligations. For the avoidance of doubt, in this definition the term **"assigned"** shall have the meaning conferred upon it under TUPE;

**"Outgoing Administering Authority"**

means the Administering Authority that has resigned or that the Partner Authorities have agreed to replace in accordance with **clause 7**;

**"Outgoing Administering Authority Personnel"**

means the Outgoing Administering Authority Employees and any officers, consultants, contractors, workers and agents of the Outgoing Administering Authority assigned from time to time to deliver or assist in delivering all or part of the Administering Authority Obligations, or to fulfil its obligations under this Agreement. For the avoidance of doubt, in this definition the term **"assigned"** shall have the meaning conferred upon it under TUPE;

**"Outgoing Administering Authority Personnel Information"**

means such information concerning the Outgoing Administering Authority Personnel as the Replacement Administering Authority shall reasonably request from time to time including:

- (a) regarding each member of the Outgoing Administering Authority Personnel, identified by a unique reference number or code which shall remain the same each time the Outgoing Administering Authority Personnel Information is provided by the Outgoing Administering Authority to the Replacement Administering Authority: type of worker (self-employed contractor, contractor employed by a third party, agency staff or other); current employer; start date and (if different) date of commencement of continuous employment; job title and post held; the delivery of the Administering Authority Obligations in which the Outgoing Administering Authority Employee is engaged; current salary or hourly rate, all overtime, shift and other allowances, and any bonus or commission earned in the last twelve months; date of next salary review and percentage increase in last review; length of service; notice period for termination of employment (stating any difference between the notice given by the employer or employee); date of birth; location; hours of work; contract type (permanent or temporary); percentage of working time spent on the Administering Authority Obligations; holiday entitlement; benefits (including without limitation health insurance, life insurance, sickness benefits, car, bonus, commission) and total benefit cost; pension membership and pension cost (including employer contribution to pension scheme); entitlement to any enhanced redundancy benefits or payments. This Outgoing Administering Authority Personnel Information shall be presented in excel spreadsheet format or some other easily intelligible form acceptable to the Replacement Administering Authority; and
- (b) regarding all the Outgoing Administering Authority Personnel: total costs of the (i) salaries; (ii) benefits; (iii) social security and national insurance costs; and (iv) miscellaneous costs (such as staff loans and training grants) in respect of all the Outgoing Administering Authority Personnel; copies of any staff handbooks and policies applicable to them; terms and conditions of employment or engagement; copies of any agreement between the Outgoing Administering Authority and a trade union or labour organisation or employee representatives or details of any other arrangements for informing and consulting with Outgoing Administering Authority Personnel or representatives; positions vacant; death benefits; disability benefits; details of any applicable bonus

schemes, commission arrangements; pay scales and structures; current or anticipated claims or other litigation or other disputes and details of any accidents, injuries or health and safety issues; details of any Outgoing Administering Authority Personnel on leave (including without limitation maternity leave, adoption leave and sick leave) including whether the individual is receiving contractual sick pay and, if so, when this entitlement expires;

**"Parties"**

means together the Outgoing Administering Authority and the Replacement Administering Authority;

**"Replacement Administering Authority"**

means the Partner Authority agreed by the Partner Authorities in accordance with **clause 7**.

**PART 2**

**2. EXIT PLANNING**

**2.1 Date for provision of Exit Plan**

2.1.1 The Outgoing Administering Authority shall provide the Replacement Administering Authority with a draft Exit Plan within:

- (a) 20 Business Days from the date of the written notification provided in accordance with **clause 7.1.1** where the Outgoing Administering Authority has decided to resign; or
- (b) 20 Business Days of the date of receipt of written notification provided in accordance with **clause 7.2.1** where the Partner Authorities have agreed to replace the Administering Authority.

2.1.2 The draft Exit Plan shall specify in detail how and when (having regard to the timescales set out in this **Schedule 3**) the Outgoing Administering Authority will fulfil all the obligations of this **Schedule 3** and any other obligations relating to exit in the Collection Contract.

2.1.3 The Replacement Administering Authority shall provide to the Outgoing Administering Authority the Replacement Administering Authority's reasonable comments on the draft Exit Plan within 20 Business Days of the Replacement Administering Authority's receipt of the draft Exit Plan. The Outgoing Administering Authority shall incorporate the Replacement Administering Authority's comments and suggestions and shall issue a revised version of the Exit Plan within 10 Business Days of receipt of the Replacement Administering Authority's reasonable comments and suggestions.

2.1.4 The Exit Plan shall not be effective until approved by the Replacement Administering Authority and the Board.

2.1.5 The Parties shall review and update the Exit Plan in consultation with the Board and the SMG as appropriate up to and including the Handover Date.

**2.2 Exit Management Roles**

2.2.1 Each Party shall appoint a suitable individual to manage the exit process (an **"Exit Manager"**).

**PART 3**

**3. EXIT ARRANGEMENTS**

**3.1 Date for provision of Exit Assistance**

3.1.1 The Outgoing Administering Authority shall provide the Exit Assistance and fulfil all the obligations set out in this **Schedule 3** within 40 Business Days of:

- (a) where the Outgoing Administering Authority has decided to resign, the date of the written notification provided in accordance with **clause** 7.1.1; or
- (b) where the Partner Authorities have agreed to replace the Administering Authority, the date of receipt of written notification provided in accordance with **clause** 7.2.1.

3.1.2 The obligation to provide the Exit Assistance and fulfil all the obligations of this **Schedule 3** from the relevant date is independent of and not contingent upon the Parties having an agreed form of Exit Plan in place. Where there is an agreed Exit Plan in place, the Outgoing Administering Authority shall provide to the Replacement Administering Authority and to the Board weekly reports of progress against the Exit Plan and of any problems, anticipated problems and delays and of any appropriate actions to be taken by the Outgoing Administering Authority in response.

3.1.3 At the Board or the Replacement Administering Authority's request, the Outgoing Administering Authority shall continue to provide the Exit Assistance and continue with the implementation of the Exit Plan for a period of up to six months (or such longer period as the Replacement Administering Authority may request) from the Handover Date.

### 3.2 **Option to purchase or use Outgoing Administering Authority Assets**

3.2.1 The Outgoing Administering Authority shall prepare a list of the Outgoing Administering Authority Assets and the Board Assets as part of the Exit Plan.

3.2.2 Upon the Handover Date, at the direction and discretion of the Replacement Administering Authority in consultation with the Board:

- (a) the Replacement Administering Authority shall have the option to acquire through purchase all or any of the Outgoing Administering Authority Assets excluding land and buildings and software in consideration of the payment by the Replacement Administering Authority of the net book value of these assets; or
- (b) the Replacement Administering Authority shall have the option where possible to continue to use such assets.

3.2.3 The Outgoing Administering Authority shall immediately transfer any Board Assets to the Replacement Administering Authority and the provisions of **paragraph** 3.2.6 shall apply to such assets as if they were transferring Outgoing Administering Authority Assets.

3.2.4 Either option set out in **paragraph** 3.2.2 above shall be exercisable by the Replacement Administering Authority by service of notice upon the Outgoing Administering Authority as soon as possible and no later than 20 Business Days prior to the Handover Date, and the option shall take effect on the Handover Date.

3.2.5 Within five Business Days of receipt of notice from the Replacement Administering Authority that it shall exercise an option set out in **paragraph** 3.2.2 above, the Outgoing Administering Authority shall appoint an independent expert agreed by the Replacement Administering Authority to review and report on the condition and proposed value of the Outgoing Administering Authority Assets. The Outgoing Administering Authority shall provide a copy of the report to the Replacement Administering Authority and the Board and the costs of the expert will be borne by the Outgoing Administering Authority.

3.2.6 Whenever, pursuant to this **paragraph** 3.2, the Outgoing Administering Authority transfers Outgoing Administering Authority Assets to the Replacement Administering Authority, the Outgoing Administering Authority shall ensure that:

- (a) the Replacement Administering Authority is provided with all relevant and available documentation, user manuals and other such information; and
- (b) the Replacement Administering Authority is provided with full and unencumbered title (with full title guarantee) to the Outgoing Administering Authority Assets.

### 3.3 **Assignment or novation of third Party Contracts and Outgoing Administering Authority Subcontracts**

3.3.1 In relation to any third party contracts (other than the Collection Contract or the Disposal Contracts), where no third party consents are required to assign or novate such contracts, the Outgoing Administering Authority shall prepare and execute assignments or novations of such contracts to the Replacement Administering Authority and the Replacement Administering Authority hereby agrees to take all steps necessary to enter into or accept such assignments or novations.

3.3.2 Where a third party consent is required to assign or novate a contract, the Outgoing Administering Authority shall use all reasonable endeavours to procure such assignment or novation to the Replacement Administering Authority and do all other things reasonably necessary to obtain such third party consents.

3.3.3 Where a third party consents to the assignment or novation of a contract, the Partner Authorities will pay any fees charged by the third party in association with such assignment or novation in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).

#### 3.4 **Novation of the Collection Contract**

3.4.1 The Replacement Administering Authority shall serve a Novation Notice on the Collection Contractor stating that it wishes to enjoy the rights and assume the obligations, liabilities and duties of the Administering Authority under the Collection Contract and specifying the Novation Date not to be less than 30 Business Days from the date of service of the Novation Notice.

3.4.2 The Outgoing Administering Authority shall provide the Replacement Administering Authority with an up-to-date list of existing and/or threatened disputes relating to the obligations under the Collection Contract, and use its best endeavours to resolve such disputes. Where the dispute affects the interests of the Replacement Administering Authority and/or the Partner Authorities, the Outgoing Administering Authority shall not settle the dispute or accept any liability without consulting the Board and without the prior consent of the Replacement Administering Authority, such consent not to be unreasonably withheld or delayed.

#### 3.5 **Software**

3.5.1 The Outgoing Administering Authority shall transfer (or shall use all reasonable endeavours to procure the transfer of) the ownership of or a licence to use any software required to perform the function of Administering Authority or to perform the obligations in this Agreement to the Replacement Administering Authority at no cost.

#### 3.6 **Accommodation**

3.6.1 Upon the Handover Date, at the discretion of the Replacement Administering Authority, the Replacement Administering Authority shall have the option to use all or part of the Outgoing Administering Authority's accommodation for a period of up to 18 months from the Handover Date where termination has occurred as a result of **clause 7.1** or up to 12 months following the Handover Date where termination has occurred as a result of **clause 7.2**.

3.6.2 The option set out in **paragraph 3.6.1** above, shall be exercisable by the Replacement Administering Authority by serving notice upon the Outgoing Administering Authority as soon as possible following its appointment as the Replacement Administering Authority and no later than:

(a) three months prior to the Handover Date where notice has been served under **clause 7.1.1**; or

(b) two months prior to the Handover Date where notice has been served under **clause 7.2.1**

and shall take effect on the Handover Date.

3.6.3 The Outgoing Administering Authority shall make all or part of the Outgoing Administering Authority's accommodation available pursuant to the option, in consideration of the payment of a reasonable charge reflecting the market rate for the proportion of the Outgoing Administering Authority's accommodation used and the period of use. The Parties agree that (subject to this **paragraph 3.6.3**) such use shall be subject to such reasonable terms and conditions as are agreed between the Parties from time to time.

3.7 **Intellectual property rights**

3.7.1 The Outgoing Administering Authority shall at the reasonable request of the Board promptly execute such documents and take or desist from such action as the Board may reasonably require in order to assure to the Replacement Administering Authority the full benefit of any intellectual property created by the Outgoing Administering Authority in respect of the Administering Authority's Obligations and to confirm the Replacement Administering Authority's title thereto.

3.7.2 To the extent that it is permitted to do so, the Outgoing Administering Authority shall grant to the Replacement Administering Authority a licence to use any third party intellectual property rights used in the performance of the services and necessary for the provision of the services by the Replacement Administering Authority. To the extent that the Outgoing Administering Authority is not permitted to grant licences to the Replacement Administering Authority of any third party intellectual property rights, it shall use its reasonable endeavours to assist the Replacement Administering Authority to procure the necessary rights direct from the relevant third party(ies).

3.8 **Existing Employees**

3.8.1 No later than:

- (a) six months prior to the Handover Date where the Outgoing Administering Authority is resigning in accordance with **clause 7.1**; or
- (b) three months prior to the Handover Date where the Outgoing Administering Authority is being replaced in accordance with **clause 7.2**,

the Outgoing Administering Authority shall provide the Replacement Administering Authority with a list of the names of all members of the Outgoing Administering Authority Personnel.

3.8.2 Within 30 Business Days of provision of the list described in **paragraph 3.8.1** above, the Outgoing Administering Authority and the Replacement Administering Authority shall agree:

the identity of the employees who would transfer under TUPE on the Handover Date and so should be included on the Exiting Employees List; and (b) the identity of any individuals who are not employees but are Key Personnel or who, if they had been employees, would have been members of the Exiting Employees List and so should be included on the Exiting Employees List. The Exiting Employees List may be updated from time to time by agreement and shall be finalised by the Parties immediately before the Handover Date.

3.8.3 The Parties agree the appointment of a Replacement Administering Authority is likely to result in a transfer on the Handover Date of the Exiting Employees' employment to the Replacement Administering Authority in accordance with TUPE.

3.8.4 In the event that TUPE does not for any reason operate to transfer to the Replacement Administering Authority the contracts of employment of any of the members of the Exiting Employees, the Replacement Administering Authority shall treat the Exiting Employees no less favourably than had TUPE applied and the Replacement Administering Authority will offer employment to the Exiting Employees from the Handover Date.

3.9 **Outgoing Administering Authority Information and Outgoing Administering**

### **Authority Personnel Exit Information**

3.9.1 During the period of:

- (a) six months prior to the Handover Date where the Outgoing Administering Authority has resigned; and
- (b) three months prior to the Handover Date where it has been agreed to replace the Outgoing Administering Authority;

the Outgoing Administering Authority shall provide the Replacement Administering Authority with the Outgoing Administering Authority Personnel Information.

3.9.2 The Outgoing Administering Authority shall notify the Replacement Administering Authority of any change to the Outgoing Administering Authority Personnel Information. The Outgoing Administering Authority shall clarify any matters in respect of the Outgoing Administering Authority Personnel Information and generally co-operate in respect of any reasonable requests by the Replacement Administering Authority concerning the Outgoing Administering Authority Personnel Information. In all such matters the Outgoing Administering Authority shall act as soon as reasonably practicable and in any event within 10 Business Days of any such change or request.

3.9.3 On the Business Day immediately before the Handover Date the Outgoing Administering Authority shall again provide to the Replacement Administering Authority the Outgoing Administering Authority Personnel Information complete and accurate as at the date of provision.

### **3.10 Information and Consultation**

3.10.1 The Outgoing Administering Authority shall consult and keep informed the Replacement Administering Authority regarding any information it intends to provide or consultation it proposes to have with Outgoing Administering Authority Personnel and their representatives under TUPE or regarding its exit as Outgoing Administering Authority.

3.10.2 The Outgoing Administering Authority shall offer the Replacement Administering Authority the opportunity to attend and participate in any meetings prior to the Handover Date where information is given to or there is consultation with Outgoing Administering Authority Personnel and their representatives under TUPE or regarding it ceasing to be the Administering Authority. The Replacement Administering Authority shall co-operate with the Outgoing Administering Authority and shall discuss with the Outgoing Administering Authority in advance of any meeting any information which the Replacement Administering Authority is to impart to the Outgoing Administering Authority Personnel.

3.10.3 The Replacement Administering Authority and the Outgoing Administering Authority shall jointly report to the Board and the SMG (in a form to be agreed) before the Handover Date.

3.10.4 The Outgoing Administering Authority and the Replacement Administering Authority shall jointly communicate to the Exiting Employees in a form to be agreed by the Board before the Handover Date (in order to meet their respective obligations under TUPE).

### **3.11 Outgoing Administering Authority Shadowing**

3.11.1 Either:

- (a) at least six months prior to the Handover Date where the Outgoing Administering Authority is resigning in accordance **clause 7.1**; or
- (b) no later than three months from receipt of written notice from the other Partner Authorities that they intend to replace the Administering Authority in accordance with **clause 7.2**,

the Outgoing Administering Authority shall provide reasonable assistance to the Replacement Administering Authority to familiarise itself with the delivery of the



Administering Authority Obligations and this may include reasonable information on and access to:

- (c) relevant facilities including assets and accommodation;
- (d) the Outgoing Administering Authority Personnel;
- (e) the Key Personnel; and
- (f) the following information (subject to any overriding confidentiality obligations and licence restrictions):
  - (i) detailed system documentation; and
  - (ii) the key provisions of more significant decisions made about the Principal Contracts that would assist the Replacement Administering Authority in undertaking its duties; and
  - (iii) contact details for the Key Personnel and/or Outgoing Administering Authority Personnel; and
  - (iv) information regarding any unresolved disputes and those which are likely to remain unresolved at the Handover Date,

all of such information to be updated and finalised by the Outgoing Administering Authority at the Handover Date.

### 3.12 **General obligations**

3.12.1 No later than 20 Business Days following the Handover Date, and after the final payroll, the Outgoing Administering Authority shall provide the Replacement Administering Authority with updated payroll information and tax and statutory details for the Exiting Employees.

3.12.2 During the six months after the Handover Date, the Outgoing Administering Authority shall not, without the Replacement Administering Authority's prior consent, solicit from the Replacement Administering Authority any Exiting Personnel or Exiting Employee. This restriction shall not apply to situations where such Exiting Personnel or Exiting Employee or person makes an unsolicited response to a general recruitment advertisement by the Outgoing Administering Authority.

3.12.3 The Outgoing Administering Authority shall fully co-operate with the Replacement Administering Authority's reasonable requests to procure the smooth transfer of the Exiting Employees and engagement of Exiting Personnel.

3.12.4 The Outgoing Administering Authority shall not prevent, restrict or hinder (or seek to do so) any Exiting Personnel member from working for the Replacement Administering Authority after the Handover Date if they so choose. The Outgoing Administering Authority shall waive any restrictions or financial penalties whether direct or indirect (including those in any staff benefits documentation) relating to the employment or engagement of Exiting Personnel by the Replacement Administering Authority.

### 3.13 **Employment warranties and indemnities**

3.13.1 The Outgoing Administering Authority warrants that as at the Handover Date:

- (a) full particulars of the Exiting Employees will have been disclosed together with all the current terms and conditions of their employment whether or not recorded in writing or implied by custom or practice or otherwise (including all information required by law to be included in particulars of terms of employment) including but without limitation: date of birth; date of commencement of employment; job title; remuneration; bonuses; commission; enhanced redundancy entitlement; pension schemes or pension rights and benefits; and all other arrangements and employment related claims, and the Outgoing Administering Authority shall warrant that all of such particulars are true and accurate and complete in all respects; and
- (b) it will have satisfied all ongoing and accrued liabilities of any nature for which it is liable as employer of the Exiting Employees.

- 3.13.2 In respect of any claims and/or losses arising directly or indirectly out of or in connection with:
- (a) a failure by the Outgoing Administering Authority to comply with its obligations under TUPE including without limitation any order to pay compensation or any award made pursuant to TUPE in connection with this Agreement or the termination of it including without limitation any claim for its or their failure to inform and/or consult pursuant to TUPE and any claim pursuant to sections 188 to 193 of the Trade Union and Labour Relations (Consolidation) Act 1992, provided the Outgoing Administering Authority's breach was not due to the failure of the Replacement Administering Authority to comply with its TUPE obligations;
  - (b) any claim by or on behalf of Outgoing Administering Authority Employees arising from their employment with or its termination by the Outgoing Administering Authority except as provided in this **Schedule 3**;
  - (c) any act or omission of the Outgoing Administering Authority in relation to the Outgoing Administering Authority Employees or the Outgoing Administering Authority Personnel;
  - (d) any failure to provide or any inaccuracy in the Outgoing Administering Authority Personnel Information; and/or any claim against the Replacement Administering Authority by or on behalf of any person other than the Exiting Employees whether on the basis that they are or may be an employee of the Replacement Administering Authority as a result of the termination of this Agreement or otherwise and whether on the basis that TUPE applies or otherwise,
  - (e) and such claims and/or losses arise as a result of a negligent act or omission of the Outgoing Administering Authority, the Outgoing Administering Authority shall indemnify and keep indemnified the Replacement Administering Authority in respect of such claims and/or losses. Where any such claims and/or losses arise which are not a result of a negligent act or omission of the Outgoing Administering Authority, the Partner Authorities shall share the amount of such claims and/or losses in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).
- 3.13.3 If any contract of employment of a person other than an Exiting Employee has effect as if originally made between the Replacement Administering Authority and such person as a result of TUPE, then the Replacement Administering Authority will consult with the Board to establish whether the person shall be deployed within the Single Client Group or to give notice to such person to terminate such contract of employment where such action is permitted by law.
- 3.14 **Apportionments, information and general**
- 3.14.1 The Outgoing Administering Authority shall provide, as soon as practicable following the Handover Date, copies of all tax, PAYE, social security and national insurance records and, if requested by the Replacement Administering Authority, copies of any other documents or records (agreed by the Replacement Administering Authority and the Outgoing Administering Authority) which the Replacement Administering Authority thinks are relevant to the Exiting Employees provided that:
- (a) the Outgoing Administering Authority shall preserve the originals of such records or documents for a period of at least three years (or such longer period required by law) after the Handover Date and shall allow the Replacement Administering Authority access to the same at all reasonable times as necessary to enable the Replacement Administering Authority to deal with any matters relating to the Exiting Employees and any employees who transfer by TUPE and, if requested by the Replacement Administering Authority, shall produce them for the appropriate authorities; and
  - (b) if the Outgoing Administering Authority wishes to dispose of or destroy such records or documents earlier, it shall inform the Replacement Administering Authority in advance and the Replacement Administering Authority may require any such records and documents to be delivered up to it.

3.15 **Bonuses and commission payments**

3.15.1 The Outgoing Administering Authority shall be responsible for the payment of any bonuses and commission to eligible Outgoing Administering Authority Personnel (including Exiting Employees and Exiting Personnel) payable in respect of the Administering Authority Obligations arising in respect of the final 12 months prior to the Handover Date where those bonuses or commissions are either deferred after the Handover Date or where an Exiting Employee or a member of the Exiting Personnel ceases to be eligible for such bonus or commission by reason of his transfer from the Outgoing Administering Authority. The Replacement Administering Authority will assume the outstanding obligation of the Outgoing Administering Authority in respect of the Exiting Employees' accrued holiday entitlements and accrued holiday remuneration at the Handover Date and in consideration the Outgoing Administering Authority will pay the full amount necessary to enable the Replacement Administering Authority to meet the cost of providing such holiday entitlements and remuneration as at the Handover Date.

3.16 **Ordinary Course of business**

3.16.1 From:

- (a) the date of the written notice provided in accordance with **clause 7.1.1**; or
- (b) the date of receipt of written notice provided in accordance with **clause 7.2.1**, up to and including the Handover Date, the Outgoing Administering Authority shall:

3.16.2 not, without the Replacement Administering Authority's prior consent, act outside the Ordinary Course of Business;

3.16.3 devote time and resources to the continued delivery of the Administering Authority Obligations to ensure that there are no disruptions and no reductions in the level of service provided; and

3.16.4 notify the Replacement Administering Authority of matters of which it is aware which adversely affect the Outgoing Administering Authority Assets or the Outgoing Administering Authority Personnel.

**SCHEDULE 4**

Form of Annual Budget

**SWB FORM OF ANNUAL BUDGET 2018/2019 onwards (headings as applicable)**

**Expenditure**

<b>Single Client Group</b>
Salaries & on-costs
Salaries pension deficit
MDC customer services impact
WSC Business Case
Travel & Subsistence
Admin, training, meetings & IT
Advertising & campaigns
Office rent & accommodation
<b>Support Services</b>
Legal
Insurance
Finance
Internal Audit
Human Resources
ICT
Democratic Services
<b>Direct Services</b>
<b>Waste Treatment and Disposal</b>
Treatment – Energy from Waste
Treatment – Food
Treatment – Composting
Disposal – Landfill
Disposal – HWRC Bulky
<b>Kerbside Recycling</b>
Sort it+ Recycle More all districts
<b>Communal Recycling</b>
<b>Garden</b>
Garden sticker admin
<b>Household Refuse</b>
Sort It + and Recycle More
<b>Refuse - Communal</b>
<b>Assisted Collections</b>
<b>Assisted Collection Review</b>
<b>Clinical Waste</b>
<b>Bulky Waste Collections</b>

<b>SWB Directed Collections</b>
<b>Day Works</b>
<b>Container Maintenance</b>
<b>Container Delivery</b>
<b>Container Supply</b>
<b>Depot Costs</b>
<b>Admitted Body Pension Costs</b>
LGPS-related costs incurred under the Waste Collection Contract
<b>Subsidised Services</b>
Additional Subsidised Services

<b>Inter Authority Transfers</b>
<b>Transfer Station Avoided Cost</b>
<b>Payment in lieu of Recycling Credits</b>
<b>Third party Recycling Credits</b>
<b>Advance Payment Saving</b>
<b>Lease Repayments - Sort It Plus Vehicles</b>
<b>Lease old Refuse Fleet - Discount</b>

**Total direct expenditure**

**Income**

Garden and Bulky Waste Income
Avoided Wiliton Transfer
District Recycling Credits

**Total income**

**Total net expenditure**

## SCHEDULE 5

### Budget & Cost Sharing Agreement

#### Definitions

Definitions used in this **Schedule 5** shall be the same as those set out in the Agreement, with the following additional definitions:

#### “Communal Refuse Collection Capacity”

means the annual potential volume of communal waste collection in any Waste Collection Authority Area, calculated for the relevant Waste Collection Authority as the sum of:

$T \times F$

Where:

T – total volume of communal refuse collection containers made available to residents at each collection site in a Waste Collection Authority Area; and

F – the annual number of collections made at each site;

#### “Communal Recycling Sites”

means micro recycling bring sites provided to households not suitable for kerbside collections;

#### “County”

means the area within the administrative boundaries of Somerset County Council;

#### “Earmarked Reserve Accounts”

means the account established by the Board in the name of each Partner Authority into which surpluses and deficits shall be allocated in accordance with the relevant cost sharing formula (for example, where a surplus is generated in the depot costs budget, it shall be allocated to the Earmarked Reserve Account of the Waste Collection Authorities using the Waste Collection Authorities un-weighted formula as set out in **paragraph 3** of this **Schedule**);

#### “Neighbourhood Bring Sites”

means smaller recycling bring sites located in residential areas and catering for local communities;

#### “Payment in Lieu of Recycling Credits”

means the prevailing rate of contribution to the Annual Budget paid by the Waste Disposal Authority for each tonne of dry recyclable waste collected and recycled as a result of the functions of the Waste Collection Authorities which have been delegated to the Board and agreed at £59.29 per tonne in 2018/19 and increased by 3% in each Financial Year thereafter;

#### “Residential Properties”

means residential properties registered for Council Tax as defined by the District Valuer and included in his valuation list as at 20<sup>th</sup> December each year;

#### “Sparsity Weighting Factor”

means the coefficient used to reflect the variation in unit waste collection cost that results from variation in population density as agreed from time to time by the Board in accordance with **clause 20**. The Sparsity Weighting Factors for each Waste Collection Authority for 2019/2020, as agreed at the Somerset Waste Board September 2018 are:

Status of Partnership The Inter-Authority Agreement 2007 October 11 Somerset Waste

Mendip	99.22%
Sedgemoor	93.34%
South Somerset	99.22%
Somerset West and Taunton Deane	97.42%

**“Strategic Bring Sites”**

means large recycling bring sites located in areas such as supermarket car parks and catering for large catchment areas;

**“Waste Collection Authority (ies)”**

means any one of Mendip, Sedgemoor, South Somerset, Somerset West and Taunton;

**“Waste Collection Authority Area”**

means the area within the administrative boundary of the relevant Waste Collection Authority;

**“Waste Disposal Authority”**

means the County Council.

**1. COST SHARING PRINCIPLES**

- 1.1 These cost sharing principles are intended to ensure that the costs of the Board and the relevant services administered by the Board on behalf of the Partner Authorities are shared on a fair and equitable basis between the Partner Authorities.
- 1.2 The general approach adopted is to identify each cost element and to apportion it in the most logical and transparent way possible, being mindful of the need to avoid any one Partner Authority subsidizing another.
- 1.2A Where the Administering Authority undertakes any programme of improvement (**Programme**) to waste management services on behalf of the Board:
  - 1.2A.1 no Partner Authority should be financially advantaged or disadvantaged in relation to the other Partner Authorities by the manner of implementation of the improvements;
  - 1.2A.2 no savings delivered by the Programme should be apportioned to any Partner Authority until the full investment costs of the Programme (across the whole of the County) have been offset by the savings delivered by it;
  - 1.2A.3 once the costs of the Programme have been paid in full any savings made through the Programme will be apportioned on the basis of the principles set out in this schedule;
- 1.2B Where savings result from factors other than the Programme of Improvement then such savings will be shared in accordance with the principles set out in this Schedule.
- 1.3 Each cost element is apportioned according to one of the formulae or bases set out in **paragraphs** 2 to 14 below.
- 1.4 Each Partner Authority shall set a budget for the waste management service within their own Authority's budget to reflect their respective share of the Annual Budget calculated in accordance with this **Schedule**. The Administering Authority shall invoice the other Partner Authorities (including VAT where appropriate) in accordance with **clause** 13.
- 1.5 Subject to paragraph 1.2A above all surpluses and deficits at the end of each Financial Year

**Comment [TW1]:** this principle would cover additional subsidised services offered by individual authorities – see table below

shall be identified by the Board and the Board shall establish the Earmarked Reserve Accounts to allocate any surpluses and deficits. Where the Board recommends the distribution of surpluses or additional contributions to fund deficits to the Partner Authorities (subject to the approval of the Partner Authorities) the Earmarked Reserve Accounts shall be used to ensure fair distribution of surpluses or deficits. Where a surplus or deficit is generated outside of the Board's budgeted activities, allocation to Earmarked Reserve Accounts should be on the basis of the client cost formula as set out in **paragraph 2** of this **Schedule** unless otherwise agreed by the Board. Where a deficit is created in any budget item funded by the Waste Disposal Authority in accordance with the formulae set out in **paragraph 2** of this **Schedule** such a deficit cannot be funded by reserves residing in the Earmarked Reserve Accounts of the Waste Collection Authorities without the prior agreement of all of the Waste Collection Authorities. Where a deficit is created in any budget item funded Waste Collection Authorities in accordance with the formulae set out in **paragraph 2** of this **Schedule** such a deficit cannot be funded by reserves residing in the Earmarked Reserve Accounts of the Waste Disposal Authority without the prior agreement of the Waste Disposal Authority.

- 1.5A Subject to paragraph 1.2A, where the Board receives income from the onward sale of recyclate under the Waste Collection Contract 20% of such income will be retained by the Administering Authority as a reserve ("**Recycling Equalisation Reserve**") to be used as required to balance out fluctuations in recyclate revenue. The adequacy of the funds in the Recycling Equalisation Reserve will be reviewed annually as part of the budget setting process.
- 1.6 In each Financial Year the Board shall set the Annual Budget in accordance with the provisions of this Agreement and the Constitution. The Annual Budget shall be a forecast of the costs and income of the Board for the forthcoming Financial Year, reflecting the actual costs and income of the previous Financial Year but also taking account of the price review mechanisms in the Principal Contracts and forecast changes in the costs of the Single Client Group and the Administering Authority. The Board shall follow normal local government conventions in setting the Annual Budget and shall ensure that the Annual Budget setting process is transparent and open to scrutiny by all of the Partner Authorities.
- 1.7 The Annual Budget setting process shall take account of savings targets set by the Board in consultation with the Partner Authorities. In each Financial Year the Board shall be required to assess budgets and performance to drive out inefficiencies. The section 151 officers from each Partner Authority shall meet with the Strategic Management Group annually to consider any proposals for savings targets and to share relevant financial information.
- 1.8 Amendments to the cost sharing formulae shall be made in accordance with the provisions of **clause 20** of this Agreement. There may be circumstances in which the Board may agree to dampen the immediate financial effect of such amendments in order to ensure ongoing affordability of waste management services to all Partner Authorities.
- 1.9 The County Council shall own the proceeds of the sale of any landfill allowances. Any costs associated with purchasing any landfill allowances, or fines levied by central government in relation to any landfill allowance schemes shall be the direct responsibility of the County Council. The County Council shall work in close consultation with and update, support and advise the Single Client Group and Board with regard to the waste strategy implications of its trading activities and plans.
- 1.10 Subject to paragraph 1.2A above net surpluses generated (after taking into account treasury management costs and any changes in financial rates and capital financing costs) by the Administering Authority as a result of its management of positive cash flows on behalf of the other Partner Authorities, such as making payments to the collection contractor in advance of the due dates in exchange for price discounts, are to be included within the Annual Budget. Whilst the County Council remains the Administering Authority these allocations shall be made in accordance with the Waste Collection Authorities Un-Weighted formula as set out in **paragraph 3** of this **Schedule** in accordance with the Somerset Waste Board decision on the Advanced Payment Mechanism January 2008.
- 1.11 The cost sharing formulae shall apply to the Board in respect of its budget for the 2007/08 –



part Financial Year and all future Financial Years unless amended in accordance with this Agreement.

**2. CLIENT COSTS FORMULA**

2.1 The initial division of costs is between the Waste Disposal Authority and the Waste Collection Authorities with the Waste Disposal Authority responsible for 45.76 per cent of costs and the Waste Collection Authorities 54.24 per cent.

2.2 Following this initial division, the actual share payable by each Waste Collection Authority shall be as follows, as agreed by the Somerset Waste Board in September 2018:

Mendip District Council	10.95%
Sedgemoor District Council	11.63%
South Somerset District Council	16.33%
Somerset West and Taunton Deane	15.33%

**3. WASTE COLLECTION AUTHORITIES UN-WEIGHTED FORMULA**

The division of costs is between the Waste Collection Authorities, with each responsible for costs in equal proportion to the percentage of Residential Properties in the County located within their area.

The formula is:

Waste Collection Authority share = Cost x (NR ÷ TRC)

Where:

NR – number of Residential Properties in the relevant Waste Collection Authority Area; and

TRC – total number of Residential Properties in the County.

**4. WASTE COLLECTION AUTHORITIES WEIGHTED FORMULA**

The division of costs is between the Waste Collection Authorities (including all LGPS pensions costs incurred by the Collection Contractor and reimbursed to the Collection Contractor by the Administering Authority under the Recycle More Collection Contract), with each responsible for costs in equal proportion to the percentage of Residential Properties in the County located within their area adjusted using the Sparsity Weighting Factor.

The formula is:

Waste Collection Authority share = Cost x (NR x Sparsity Weighting Factor) ÷ CNR

Where:

NR – number of Residential Properties in the relevant Waste Collection Authority Area; and CNR – the sum of NR x Sparsity Weighting Factor for each Waste Collection Authority.

5. **WASTE COLLECTION AUTHORITIES SERVICE LEVEL BASED WEIGHTED FORMULA (NO LONGER USED – FINANCIAL PRINCIPLES FOR RECYCLE MORE ROLL-OUT WERE AGREED BY THE SOMERSET WASTE BOARD IN DECEMBER 2015).**

6. **WASTE COLLECTION AUTHORITIES SERVICE LEVEL BASED UN-WEIGHTED FORMULA (NO LONGER USED – FINANCIAL PRINCIPLES FOR RECYCLE MORE ROLL-OUT WERE AGREED BY THE SOMERSET WASTE BOARD IN DECEMBER 2015).**

7. **STRATEGIC BRING SITES FORMULA (NO LONGER USED – THE BRING BANKS SERVICE WAS REMOVED FROM THE SOMERSET WASTE PARTNERSHIP BUDGET AS AGREED BY THE SOMERSET WASTE BOARD IN OCTOBER 2008)**

8. **NEIGHBOURHOOD BRING SITES FORMULA (NO LONGER USED – THE BRING BANKS**

**SERVICE WAS REMOVED FROM THE SOMERSET WASTE PARTNERSHIP BUDGET AS AGREED BY THE SOMERSET WASTE BOARD IN OCTOBER 2008)**

9. **COMMUNAL REFUSE FORMULA**

The cost will be shared between the Waste Collection Authorities, with each responsible for costs in equal proportion to the percentage of Communal Refuse Collection Capacity in the County located within their area.

The formula is:

$$\text{Waste Collection Authority share} = \text{Cost} \times (\text{CA} \div \text{CC})$$

Where:

CA – Communal Refuse Collection Capacity in the relevant Waste Collection Authority Area; and CC – Communal Refuse Collection Capacity in the County.

10. **COMMUNAL RECYCLING FORMULA**

The cost will be shared between the Waste Collection Authorities, with each responsible for costs in equal proportion to the percentage of Communal Recycling Sites in the County located within their relevant area.

The formula is:

$$\text{Waste Collection Authority share} = \text{Cost} \times (\text{CRA} \div \text{CRC})$$

Where:

CRA – number of Communal Recycling Sites in the relevant Waste Collection Authority Area; and CRC – number of Communal Recycling Sites in the County.

11. **PAYMENT IN LIEU OF RECYCLING CREDITS FORMULA**

The Waste Disposal Authority shall be responsible for making payments to the Waste Collection Authorities in lieu of recycling credits.

The formulae are:

$$\text{Waste Disposal Authority contribution} = \text{WC} \times \text{CADC}$$

Where:

WC - tonnes of dry recyclable waste collected and recycled as a result of Waste Collection Authority functions in the County (excluding any third party generated tonnage; and

CADC - current rate of Payment in Lieu of Recycling Credits

$$\text{Individual Waste Collection Authority income} = \text{DRWA} \times \text{CADC}$$

Where:

DRWA – tonnes of dry recyclable waste collected and recycled as a result of Waste Collection Authority functions (excluding any third party generated tonnage) allocated according to the previous 3 full years' individual Waste Collection Authority performances as agreed by the Somerset Waste Board in December 2016; and

CADC – current rate of Payment in Lieu of Recycling Credits

12. **SWAP TEAM FORMULA (NO LONGER PART OF THE SOMERSET WASTE PARTNERSHIP BUDGET).**

13. **CUSTOMER SERVICES (NOT CURRENTLY IN USE. THIS FORMULA WAS TO BE DEVELOPED SHOULD SIGNIFICANT CHANGES TAKE PLACE WITH REGARDS TO CUSTOMER SERVICE CENTRES STILL MAINTAINED BY THE WASTE COLLECTION PARTNERS IN PARTICULAR. THE CURRENT STAFF WITHIN THE SOMERSET WASTE PARTNERSHIP BUDGET ARE SHARED IN ACCORDANCE WITH THE CLIENT COSTS FORMULA).**

The division of costs is between the Waste Disposal Authority and the Waste Collection Authorities. The mechanism to divide costs shall be agreed subsequently by the Partner Authorities based on a recommendation prepared by the Single Client Group and agreed by the Board.

14. **ACTUAL USAGE BASIS**

The division of costs or income between the Waste Collection Authorities based on actual usage of the service in question by residents in each Waste Collection Authority Area.

15. **DIRECTLY ASSOCIATED COSTS BASIS**

The allocation of a cost to a particular Partner Authority because that cost arises as a direct result of a policy or other factor unique to that Partner Authority. Specifically, all costs associated with the functions of the Waste Disposal Authority shall be allocated on this basis to the Waste Disposal Authority.

16. **OTHER ONE-OFF COLLECTION COSTS BASIS**

The Somerset Waste Board has been required to approve a cost sharing formula to one-off collection costs in relation to additional "catch up" costs for the Royal Wedding (Board decision February 2011) and the Diamond Jubilee Bank Holiday (Board decision February 2012). In both cases, it has been agreed that these costs should be shared by the Waste Collection Authorities based on the formula for Unweighted Properties be used (i.e. each collection authority pays a proportion based solely on the number of properties within its boundaries).

17. **REMOVED BUDGET LINES**

Over time the Somerset Waste Board budget has removed lines from the Annual Budget as these became redundant (such as time limited grants and contributions).

It has also made decisions to remove Income Collection lines (such as Garden Waste) and Bring Bank service costs at its October 2008 meeting as it was decided that these could best be managed locally.

18. **AVOIDED TRANSFER STATION COSTS AT WILTON BASIS**

In lieu of providing a transfer station for waste at Williton, the Waste Disposal Authority agreed to make an annual compensation pay payment to the Waste Collection Authorities for the additional collection costs that they would have to meet as a result of the facility not be available. This is £321,050 per annum in the 2018/2019 budget and rises at 3% per annum. The Somerset Waste Board agreed in January 2008 that this should be shared by the Waste Collection Authorities based on the formula for Unweighted Properties be used (i.e. each collection authority pays a proportion based solely on the number of properties within its boundaries).

19. **LEASE REPAYMENTS – SORT IT PLUS VEHICLES BASIS**

A number of vehicles were leased as part of the Sort It Plus roll-out. It was agreed that the costs of meeting these capital payments was to be shared between the Waste Collection Authorities in the best approximation of the Actual Usage Basis for these vehicles. This equates to:-

Mendip District Council	22.322%
Sedgemoor District Council	18.214%
South Somerset District Council	33.213%
Somerset Waste and Taunton	26.251%

20. **FUNDING OF CAPITAL EXPENDITURE FOR RECYCLE MORE**

Each district will enter into a loan agreement with the Administering Authority which will provide the Administering authority with the necessary capital funds to fund the purchase of vehicles and the carrying out of depot works as specified in the Recycle More contract. Such loans shall be made at the prevailing PWLB EIP rate with certainty discount plus 1% and shall be repaid on an annuity basis over either 10 or 20 years depending on the nature of the investment.

21. **COST SHARING FORMULAE APPLYING TO THE BOARD BUDGET 2018/19 onwards**

<u>Annual Somerset Waste Board Budget 2018/19</u>	
Expenditure	
<b>Single Client Group</b>	
Salaries & on-costs	Client Costs Formula
Salaries pension deficit	Client Costs Formula
MDC customer services impact	Directly Associated Costs Basis (allocated to Mendip)
Travel & Subsistence	Client Costs Formula
Admin, training, meetings & IT	Client Costs Formula
Advertising & campaigns	Client Costs Formula
Office rent & accommodation	Client Costs Formula
<b>Support Services</b>	
Legal	Client Costs Formula
Insurance	Client Costs Formula
Finance	Client Costs Formula
Internal Audit	Client Costs Formula
Human Resources	Client Costs Formula
ICT	Client Costs Formula
Democratic Services	Client Costs Formula (SCC does not charge itself)
<b>Direct Services</b>	
<b>Waste Treatment and Disposal</b>	
Treatment – Energy from Waste	Directly Associated Costs Basis (allocated to County Council)
Treatment – Food	Directly Associated Costs Basis (allocated to County Council)
Treatment – Composting	Directly Associated Costs Basis (allocated to County Council)
Disposal – Landfill	Directly Associated Costs Basis (allocated to County Council)
Disposal – HWRC Bulky	Directly Associated Costs Basis (allocated to County Council)
<b>Kerbside Recycling</b>	
Sort it+ Recycle More all districts	Waste Collection Authorities Weighted Formula

Status of Partnership The Inter-Authority Agreement 2007 October 11 Somerset Waste

Communal Recycling	Communal Recycling Formula
Garden	Actual Usage Basis
Garden sticker admin	Actual Usage Basis (excludes South Somerset)
<b>Household Refuse</b>	
Sort It + and Recycle More	Waste Collection Authorities Weighted Formula
Refuse - Communal	Communal Refuse Formula
Assisted Collections	Waste Collection Authorities Weighted Formula
Assisted Collection Review	Waste Collection Authorities Weighted Formula
Clinical Waste	Waste Collection Authorities Un-Weighted Formula
Bulky Waste Collections	Actual Usage Basis
SWB Directed Collections	Waste Collection Authorities Un-Weighted Formula
Day Works	Waste Collection Authorities Un-Weighted Formula
Container Maintenance	Waste Collection Authorities Un-Weighted Formula
Container Delivery	Actual Usage Basis (Board September 2010)
Container Supply	Actual Usage Basis
Depot Costs	Waste Collection Authorities Un-Weighted Formula
<b>Admitted Body Pension Costs</b>	
LGPS-related costs incurred under the Waste Collection Contract	Waste Collection Authorities Un-Weighted Formula
<b>Subsidised Services</b>	
Additional Subsidised Services	Directly Associated Costs Basis (allocated to the relevant Partner Authority)
<b>Inter Authority Transfers</b>	
Transfer Station Avoided Cost	Directly Associated Costs Basis (allocated to County Council)
Payment in lieu of Recycling Credits	Directly Associated Costs Basis (allocated to County Council)
Third party Recycling Credits	Directly Associated Costs Basis (allocated to County Council)
Advance Payment Saving	Waste Collection Authorities Un-Weighted Formula
Lease Repayments - Sort It Plus Vehicles	Lease Repayments - Sort It Plus Vehicles Basis
Lease old Refuse Fleet - Discount	Financial Principles for Recycle More Basis
<b>Income</b>	
Recyclate revenue (subject to retention of 20% for reserve) (paid quarterly in arrears to Partner Authorities by the Administering Authority)	WCA Weighted Formula
Garden and Bulky Waste income	Directly Associated Costs Basis (allocated to the relevant Partner Authority)
Avoided Wiliton Transfer	Waste Collection Authorities Un-Weighted Formula
District Recycling Credits	Payment in Lieu of Recycling Credits Formula

**Comment [TW2]:** Is this the best place for this line?

**Comment [TW3]:** Please confirm which formula should be used here

## SCHEDULE 6

### Exit arrangements

#### 1. DEFINITION

Definitions used in this **Schedule 6** shall be the same as those set out in the Agreement, with the following additional definitions:

**"District Authorities"**

means all of the Partner Authorities excluding the County Council;

**"Dissolution Agreement"**

means the agreement entered into by the Partnering Authorities in accordance with **clause 15.2** and this **Schedule 6**.

#### 2. INTRODUCTION

In the event of agreement that the Board should be dissolved or in the event of the termination of this Agreement in accordance with **clause 31** the Partner Authorities shall (acting reasonably) negotiate and seek to agree and execute a legally binding agreement dealing with the novation or termination of the Principal Contracts (excluding the Disposal Contracts) and the allocation amongst the Partner Authorities of the property, assets, rights, staff and liabilities held or employed by the Administering Authority on behalf of the Board. Such agreement shall include, as a minimum, provisions to deal with the matters listed in this **Schedule 6**.

#### 3. TRANSFER OF ASSETS

- 3.1 The Administering Authority shall prepare and maintain a list of the assets owned by it on behalf of the Board and include the list in the Dissolution Agreement.
- 3.2 The Partner Authorities shall meet and (acting reasonably) apportion the ownership of the assets equally amongst the Partner Authorities and the Administering Authority shall transfer the assets to the relevant Partner Authorities.
- 3.3 Where assets cannot equally be apportioned to the Partner Authorities, one Partner Authority shall agree to accept the assets and provide compensation to the remaining Partner Authorities on a mutually agreed basis.
- 3.4 Any assets used in connection with the Board that were owned by the Administering Authority prior to the commencement of this Agreement shall, unless the Partner Authorities agree otherwise remain the property of the Administering Authority.

#### 4. NOVIATION OF THE COLLECTION CONTRACT AND ANY THIRD PARTY CONTRACTS

- 4.1 The Collection Contract shall need to be either novated to one or all of the District Authorities, or else will need to be determined in accordance with the provisions of the Collection Contract.
- 4.2 The Administering Authority shall be required to take all reasonable steps to novate the Collection Contract in accordance with the agreement reached by the District Authorities.
- 4.3 In the event that the District Authorities agree to continue the Collection Contract it may be necessary to continue other third party contracts held by the Administering Authority, in which case these will also need to be assigned or novated to the nominated District Authority or to all of the District Authorities.
- 4.4 Where a third party consent is required to any assignment or novation the Administering Authority shall use all reasonable endeavours to procure such assignment or novation to

the relevant District Authority(ies) and do all other things reasonably necessary to obtain such third party consents.

4.5 Where a third party consents to the assignment or novation of a third party contract, the Partner Authorities shall each pay an equal share of any fees charged by the third party in association with such assignment or novation.

4.6 The Dissolution Agreement shall deal with any residual liabilities or ongoing responsibilities of the Partner Authorities in respect of the Collection Contract.

## **5. TRANSFER OF THE SINGLE CLIENT GROUP**

5.1 In the event that it is agreed by the Partner Authorities that one of the Partner Authorities will host the Single Client Group following dissolution of the Board the Dissolution Agreement shall deal with the process for the transfer of the staff and assets of the Single Client Group to the nominated Partner Authority. In respect of such transfer the Partner Authorities shall have regard to the principles set out in **Schedule 3** (Change of Administering Authority) in respect of the transfer of the staff and assets of the Single Client Group.

5.2 If the Partner Authorities fail to agree a nominated Partner Authority to host the Single Client Group or if no Partner Authority is willing to host the Single Client Group then the Dissolution Agreement shall deal with the process for the transfer of the staff and assets of the Single Client Group to all of the Partner Authorities.

## **SCHEDULE 7**

### Collection Contract

## **1. ADMINISTRATION OF THE COLLECTION CONTRACT**

Unless otherwise defined in this Agreement, terms used in this **Schedule** shall be as defined in the Collection Contract.

## **2. PARTNER NOTICE OF CHANGE**

2.1 Each Partner Authority (except the County Council) may order a change to the Services (including the provision of new services) by serving a notice of change (a "**Partner Notice of Change**") on the Administering Authority, the Board and all other Partner Authorities setting out the required change in the Services in sufficient detail to enable the Collection Contractor to provide an Estimate.

2.2 A Partner Authority shall not issue a Partner Notice of Change which:

2.2.1 requires the Services to be performed in a way that infringes legislation;

2.2.2 would cause any Planning Permission or Necessary Consent to be breached and/or revoked;

2.2.3 would materially and adversely affect the health and safety of any person; and/or

2.2.4 would substantially alter the scope of the Services.

2.3 Within 20 Business Days of receipt of the Partner Notice of Change, the Administering Authority shall invite a meeting of the Board to consider the implications of the Partner Notice of Change and to recommend any changes to the Partner Notice of Change.

2.4 On receipt of any comments from the Board and/or the Partner Authorities the Partner Authority issuing the Partner Notice of Change shall consider at its absolute discretion whether any amendment to the Partner Notice of Change is required.

- 2.5 The Administering Authority shall serve a Notice of Change setting out the change in Services requested by the Partner Authority in the Partner Notice of Change on the Collection Contractor in accordance with clause 43.2 of the Collection Contract.
- 2.6 The Administering Authority shall within 10 Business Days of receipt of the Estimate given by the Collection Contractor pursuant to clause 43.4 of the Collection Contract, forward such Estimate to the Board and to the Partner Authority that requested the change.
- 2.7 Within 25 Business Days of receipt of the Estimate the Partner Authority which requested the change may in consultation with the Board require the Administering Authority to:
- 2.7.1 confirm in writing the Estimate;
- 2.7.2 suggest reasonable amendments to the Estimate; or
- 2.7.3 request the withdrawal of the Notice of Change.
- 2.8 If a Partner Authority does not confirm its decision in writing to the Administering Authority in relation to the Estimate within 20 Business Days of the provision of the Estimate, its approval shall be deemed not to have been given and the Notice of Change will be withdrawn in accordance with clause 43.6 of the Collection Contract.
- 2.9 If the Partner Authority confirms in writing to the Board and the Administering Authority the Estimate, the Administering Authority shall confirm such change to the Collection Contractor and the change in the Services shall be effected as an agreed variation to the Collection Contract.
- 2.10 The Partner Authority requesting the change in the Services shall meet all additional costs of the Estimate through an adjustment to its contribution to the Annual Budget and in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).
- 2.11 Where any such change in the Services results in any consequential additional costs or liabilities for the Administering Authority and/or other Partner Authorities the Partner Authority requesting the change in the Services shall meet all such additional costs or liabilities of the other Partner Authorities through an adjustment to its contribution to the Annual Budget and in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).
- 2.12 Where any change in the Services results in a reduction in the Services Payment the Partner Authority requesting the change in the Services shall receive a reduction in its contributions to the Annual Budget in accordance with the principles set out in **Schedule 5** (Budget and Cost Sharing Agreement), provided always that such change has not increased the costs or liabilities of the other Partner Authorities in which case these costs or liabilities shall be taken into account in calculating the reduction in the Partner Authority's contributions.
- 2.13 Where the Collection Contractor requests that the Administering Authority issues a Notice of Change pursuant to clause 43.8 of the Collection Contract, the Administering Authority shall request that the Board decides whether or not to issue such a Notice of Change. A Notice of Change may only be issued if agreed by the Board.

### **3. WITHDRAWAL FROM THE COLLECTION CONTRACT**

- 3.1 Any of the Partner Authorities (other than the County Council) may on giving 12 months' written notice to the Clerk of the Board withdraw from the joint collection and recycling arrangements.
- 3.2 In the event of a Partner Authority serving notice under **paragraph 3.1** of this **Schedule** the Administering Authority shall obtain from the Collection Contractor an Estimate of the costs of removing the relevant Partner Authority from the Collection Contract for the remainder of the original contract term or the period of such extension as may have been agreed at the point of service of the notice under **paragraph 3.1** of this **Schedule**.



- 3.3 If the relevant Partner Authority confirms in writing to the Administering Authority its acceptance of the Estimate, the Administering Authority shall confirm such change to the Collection Contractor and the removal of the Partner Authority shall be effected as an agreed variation to the Collection Contract.
- 3.4 The relevant Partner Authority shall meet all additional costs of the Estimate including the reasonable costs incurred by the Administering Authority through an adjustment to its contribution to the Annual Budget and in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).
- 3.5 Where the removal of a Partner Authority results in any consequential additional costs or liabilities for the other Partner Authorities the relevant Partner Authority shall meet all additional costs or liabilities of the other Partner Authorities through a lump sum payment to the other Partner Authorities or in such other manner as the other Partner Authorities in consultation with the Board may each at their absolute discretion agree.
- 3.6 The Partner Authorities agree that where a Partner Authority withdraws from the Collection Contract in accordance with this **Schedule** the Partner Authorities agree that the principles outlined in **Schedule 3** and those contained in the Workforce Code where applicable should apply to the transfer of staff, assets and equipment from the Collection Contractor to the relevant Partner Authority or a contractor of the relevant Partner Authority.

#### **4. EXTENSION OF THE COLLECTION CONTRACT**

- 4.1 No later than 12 months prior to the expiry of the Collection Contract the Board shall meet and consider whether or not to extend the term of the Collection Contract (in accordance with clause 2.2 of the Collection Contract). Where the Board proposes to extend the term of the Collection Contract the Managing Director shall, as soon as reasonably practicable, notify the Chief Executive of each of the Partner Authorities of its decision.
- 4.2 Each Partner Authority shall have a period of 30 Business Days from receipt of the notice from the Managing Director (in accordance with **paragraph 4.1** above) in which to consider it. Where a Partner Authority (other than the County Council), acting reasonably, does not wish the Collection Contract to be extended, it shall notify the Managing Director of its decision forthwith (and in any event within five Business Days of expiry of the 30 Business Day notice period). For the avoidance of doubt, where a Partner Authority does not wish the Collection Contract to be extended it shall not be treated as withdrawing from the Collection Contract for the purposes of paragraph 3 of this **Schedule 7**.
- 4.3 Provided that at least two Partner Authorities (other than the County Council) serve notice on the Managing Director ratifying the Board's proposal to extend the Collection Contract, the Board shall procure that the Administering Authority takes all reasonable steps necessary to extend the Collection Contract (in accordance with the terms of that contract) and, where necessary, to vary the Collection Contract to reflect the reduced number of Partner Authorities who are subject to it.
- 4.4 Where only one Partner Authority serves notice on the Managing Director ratifying the Board's proposal to extend the Collection Contract, the Board shall not extend the Collection Contract and it shall come to an end in accordance with the terms of that contract.

#### **5. DISPUTES**

- 5.1 If a dispute arises in relation to any aspect of the Collection Contract, which cannot be resolved between the Contract Manager and the Contractor's Representative in accordance with clause 36.1.1 of the Collection Contract, the Administering Authority shall promptly notify the Board of the dispute.
- 5.2 In the event that any dispute is referred to mediation or arbitration in accordance with clauses 36.2 and 36.3 of the Collection Contract the Administering Authority shall promptly notify the

Board and shall keep the Board regularly informed of the progress of the dispute referred to mediation or arbitration.