

# TAUNTON DEANE BOROUGH COUNCIL

EXECUTIVE

19<sup>th</sup> JULY 2007

## GOVERNANCE ARRANGEMENTS FOR THE SOMERSET WASTE BOARD

Report of Strategic Director – Joy Wishlade

This is the responsibility of Executive Councillor M Mullins

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### 1. INTRODUCTION

- 1.1 This is a composite report dealing with all aspects of the future governance arrangements for the Somerset Waste Board. For clarity it highlights the effects of previous decisions of this Committee in relation to the preparation of an associated Inter Authority Agreement and Constitution and reaffirms the decisions in respect of the creation of a Joint Committee and the divesting of waste responsibilities to it.
- 1.2 The report also requests the nomination of two elected Members to represent the Council on the Somerset Waste Board and the approval of a “Commencement Date” on which the Somerset Waste Board will be established.
- 1.3 This report is clearly linked to the next item on the agenda dealing with the award of a contract for recycling and refuse collection for the Somerset Waste Board.

### 2. SUPPORTING INFORMATION

#### 2.1 Background

Since 1992 the Somerset Waste Partnership has improved working arrangements in waste management across the County and the Partner Authorities are now seeking to formally combine the responsibilities for waste collection and waste disposal into a single Somerset Waste Board.

This Executive has previously agreed to adopt the Joint Committee Administering Authority model (with Somerset County Council taking on the role of Administering Authority) for creating the Somerset Waste Board (26<sup>th</sup> February 2007).

At the same meeting, the Executive/Cabinet Committee approved the proposed structure of the Somerset Waste Board and the Heads of Terms to be used in the preparation of an Inter Authority Agreement and a Constitution,

documents which would effect the ongoing contractual, financial and operational arrangements between the Partner Authorities and the arrangements for the administration of the Somerset Waste Board.

At the meeting of the Executive on 4<sup>th</sup> April 2007 the Portfolio Holder in consultation with the Strategic Director was authorised to approve on behalf of the Council the final versions of the Inter Authority Agreement and Constitution.

## 2.2 Inter Authority Agreement and Constitution

These are both very complex and important documents, and the detailed drafting has been undertaken by Nabarro, the Partnership's external legal advisers together with the Legal Sub Group (consisting of senior legal representatives from each of the Partner Authorities). The final versions of which have been "approved" by the Strategic Director after consultation with the Portfolio Holder and are attached as Appendices A and B to this report. **NB these are still being finalised and will be distributed as soon as possible before the meeting.**

## 2.3 The Somerset Waste Board

Now that the Inter Authority Agreement and the Constitution have been finalised the previous resolutions to establish the Somerset Waste Board and for the discharge of the Council's statutory waste functions by it may be endorsed and put into effect from the "Commencement Date" under the Inter Authority Agreement and it is recommended that this should be the 29<sup>th</sup> July 2007.

The Constitution requires that each Partner Authority is represented on the Board by two Elected Members and therefore the Committee is asked to formally make two such nominations, one of whom must be the Portfolio Holder for waste.

## 2.4 Next Steps

The other item on this agenda recommends the award of a single recycling and refuse collection contract for the Somerset Waste Board. These two reports are clearly inextricably linked and the Directors Implementation Group has taken a view that because of the practical difficulties that would arise in exercising statutory waste management functions on behalf of Partner Authorities through an Executive Joint Committee it would not be appropriate for any authority who did not wish to enter into a single County wide recycling and refuse collection contract to continue to be part of the Somerset Waste Board and thereby also take advantage of the other benefits of a formalized partnership arrangement.

### **3. FINANCIAL IMPLICATIONS**

- 3.1 The costs of the external legal advice to complete the drafting of the Inter Authority Agreement and the Constitution have been met from the agreed project budget.

The detailed cost sharing mechanism agreed by all the Partner Authorities that will support the Somerset Waste Board are included as a Schedule in the Inter Authority Agreement.

### **4. LEGAL IMPLICATIONS**

- 4.1 The legal powers to constitute a Joint Committee and discharge the Council's statutory waste functions and responsibilities to it are in Sections 101 and 102 of the Local Government Act 1972, and the Local Authorities (Arrangement for the Discharge of Functions)(England)(Amendment) Regulations 2001 made under Section 20 of the Local Government Act 2000.

As has been previously mentioned in this report, each of the Partner Authorities' senior legal advisers (together, the Legal Sub Group) have been involved in the drafting of the Inter Authority Agreement and the Constitution with the Council's external legal advisers, Nabarro.

### **5. RECOMMENDATIONS**

- 5.1 That the Executive endorses the adoption of the Inter Authority Agreement and Constitution detailing the contractual, financial and operational arrangements between all the Partner Authorities and the administrative arrangements for the Somerset Waste Board respectively, and attached as Appendices A and B to this report;
- 5.2 That the Executive on the adoption of the above documents reaffirms the decision, that together with (Somerset County Council, Mendip District Council, Sedgemoor District Council, South Somerset District Council, and West Somerset District Council) and pursuant to Section 101(5) and 102 of the Local Government Act 1972 and regulations made under Section 20 of the Local Government Act 2000, to establish a Joint Committee to be called the Somerset Waste Board;
- 5.3 That the Executive on the adoption of the above documents reaffirms the decision, that pursuant to Section 101(5) and 102 of the Local Government Act 1972 and regulations made under Section 20 of the Local Government Act 2000, to arrange for the statutory functions in respect of the recycling and collection of waste to be discharged by the Somerset Waste Board;
- 5.4 That the Executive agrees 29<sup>th</sup> July 2007 as the "Commencement Date" on which the Inter Authority Agreement and Constitution will come into force and on which the Somerset Waste Board will be established ;

- 5.5 That the Executive nominates two Elected Members to represent the Council on the Somerset Waste Board, one of whom must be the Portfolio Holder for Waste in accordance with the Constitution.
- 5.6 That the Executive authorises the Chief Executive to execute the Inter Authority Agreement on behalf of the Council.

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APPENDIX A

SOMERSET WASTE BOARD



CONSTITUTION



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## CONSTITUTION

DATED

2007

**THE SOMERSET WASTE BOARD** is a Joint Committee of local authorities in the County of Somerset established pursuant to sections 101(5) and 102 of the Local Government Act 1972 and all other relevant enabling legislation by the following Partner Authorities:

- (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) TAUNTON DEANE BOROUGH COUNCIL of The Deane House, Belvedere Road, Taunton, Somerset TA1 1HE ("**Taunton Deane**"); and
- (6) WEST SOMERSET DISTRICT COUNCIL of 20 Fore Street, Williton, Somerset TA4 4QA ("**West Somerset**").

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**"2000 Act"**

means the Local Government Act 2000;

**"Administering Authority"**

means the authority appointed pursuant to clause 5 of the Inter Authority Agreement;

**"Aims and Objectives"**

means the aims and objectives set out in **Appendix 2**;

**"Annual Action Plan"**

means a plan for the performance by the Board of its functions and activities in any Financial Year referred to in **paragraph 10**;

**"Annual Budget"**

means the annual budget for a Financial Year referred to in **paragraph 11**;

**"Annual General Meeting"**

means the first meeting of the Board after 1 May in each year in accordance with **paragraph 3 of Appendix 3**;

**"Board"**

means the Joint Committee established pursuant to clause 3.1 of the Inter Authority Agreement and 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 business plan approved by the Board from time to time in accordance with **paragraph 10** which term shall include the First Business Plan;

**"Chairman"**

means the chairman from time to time of the Board elected in accordance with **paragraph 1.3 or 3 of Appendix 3**;

**"Chief Executive"**

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

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

means the clerk to the Board appointed pursuant to clause 4.1.1 of the Inter Authority Agreement;

**"Collection Contract"**

means the contract for the collection and recycling of household waste for the County of Somerset to be entered into by the Administering Authority and [ECT] on behalf of the Board;

**"Collective Scrutiny Arrangements"**

means the arrangements set out in **Appendix 7**;

**"Commencement Date"**

means [ July] 2007;



**"Constitution"**

means this constitution and its appendices;

**"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;

**"Executive or Cabinet"**

means the executive body of a Partner Authority appointed pursuant to the 2000 Regulations;

**"Financial Year"**

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

**"First Business Plan"**

means the outline business plan for the Board contained in **Appendix 4**;

**"Inter Authority Agreement"**

means an agreement of even date entered into by the County Council, Mendip, Sedgemoor, South Somerset, Taunton Deane and West Somerset in relation to the formation and operation of the Somerset Waste Board as may be amended from time to time;

**"LGA 1972"**

means the Local Government Act 1972;

**"Managing Director"**

means the head of the Single Client Group appointed in accordance with **paragraph 17.2**;

**"Material Change"**

means a change proposed to the approved Business Plan or to this Constitution in accordance with **paragraphs 10 and 12** which a Partner Authority (acting reasonably) considers to be a material change to the nature or operation of the Board and which it considers must be subject to approval by elected members of the Partner Authority;

**"Monitoring Officer"**

means the monitoring officer for the Board appointed pursuant to clause 4.1.3 of the Inter Authority Agreement;

**"Partner Authority"**

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

**"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;

**"Scheme of Delegation"**

means the scheme of delegation adopted by the Board from time to time by which the Board will authorise its sub-committees and officers of Administrative Authority (including those of the Single Client Group) to exercise certain of its powers and duties;

**"Scrutiny Arrangements"**

means the arrangements made by each Partner Authority for the scrutiny of its decisions in accordance with Section 21 of the 2000 Act;

**"Scrutiny Committee"**

means the committee of each Partner Authority responsible for the Scrutiny Arrangements in accordance with Section 21 of the 2000 Act;

**"Single Client Group"**

means the group of officers employed by the Administering Authority on behalf of all the Partner Authorities to carry out the roles and functions set out in clause 8 of the Inter Authority Agreement;

**"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 as adopted by the Board from time to time;

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

means the board 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 of the Inter Authority Agreement;

**"Substitute Member"**

means a person nominated by a SWB Member to attend a meeting of the Board in his place in accordance with **paragraph** 4.8;

**"SWB Member(s)"**

means a member of the Board appointed by a Partner Authority in accordance with **paragraph 4.1**;

**"the 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);

**"Treasurer"**

means the treasurer of the Board appointed pursuant to clause 4.1.2 of the Inter Authority Agreement;

**"Vice-Chairman"**

means the vice-chairman for the time being of the Board elected in accordance with **paragraph 1.3** or 3 of **Appendix 3**.

**1.2 Interpretation**

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

1.2.2 references to paragraphs and appendices are to the paragraphs and appendices of this Constitution. Any reference to a sub-paragraph is to the relevant sub-paragraph of the paragraph in which it appears;

1.2.3 the table of contents and headings are not part of this Constitution and are not to be taken into account in the interpretation of this Constitution;

1.2.4 the use of the masculine gender alone includes the feminine and neuter genders and the singular includes the plural and vice versa;

1.2.5 references to legislation (including subsidiary legislation), regulations, 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 Constitution 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 to the nature or operation of the Board, the amendment or modification shall require the approval of the Partner Authority;

1.2.6 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;

1.2.7 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.

1.3 The appendices to this Constitution are to have effect as if set out in full in the body of this Constitution and references to this Constitution include the appendices.

## **2. FUNCTIONS AND ACTIVITIES TO BE UNDERTAKEN BY THE BOARD ON BEHALF OF THE PARTNER AUTHORITIES**

- 2.1 The Partner Authorities have each agreed and resolved to form the Board with effect from the Commencement Date.
- 2.2 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 recycling of waste which statutory functions are set out in **part I of Appendix 1**.
- 2.3 The Partner Authorities acknowledge that the Disposal Contracts have been entered into in furtherance of the Aims and Objectives and they further acknowledge that the Board shall endorse and adopt both the Disposal Contracts and the Collection Contract.
- 2.4 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 **part II of Appendix 1**.
- 2.5 The Board shall not make any decisions the effect of which would be to put any Partner Authority in breach of any contract (including the Principal Contracts).
- 2.6 The Partner Authorities acknowledge that any decision taken by the Administering Authority that puts a Partner Authority in breach of any contract (including the Principal Contracts) shall not be implemented and any costs or losses incurred by a Partner Authority arising from any such decision shall be apportioned equally between the Partner Authorities in accordance with the cost sharing principles in schedule 5 of the Inter Authority Agreement.

## **3. COMMENCEMENT AND DURATION OF THE BOARD**

The Board has been established in accordance with the resolutions of the Partner Authorities referred to in **paragraph 2.1** with effect from the Commencement Date and shall continue in existence unless and until dissolved by resolution of a majority of the Partner Authorities in accordance with **paragraph 16.6**.

## **4. COMPOSITION OF THE BOARD**

- 4.1 Each Partner Authority shall appoint two of its elected members to be its representatives on the Board.
- 4.2 The SWB Members shall be appointed by each Partner Authority in accordance with the Partner Authority's constitution.
- 4.3 For each Partner Authority, one SWB Member shall be the portfolio holder for waste and/or the environment.
- 4.4 All such appointments of SWB Members shall be made in accordance with the relevant statutory provisions of sections 101 and 102 of the LGA 1972 and of the 2000 Regulations, as they may from time to time be applicable to each of the Partner Authorities.
- 4.5 Each SWB Member shall have one vote at meetings of the Board.

- 4.6 Each SWB Member shall remain in office until removed or replaced by his appointing Partner Authority, or in the case of a SWB Member who is a member of an Executive until he ceases to be a member of the Executive of his appointing Partner Authority. Notice of the removal or replacement of a SWB Member shall be given to the Clerk of the Board.
- 4.7 The proceedings of the Board shall not be invalidated by any vacancy or any defect or purported defect in the appointment of any SWB Member.
- 4.8 Any SWB Member may, by giving written notice thereof to the Clerk of the Board, nominate a Substitute Member to attend a meeting of the Board in his place.
- 4.9 Where a Substitute Member takes the place of a SWB Member who is a member of his appointing Partner Authority's Executive then such Substitute Member must also be a member of his appointing Partner Authority's Executive.
- 4.10 A Substitute Member shall have the same rights of speaking and voting at meetings of the Board as the SWB Member for whom he is substituting.
- 4.11 Members of the SMG and the Single Client Group, together with the Treasurer, Monitoring Officer and the Clerk, shall be entitled to attend meetings of the Board to advise the Board on matters relevant to the functions and activities of the Board but shall have no voting rights.
- 4.12 Each Partner Authority may send any of its officers (as it considers to be appropriate) to meetings of the Board, or any sub-committee thereof, to support its SWB Members.

## **5. ROLE OF SWB MEMBERS**

- 5.1 The responsibilities of a SWB Member shall be as follows:
- 5.1.1 to act in the interests of the Board as a whole except where this would result in a breach of statutory or other duty to their Partner Authority or would be in breach of their Partner Authority's adopted code of conduct for elected members;
- 5.1.2 to be committed to, and act as a champion for, the achievement of the Aims and Objectives;
- 5.1.3 to be a good ambassador for the Board;
- 5.1.4 to attend Board meetings regularly, vote on items of business and make a positive contribution to the achievement of the Aims and Objectives;
- 5.1.5 to remain acquainted with emerging technologies and processes in the area of waste management; and
- 5.1.6 to act as an advocate for the Board in seeking any necessary approval from their Partner Authority to the draft Business Plan, the Annual Action Plan and decisions of the Board requiring ratification from their Partner Authority (provided always that the SWB Member approves the relevant document or decision subject to ratification).

## **6. MEETINGS OF THE BOARD**

The provisions of **Appendix 3** shall apply to the conduct of meetings of the Board and its sub-committees. In addition part I of Schedule 12 of the LGA 1972 (in so far as not contrary to the provisions of **Appendix 3**) shall apply to meetings of the Board.

## **7. RESPONSIBILITIES OF THE CHAIRMAN AND VICE-CHAIRMAN**

- 7.1 The responsibilities of the Chairman are as follows:
- 7.1.1 to act as an ambassador for the Board and to represent the views of the Board to the general public and other organisations;
  - 7.1.2 to ensure that the meetings of the Board are conducted efficiently and in accordance with the Standing Orders and Rules of Procedure;
  - 7.1.3 to encourage the Board to delegate sufficient authority to the Managing Director and to other officers of the Single Client Group to enable the Board's functions and activities to be carried out efficiently between meetings of the Board;
  - 7.1.4 together with the SMG to monitor and appraise the performance of the Managing Director;
  - 7.1.5 to establish a constructive working relationship with, and to provide support for any sub-committees and to the Single Client Group or any other officers to whom the Board have delegated any of its powers and functions;
  - 7.1.6 to ensure that the Board monitors and controls the use of delegated powers; and
  - 7.1.7 to liaise with the Administering Authority regarding the Board's meetings and the conduct of its business.
- 7.2 The role of the Vice-Chairman is to deputise for the Chairman during any period of the Chairman's absence or at other times as appropriate and his responsibilities shall be the same as those of the Chairman.
- 7.3 Except as provided by this Constitution, neither the Chairman nor the Vice-Chairman has any authority or powers beyond those of any other SWB Member.

## **8. DELEGATION TO SUB-COMMITTEES AND OFFICERS**

- 8.1 The Board may arrange for any of its functions to be discharged in accordance with the provisions of the Scheme of Delegation.
- 8.2 The Board may appoint working groups consisting of SWB Members, officers from the Administering Authority (including of the Single Client Group) and officers of any of the Partner Authorities to consider specific matters and report back to the Board or any sub-committee with recommendations.

## **9. STRATEGIC MANAGEMENT GROUP**

The roles and responsibilities of the SMG are set out in clause 10 of the Inter Authority Agreement.

## 10. BUSINESS PLAN

- 10.1 Save for the first Financial Year of the operation of the Board, no later than 1 June in each year the Managing Director shall submit a draft Business Plan to the SMG in respect of the next ensuing five Financial Years (covering that Financial Year and the following four Financial Years) (which draft Business Plan shall include a draft Annual Action Plan for the next Financial Year).
- 10.2 The SMG shall within 20 Business Days of receipt of the draft Business Plan consider and provide comments on or suggest amendments to the Managing Director to be included in a revised draft Business Plan and/or draft Annual Action Plan.
- 10.3 Subject to having considered any comments or suggested amendments from the SMG by no later than 31 July in each year (save for the first Financial Year of the operation of the Board) the Managing Director shall submit to the Board the draft Business Plan in respect of the next ensuing five Financial Years (covering that Financial Year and the following four Financial Years) (which draft Business Plan shall include a draft Annual Action Plan for the next Financial Year).
- 10.4 The Board shall consider the suitability of the draft Business Plan and draft Annual Action Plan for the performance during the next five Financial Years of the functions and activities delegated to it by the Partner Authorities (together with the contractual commitments of the Partner Authorities under any relevant contracts including the Principal Contracts) in accordance with the Aims and Objectives and shall use its reasonable endeavours to approve the draft Business Plan and draft Annual Action Plan (subject to such amendments as the Board may require) by no later than 30 November in each year. The draft Business Plan and draft Annual Action Plan shall require the approval of a majority of SWB Members which must include the approval by at least one SWB Member from each Partner Authority who is a member of his Partner Authority's Executive.
- 10.5 The Board shall perform the statutory functions delegated to it by the Partner Authorities and the activities referred to in **paragraph 2** in conformity with the approved Business Plan (including the Annual Action Plan).
- 10.6 At any time within a Financial Year the Board may agree by a majority vote of the SWB Members a proposal to amend the Business Plan (including the Annual Action Plan) for that Financial Year to accommodate any unforeseen circumstances and to assist the Board in achieving the Aims and Objectives.
- 10.7 Where the Board is to consider amendments to the Business Plan (including the Annual Action Plan) in accordance with **paragraph 10.6** above, the Managing Director shall forthwith notify the Chief Executive of each of the Partner Authorities of the proposed amendments. Each Partner Authority shall have a period of 20 Business Days from receipt of the proposed amendments in which to consider them and where a Partner Authority (acting reasonably) considers the proposed amendments to be a Material Change to the Business Plan (including the Annual Action Plan) that Partner Authority shall forthwith (and in any event within five Business Days of expiry of the 20 Business Day notice period) notify the Managing Director that such amendments constitute a Material Change that requires the approval of the Partner Authority.
- 10.8 Where no Partner Authorities serve notice (in accordance with **paragraph 10.7**) on the Managing Director, the Board may implement such proposed amendments.

- 10.9 Where one or more of the Partner Authorities has notified the Managing Director that it considers the proposed amendments to be a Material Change, the Board shall not implement such proposed amendment unless and until the notifying Partner Authority has approved the proposed amendments and informed the Managing Director that it has approved such proposed amendments. Until such time as the proposed amendments have been approved, the current approved Business Plan (as may have been amended from time to time in accordance with this Constitution) shall apply.

## 11. ANNUAL BUDGET

- 11.1 The Annual Budget for the first Financial Year (or part thereof) of the operation of the Board is set out in **Appendix 5**.
- 11.2 The Board and the Partner Authorities will prepare the subsequent Annual Budget for future Financial Years in accordance with the following deadlines:
- 11.2.1 No later than 30 June in each Financial Year each Partner Authority will provide estimates of the additional number of residential properties included in the Council Tax base in its administrative area to the Single Client Group and the Administering Authority;
- 11.2.2 No later than 31 July in each Financial Year the Treasurer will circulate to the Board and to the SMG member and s151 officer of each Partner Authority a draft Annual Budget in respect of the following Financial Year;
- 11.2.3 No later than 30 September in each Financial Year the Board will approve the draft Annual Budget;
- 11.2.4 No later than 30 October in each Financial Year each Partner Authority will submit a report to its elected members to obtain approval for the draft Annual Budget and consider whether the draft Annual Budget should be included in its medium term financial plan;
- 11.2.5 No later than 30 November in each Financial Year each Partner Authority will provide any comments or proposed amendments to the draft Annual Budget to the Board;
- 11.2.6 No later than 20 December in each Financial Year each Partner Authority will provide confirmation of the actual number of additional residential properties included in the Council Tax base in its administrative area as at 1 December in that Financial Year to the Single Client Group and the Administering Authority;
- 11.2.7 No later than 15 January in each Financial Year the Treasurer will insert the actual increases in costs to the Board into the draft Annual Budget and circulate it to the s151 officer and SMG member of each Partner Authority and to the Board;
- 11.2.8 No later than 15 February in each Financial Year each Partner Authority will approve any amendments to the draft Annual Budget;
- 11.2.9 The Board will approve the Annual Budget by no later than 26 February in each Financial Year.
- 11.3 If the Partner Authorities or the Board are unable to approve the draft Annual Budget for a Financial Year before 26 February in any year, the Board shall perform its delegated functions and activities set out in **paragraph 2** in conformity with the approved Annual Budget for the previous Financial Year subject to such adjustment for inflation as



required under the terms of the Principal Contracts and to meet any increased costs of employment of the existing Single Client Group.

- 11.4 At any time within a Financial Year the Board may agree by a majority vote which must include the approval by at least one SWB Member from each Partner Authority who is a member of his Partner Authority's Executive amendments to the Annual Budget for that Financial Year to accommodate any unforeseen change in circumstances and to assist the Board in achieving the performance of its statutory functions and other activities in accordance with the Aims and Objectives.
- 11.5 Where the Board is to consider amendments in accordance with **paragraph** 11.4 above, the Managing Director shall forthwith notify the Chief Executive of each of the Partner Authorities of the proposed amendments to the Annual Budget. Each Partner Authority shall have a period of 20 Business Days from receipt of the proposed amendments in which to consider them and to notify the Managing Director that such amendments require the approval of the Partner Authority.
- 11.6 Where no Partner Authorities serve notice (in accordance with **paragraph** 11.5) on the Managing Director the Board may implement such proposed amendment.
- 11.7 Where one or more of the Partner Authorities has notified the Managing Director that it needs to approve the proposed amendments, the Board shall not implement such proposed amendments unless and until the notifying Partner Authority has approved the proposed amendments and informed the Managing Director that it has approved such proposed amendments.
- 11.8 The Partner Authorities shall each pay their contribution of the Annual Budget to the Administering Authority in accordance with clause 13 and schedule 5 of the Inter Authority Agreement.

## **12. AMENDMENTS TO THE CONSTITUTION**

- 12.1 The Board may at any time by a unanimous vote propose to amend the Constitution.
- 12.2 Any of the Partner Authorities may, if it considers it appropriate to do so, propose amendments to the Constitution and submit any such proposals to the Board.
- 12.3 Where the Board is to consider any proposed amendments in accordance with **paragraph** 12.1 above or has been notified of a proposed amendment by a Partner Authority in accordance with **paragraph** 12.2, the Managing Director shall forthwith notify the Chief Executive of each of the Partner Authorities of the proposed amendments.
- 12.4 Each Partner Authority shall have a period of 20 Business Days from receipt of the proposed amendments in which to consider them and where a Partner Authority (acting reasonably) considers that the proposed amendments constitute a Material Change to the Constitution that Partner Authority shall forthwith (and in any event within 5 Business Days of expiry of the 20 Business Day notice period) notify the Managing Director that such amendments constitute a Material Change that requires the approval of the Partner Authority.
- 12.5 Where no Partner Authorities serve notice (in accordance with **paragraph** 12.4) on the Managing Director the Board may implement such proposed amendments.

- 12.6 Where one or more of the Partner Authorities has notified the Managing Director that it considers the proposed amendments constitute a Material Change, the Board shall not implement such proposed amendment unless and until the notifying Partner Authority has approved the proposed amendments and informed the Managing Director that it has approved such proposed amendments.
- 12.7 Where an amendment of the Constitution is implemented in accordance with **paragraph** 12.5 or **paragraph** 12.6 the Clerk of the Board shall forthwith circulate to each of the SWB Members each Partner Authority and to the Treasurer, Monitoring Officer and Managing Director an amended Constitution incorporating such amendments.

### **13. SCRUTINY ARRANGMENTS**

- 13.1 The decisions, actions and activities of the Board shall be subject to the scrutiny arrangements of each Partner Authority under the 2000 Act.
- 13.2 Subject to **paragraph** 13.1 composite arrangements for the collective scrutiny of the decisions, action and activities of the Board by the Partner Authorities shall operate in accordance with the Collective Scrutiny Arrangements set out in **Appendix 7**.

### **14. CONDUCT AND EXPENSES OF SWB MEMBERS**

- 14.1 SWB Members shall be subject to the code of conduct for elected members adopted by the Partner Authority that nominated them to be a SWB Member.
- 14.2 SWB Members shall be entitled to receive payment of their attendance expenses as a SWB Member in accordance with the LGA 1972 and their Partner Authority shall be responsible for such payments.

### **15. LIABILITY OF BOARD MEMBERS**

A SWB Member shall have the same responsibilities and liabilities as those that apply when sitting on other committees and bodies as an appointed representative of his nominating Partner Authority.

### **16. CESSATION OF MEMBERSHIP OR DISSOLUTION OF THE BOARD**

- 16.1 Any of the Partner Authorities may on giving 12 months' written notice to the Clerk of the Board and the Managing Director withdraw from membership of the Board.
- 16.2 Where any of the Partner Authorities does serve notice to withdraw from membership of the Board, the Partner Authorities shall cooperate and seek to agree the arrangements regarding the relevant Partner Authority's exit from the Board.
- 16.3 In the event of withdrawal from the membership of the Board by a Partner Authority the provisions of clause 14 of the Inter Authority Agreement shall apply.
- 16.4 If two or more Partner Authorities give notice of withdrawal from membership of the Board in accordance with **paragraph** 16.1 in the same Financial Year, the Board shall consider

whether or not it is economic or practicable for the Board to continue to operate on behalf of the remaining Partner Authorities and shall make appropriate recommendations to the remaining Partner Authorities whether or not the Board should continue in operation and if so make recommendations as to any appropriate amendments required to the Constitution and the arrangements for the performance of the functions and activities of the Board.

- 16.5 In the event that the County Council ceases to be a member of the Board the remaining Partner Authorities shall amend the Constitution or reconstitute the Board as necessary to give effect to the withdrawal of the County Council as a waste disposal authority.
- 16.6 A majority of the Partner Authorities may at any time (whether as a result of the Board's recommendations under **paragraph** 16.4 or otherwise) agree (by formal resolutions by each of them) that the Board should be dissolved on a date not less than six months from the date of the decision to dissolve the Board and subject to the provisions of clause 15 of the Inter Authority Agreement.
- 16.7 In the event of a decision by the Partner Authorities to dissolve the Board the provisions of clause 15 of the Inter Authority Agreement shall apply.
- 16.8 If it is agreed by all of the 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 with a view to a new board being established and a replacement constitution on similar terms to this Constitution (as varied by agreement of the proposed Partner Authorities) being completed.

## **17. THE SUPERVISION AND MONITORING OF THE ADMINISTERING AUTHORITY AND THE SINGLE CLIENT GROUP**

- 17.1 The duties of the Administering Authority and the Single Client Group pursuant to clauses 5 and 8 of the Inter Authority Agreement are set out in **Appendix 6**.
- 17.2 The Board shall appoint the Managing Director.
- 17.3 The Board shall receive regular reports from the Managing Director on the activities and performance of the Administering Authority (including the Single Client Group) in relation to their duties set out in clauses 5 and 8 of the Inter Authority Agreement. In addition, the SMG shall receive regular reports from the Managing Director on the activities and performance of the Single Client Group.
- 17.4 The Board and the Managing Director shall also receive regular reports from the Treasurer on the financial performance of the Board.
- 17.5 Copies of such reports and the decisions of the Board thereon shall be circulated to each of the Partner Authorities.

## APPENDIX 1

### Statutory functions and activities delegated to the Board

#### Part I

The Board's functions shall comprise the statutory functions of each of the Partner Authorities under each of the following enactments (which for the avoidance of doubt shall include all subordinate legislation made under the relevant enactment):

1. Environmental Protection Act 1990 Part II s. 34, s.45, s.46, s.47, s.48, s.51, s. 52, s.55;
2. Waste and Emissions Trading Act 2003 s.6 -s.9, s.12, s.14, s.31; s.32;
3. Waste Minimisation Act 1998 s.1;
4. Household Waste and Recycling Act 2003 s.1;
5. Environment Act 1995 s.108, 109;
6. Local Government Act 1972 s.111, in so far as its use is calculated to facilitate or is incidental or conducive to the discharge of any of the functions referred to in paragraphs (a) to (h) of this Appendix; and
7. Local Government Act 2000 s.2, in so far as its use relates to the promotion or improvement of the economic, social and/or environmental well-being of the whole of the County of Somerset or any part thereof in respect of matters directly related to the management or recycling of waste.

#### Part II

In performance of the statutory functions referred to in Part I the Board shall also undertake the following activities on behalf of the Partner Authorities:

1. manage the Principal Contracts for the delivery of an integrated waste management service across the County of Somerset in so far as such service relates to all or any of the areas of the Partner Authorities through the Single Client Group;
2. supervise and monitor the performance of the Managing Director, the Administering Authority (including the Single Client Group) in the performance of their duties and functions under the Inter Authority Agreement;
3. approve and implement the Business Plan;
4. approve and implement Annual Action Plan;
5. seek to influence and advise central government on waste and recycling policies;
6. commission research and associated public opinion surveys etc. on waste and recycling;
7. ensure that the legal and statutory functions delegated to it by the Partner Authorities are being discharged effectively;
8. liaise with the Managing Director to ensure that a strategic policy for waste and recycling across the County of Somerset is formulated and approved; and
9. assist the Partner Authorities in meeting their respective responsibilities (including but not limited to) the:

- (a) European Community Strategy for Waste Management 1989 (as reviewed in 1996);
- (b) EU Directive 757 4427 EEC as amended by Directive 917 1567 EEC and adapted by Directive 967 3507 EEC on Waste (The Framework Directives on Waste);
- (c) Environmental Protection Act 1990;
- (d) Public Health Act 1936;
- (e) Anti-Social Behaviour Act 2003;
- (f) Clean Neighbourhoods and Environment Act 2005;
- (g) Refuse Disposal (Amenity) Act 1978 (insofar as this relates to abandoned vehicles, public safety and amenity);
- (h) Environmental Protection (Waste Recycling Payments) Regulations 1992 (as amended 1994);
- (i) National Waste Strategy 2000;
- (j) Waste Strategy for England 2007;
- (k) EU Landfill Directive (Council Directive 1993/317 EC);
- (l) EU IPPC Directive (Council Directive 967 617 EC);
- (m) Landfill Tax Regulations and the Finance Act 1996;
- (n) Controlled Waste Regulations 1992;
- (o) Environmental Protection (Duty of Care) Regulations 1991;
- (p) Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991;
- (q) Environment Act 1995;
- (r) Waste Emissions Trading Act 2003;
- (s) Household Waste and Recycling Act 2003;
- (t) EU Waste Electronic and Electrical Equipment Directive;
- (u) Local Government Act 1999 (best value duty);
- (v) Local Government Act 2003 (duties under the Code of Practice for Workforce Matters);
- (w) Controlled Waste (Registration of Carriers and Seizure of Vehicles) (Amendment) Regulations 1998, SI 605;
- (x) End-of-Life Vehicles Regulations 2003, SI 2635;
- (y) End-of-Life Vehicles (Producer Responsibility) Regulations 2005, SI 263;
- (z) Environmental Protection (Duty of Care) (England) (Amendment) Regulations 2003, SI 63;
- (aa) EU Regulation on the Supervision and Control of Shipments of Waste 259/1993;
- (bb) EU Regulation laying down Health Rules concerning Animal By-Products not intended for Human Consumption 1774/2002;
- (cc) Waste Electrical and Electronic Equipment Regulations 2006, SI 3289;

- (dd) Waste Electrical and Electronic Equipment (Waste Management Licensing) (England and Wales) Regulations 2006, SI 3315;
- (ee) Waste Incineration (England and Wales) Regulations 2002, SI 2980;
- (ff) Waste Management (England and Wales) Regulations 2006, SI 937;
- (gg) Waste Management Regulations 1996, SI 634; and
- (hh) Pollution Prevention and Control Act 1999.

## APPENDIX 2

### Aims and Objectives of the Somerset Waste Board

1. Each of the Partner Authorities recognise in particular the need to address central government and EU targets for recycling and recovery of waste and the promotion of sustainable development including the use of waste as a resource and waste minimisation.
2. Each of the Partner Authorities, in recognition of the need for delivering best value, promoting financial efficiency and effectiveness, and securing continuous improvement in the provision of waste management services, wish to:
  - 2.1 develop and deliver long term strategies in respect of the collection and disposal of waste;
  - 2.2 consider managing waste from outside Somerset if commensurate benefits accrue and such action has been approved by all of the Partner Authorities;
  - 2.3 be recognised as a leading provider of sustainable waste management services in the United Kingdom;
  - 2.4 procure services, facilities, assets and solutions to meet the current and future central government and European targets for recycling and recovery of waste;
  - 2.5 work together in a spirit of mutual trust, support and respect, and to ensure that when difficulties or differences of opinion arise they are addressed quickly, honestly and openly;
  - 2.6 share in a fair and equitable manner the costs and work included in achieving these Aims and Objectives;
  - 2.7 endeavour to fully engage all stakeholders and to maximise the benefits arising from the co-operation of the Partner Authorities through the Board and the contributions that each Partner Authority may be able to make through its participation in the Board; and
  - 2.8 provide a forum and mechanisms for ensuring that there is a coherent programme and organisational structure for waste management and for joint working.

### APPENDIX 3

#### Provisions governing the conduct of meetings of the Board

1. At its first meeting the Board shall:
  - 1.1 adopt its Standing Orders and Rules of Procedure (which shall be based on those of the Administering Authority, subject to such amendments or additions as the Board sees fit);
  - 1.2 adopt a Scheme of Delegation; and
  - 1.3 elect from among the SWB Members the first Chairman and Vice-Chairman by a simple majority of votes provided that if a deadlock occurs between two or more SWB Members a second secret ballot shall immediately be conducted for the election of the Chairman and Vice-Chairman; and
  - 1.4 approve the schedule of meetings for the remainder of the year.
2. Subject to **paragraph** 5 of this Appendix 3 and paragraph 1.14 of Appendix 7, and the need exceptionally to call additional meetings, the Board shall meet at least four times each year. The Chairman shall decide the venue, date and time of all meetings of the Board. Wherever practicable, at least 10 Business Days notice of such meetings shall be given to each SWB Member, the Managing Director, the Treasurer, the Monitoring Officer and to each of the Partner Authorities by the Clerk.
3. At the Annual General Meeting, the Board shall elect from among the SWB Members the Chairman and Vice-Chairman for the next year by a simple majority of votes provided that if a deadlock occurs between two or more SWB Members a second secret ballot shall immediately be conducted for the election of the Chairman and Vice-Chairman.
4. Meetings of the Board shall be open to the public and press except during consideration of items containing confidential or exempt information in accordance with the provisions of sections 100 to 100K of the LGA 1972; and reports to and the minutes of the Board shall (subject to the provisions of sections 100 to 100K of the LGA 1972) be available to the public and press as though they were the reports or minutes of a meeting of a Partner Authority.
5. Any SWB Member may requisition a meeting of the Board by giving notice of such requisition to the Chairman and to the Clerk. Immediately upon receipt of such requisition, the Chairman shall call a meeting of the Board in accordance with **paragraph** 2 of this Appendix 3 which shall be no later than 10 Business Days after the receipt by the Clerk of the Board of the notice of requisition.
6. The Standing Orders and Rules of Procedure shall be applicable to meetings of the Board. The Standing Orders and Rules of Procedure may only be amended or replaced if the amendment or replacement is agreed by not less than three-quarters of the SWB Members.
7. No business may be transacted at a meeting of the Board unless a quorum is present, subject to **paragraph** 6 of this Appendix 3. The quorum for a meeting of the Board shall be six SWB Members which shall include at least one SWB Member appointed by each of four different Partner Authorities.



8. Where the business of a meeting includes the approval or amendment of the Business Plan or the Annual Action Plan the quorum for that item of business shall be at least one SWB Member from each Partner Authority who shall be a member of his Partner Authority's Executive.
9. If a quorum is not present within 30 minutes of the time set for the commencement of a meeting of the Board (or a quorum ceases to be present during a meeting) the meeting shall be adjourned to the same time and venue five Business Days later or to such other date, time and venue as the Chairman (or other person who is chairing the meeting) shall determine.
10. The Chairman or Vice-Chairman may be removed by a majority vote of all of the SWB Members present at a meeting of the Board subject to the Chairman or the Vice-Chairman being given the opportunity to address the meeting before the vote is taken to put his case as to why he should not be removed.
11. If the Chairman or the Vice-Chairman is removed by a majority vote of the Board or resigns or is otherwise unable to continue as Chairman or Vice-Chairman he may be replaced by the election of an SWB Member as Chairman or Vice-Chairman as the case may be by a majority vote of the Board (in accordance with the provisions of **paragraph 3** of this Appendix 3).
12. The Chairman shall normally preside at all meetings of the Board. If the Chairman is not present within 15 minutes of the time for the commencement of a meeting, or being present does not wish to preside or is unable to do so, then the Vice-Chairman shall preside at that meeting. If (in the event of the absence or non-availability of the Chairman) the Vice-Chairman is not present within 15 minutes of the time for the commencement of the meeting or does not wish to preside or is unable to do so, the meeting shall appoint another SWB Member to chair the meeting.
13. In the event of an equality of votes in relation to an agenda item at the first Board Meeting at which that agenda item is discussed, the person chairing that meeting shall not have a second or casting vote, if a vote to defer that agenda item ("**Deferral Vote**") is passed by a majority of the SWB Members present. In the event of a Deferral Vote the agenda item shall be deferred for a period of not less than five Business Days ("**Deferral Period**") and the Board Meeting shall be adjourned to a date beyond the expiry of the Deferral Period as determined by the person chairing the meeting. During the Deferral Period the SWB Members shall be able to consult their Partner Authorities and discuss the agenda item with other SWB Members. At the adjourned Board meeting the agenda item shall be discussed again and any written views received from Partner Authorities shall be reported to the Board for consideration by the meeting. If at the adjourned meeting there is an equality of votes in relation to that agenda item the person chairing that meeting shall have a second or casting vote.

## **APPENDIX 4**

### First Business Plan

#### **1. INTRODUCTION**

- 1.1 The Business Plans and the associated Annual Action Plans will be based on SMART (Specific, Measurable, Achievable, Realistic and Timed) targets, with group or individual responsibilities clearly identified.
- 1.2 The draft five year Business Plan shall be prepared by no later than 31<sup>st</sup> July in each Financial Year and shall set out in a draft Annual Action Plan the strategy for the achievement of the Objectives over the following twelve month period.
- 1.3 The Plans will specify the activities to be undertaken, and arrangements to be entered into, in support of that strategy, together with a full assessment of the short and long term financial, resource, legal and contractual implications for the Somerset Waste Board, the Single Client Group, the Administering Authority and each of the Partner Authorities.

#### **2. FUTURE BUSINESS PLAN FRAMEWORK**

- 2.1 Somerset Waste Board – The Business
  - Description
  - Brief History
  - The Vision
  - Recognition
  - Services Provided
  - Key Issues and Challenges (Somerset, UK, Europe)
  - Performance
  - Compliance
  - Cost
  - Waste Growth
- 2.2 Customers and Markets
  - Stakeholders
  - LATS Market
  - Materials Marketing
  - Profit Sharing
  - Public Relations
- 2.3 Key Aims and Priorities
  - Annual Goals and Objectives
- 2.4 Key Projects
- 2.5 Risk Management
- 2.6 Finance
  - Medium Term Financial Plans

- 2.7 Review of Principal Contracts
- 2.8 Governance and Management

### **3. KEY PRIORITIES 2007 – 2008**

- 3.1 Commencement and development of the new Somerset Waste Board.
- 3.2 Commencement of a new single County wide recycling and refuse collection contract with ECT.
- 3.3 Initiate large scale trials of Sort It + Plastic and Cardboard Collections.
- 3.4 Establish the new Single Client Group (create a new office, set up new IT and communication systems, enhanced customer contact arrangements, implement new working practices and operational procedures).
- 3.5 Continue to strengthen the Strategic Partnership with Viridor Waste Management and develop plans for residual waste treatment.
- 3.6 Develop and implement plans to provide a second food waste treatment facility.
- 3.7 Deliver the Somerset Waste Action Programme and the Somerset Waste Minimisation Strategy to maximise public participation in waste minimisation and recycling.
- 3.8 Monitor the implementation of the Landfill Allowance Trading Scheme (LATS) trading and investment strategy.

## APPENDIX 5

### First Annual Budget

SWB DRAFT BUDGET 2007/08

(14 October 2007 to 31 March 2008 )

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# DRAFT

#### Expenditure

##### Single Client Group

Salaries & on-costs	437,021
Travel & Subsistence	43,702
Admin, training, meetings & IT	43,702
Advertising & campaigns	46,154
Office rent & accommodation	25,385
SWAP Team	78,462

##### Support Services

Legal	13,846
Insurance	4,615
Finance	23,077
Audit	4,615
Human Resources	13,846
ICT	18,462
Customer Services	0
Other support services	9,231

##### Direct Services

##### Waste Disposal

Disposal - Landfill	2,356,154
Disposal - HWRCs	3,393,692
Disposal - IVC (food waste)	376,154
Disposal - Hazardous waste	574,154
Composting	490,615

##### Kerbside Recycling

Weekly (TDBC;MDC;SSDC)	1,778,755
Fortnightly (WSDC;SDC)	225,401
Cardboard Collection (WSDC)	27,692

##### Garden Waste Collections

761,328

##### Household Refuse

Fortnightly (TDBC;MDC;SSDC)	1,341,194
Weekly (WSDC;SDC)	880,390
Weekly (TDBC;MDC)	30,745
Household Refuse - Communal	59,985

##### Food Waste Transfer

90,004

##### Bring Banks

Strategic sites	51,910
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Neighbourhood sites	48,795
<b>Schools &amp; SS Recycling</b>	35,538
<b>Clinical Waste</b>	
Household Collections	41,005
Other Collections	1,041
Clinical Waste Disposal	1,662
<b>Bulky Waste Collections</b>	77,429
<b>Communal Recycling</b>	38,209
<b>Schools &amp; SS Refuse</b>	26,022
<b>Commercial Waste</b>	
Commercial waste collection	5,936
Commercial waste disposal	13,938
<b>SWB Directed Collections</b>	1,117
<b>Container Maintenance &amp; Delivery</b>	
Internally and externally clean	1,745
'Basic Maintenance/repairs'	335
'Major Maintenance/repairs'	671
2 Wheeled Bin Repair	17,465
Delivery of Sort-it! New Household Kit	1,056
Delivery of Sort-it! New Household Kit	637
Delivery of 4 wheeled bins	134
Delivery of 2 wheeled bins	10,998
Delivery of Kerbside Box	10,998
Delivery of Food Waste Containers	10,998
<b>Day Works</b>	2,886
<b>Admitted Body Pension Costs</b>	
Base pension cost	35,277
Incremental pension cost	12,760
<b>Transitional Costs</b>	83,218
<b>Depot Costs</b>	76,154
<b>Bring Site Bin Financing</b>	46,538
<b>Schools Bin Financing</b>	0
<b>ECT Discount</b>	-93,336
<b>Inter Authority Transfers</b>	
<b>Transfer Station Avoided Cost</b>	115,385
<b>WDA Avoided Disposal</b>	635,182
<b>Vehicle Financing</b>	-66,385
<b>Total Direct Expenditure</b>	<u>14,393,694</u>
<b>Income</b>	
Garden waste charges	-320,875
Bulky waste charges	-36,688
Hazardous waste grant	-97,846

**DRAFT**

Commercial waste charges		-28,892
DEFRA Waste Performance & Efficiency Grant		-418,615
Schools & Social Services		-61,561
Avoided Waste Transfer		-115,385
WDA Avoided Disposal		-635,182
<b>Total Income</b>	<b>DRAFT</b>	<u><u>-1,715,044</u></u>
<b>Total Net Expenditure</b>		<u><u>12,678,650</u></u>

## APPENDIX 6

Roles and duties of the Administering Authority, the Single Client Group, the

### 1. THE ADMINISTERING AUTHORITY

- 1.1 The roles and duties of the Administering Authority as set out in clause 5 of the Inter Authority Agreement are to:
- 1.1.1 arrange for the Single Client Group to discharge its roles and functions as set out in clause 8 of the Inter Authority Agreement;
  - 1.1.2 receive each Partner Authority's share of the Annual Budget calculated in accordance with the principles set out in Schedule 5 of the Inter Authority Agreement;
  - 1.1.3 make the payments due under the Principal Contracts;
  - 1.1.4 ensure that the Board operates in accordance with the Constitution and Standing Orders and Rules of Procedure including notifications for meetings of the Board;
  - 1.1.5 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;
  - 1.1.6 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;
  - 1.1.7 subject to clause 4.4 of the Inter-Authority Agreement provide promptly and diligently such legal advice as requested by the Board from time to time;
  - 1.1.8 provide promptly and diligently such human resources advice and services as requested by the Board from time to time;
  - 1.1.9 provide promptly and diligently such additional administrative resources and office facilities that may be reasonably necessary to discharge the Board's functions;
  - 1.1.10 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;
  - 1.1.11 be the contracting authority on behalf of the Board;
  - 1.1.12 to carry out any functions delegated to it by the Board; and
  - 1.1.13 instigate and defend legal proceedings on behalf of the Board, the other Partner Authorities and itself as appropriate.
- 1.2 The Administering Authority shall be responsible for the appointment, employment and management of the staff of the Single Client Group (other than the Managing Director who shall be appointed by the Board in accordance with clause 5.5 of the Inter Authority Agreement) 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.

- 1.3 The Administering Authority shall provide such administrative resources and office facilities that may be reasonably necessary to enable the Single Client Group to carry out its functions and activities.
- 1.4 The Administering Authority shall be responsible for the employment of the Managing Director on such terms and conditions as agreed by the Board and the Administering Authority shall be responsible for the payment of the salary, wages, income tax, national insurance contributions, and all other payments and emoluments of the Managing Director provided that such payments shall not, without the approval of the Board exceed the amount specified within the Annual Budget for such expenditure.
- 1.5 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.

## **2. THE SINGLE CLIENT GROUP**

- 2.1 The roles and duties of the Single Client Group as set out in clause 8 of the Inter Authority Agreement are to:
  - 2.1.1 monitor and manage the performance of the Principal Contracts;
  - 2.1.2 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;
  - 2.1.3 advise the Board generally on waste management initiatives (both local and national) and the progress in delivering the Aims and Objectives;
  - 2.1.4 prepare reports and recommendations for the consideration by the Board, support the setting of the strategic direction of the Board and the context within which services are developed, managed and operated;
  - 2.1.5 ensure that where any information is received from or requested by a supplier or contractor, 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;
  - 2.1.6 refer any requests from the 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. 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;
  - 2.1.7 prepare and make recommendations to the Board on waste management issues involving central government and other external agencies; and
  - 2.1.8 provide a full assessment of the short, medium and long term financial, resource, service, legal and contractual implications of the waste management service for the Board, the Administering Authority and each Partner Authority.



### **3. THE STRATEGIC MANAGEMENT GROUP**

3.1 The Partner Authorities agree that the SMG shall have the following role and responsibilities:

- 3.1.1 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;
- 3.1.2 to ensure that the duties of the Partner Authorities with respect to best value are complied with;
- 3.1.3 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** prior to submission to the Board for approval;
- 3.1.4 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** before submission to the Board and each Partner Authority for approval;
- 3.1.5 to consider the reports submitted by the Managing Director regarding the performance of the Board; and
- 3.1.6 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.

### **4. ROLES OF THE OFFICERS TO THE BOARD**

#### **Clerk**

The Partner Authorities agree that the role of the Clerk shall be to provide clerical and administrative support to the Board including, but not limited to, calling meetings of the Board, taking minutes at meetings and circulating agendas and minutes and other papers.

#### **Treasurer**

The Partner Authorities agree that the role of the Treasurer shall be to perform the role and functions as set out in the Inter Authority Agreement and in particular those duties set out in clauses 5.2.5, 16.1 and 16.3 of the Inter Authority Agreement.

## APPENDIX 7

### Collective Scrutiny Arrangements

- 1.1 The decisions made by the Board shall for the time being be subject to the scrutiny arrangements of each Partner Authority and each Partner Authority acknowledges the requirements in paragraph 1.8 below for cooperation between the respective Scrutiny Committees of each Partner Authority. The potential for the establishment of formal joint scrutiny arrangements once permissible under legislation will be investigated by the Clerk for consideration by the Board and adoption following consultation with the Partner Authorities.
- 1.2 Any decision of the Board, except those agreed as urgent in accordance with **paragraph 1.3** of this Appendix, shall not be implemented until the Scrutiny Arrangements of the Partner Authority whose membership has called in the decision or action has been completed.
- 1.3 Where the Board decides that a decision must be implemented without delay and as a matter of urgency any subsequent 'call in' of that decision should normally relate only to the process leading to the decision and not to the decision itself.
- 1.4 A summary record of decisions made by the Board will be made available to the public via the website of the Administering Authority within two Business Days of the decision being made. At the same time the Administering Authority will notify the summary record of decisions to all Partner Authorities for them to make available to their members as they see fit. The summary record will indicate which of the decisions are subject to the urgency provision and therefore are not available to be 'called in' prior to implementation.
- 1.5 All decisions of the Board (unless urgency is specified in accordance with **paragraph 1.3** of this Appendix) to be subject to call-in within five Business Days of publication. If not called in during that period any decision shall then be available for implementation.
- 1.6 A call in of a decision should only be permitted if the decision directly affects the Partner Authority whose membership wishes to call it in.
- 1.7 The SWB Members and the relevant officers from each Partner Authority (including the officers of the Single Client Group employed by the Administering Authority) shall fully cooperate with the relevant Scrutiny Committee of any of the Partner Authorities. The Managing Director may identify the appropriate officer(s) to attend a scrutiny meeting. The SWB Chairman may nominate the SWB Member(s).
- 1.8 Where a decision is called in by more than one Partner Authority, each of the Scrutiny Committees of each of the Partner Authorities calling in the decision will be invited to meet jointly to hear evidence, views, options considered, reasons for decision and to ask questions of appropriate SWB Member(s) and officers of the Administering Authority (including of the Single Client Group) and others invited to participate.
- 1.9 After these "hearings", each relevant Scrutiny Committee will meet separately to decide on what comment, view or recommendations (if any) it wishes to make to the Board.
- 1.10 Where the account to be given to the Scrutiny Committee requires the production of a report, then the SWB Member or officer concerned will be given sufficient notice to prepare the documentation.

- 1.11 A SWB member who is also a member of a Scrutiny Committee or a sub-committee of such a committee should regard himself as having a personal and a prejudicial interest if a Scrutiny Committee consideration relates to a decision made, or action taken, by the SWB or any sub committee of the Board.
- 1.12 Any other SWB Member attending a scrutiny meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action should declare a personal interest.
- 1.13 Once it has formed recommendations on a call-in (or proposals for development in accordance with **paragraph** 1.16 of this Appendix) a Scrutiny Committee shall prepare a formal report and submit it for consideration by the Board.
- 1.14 The Board shall consider the report of a Scrutiny Committee at its next suitable meeting and shall issue a formal response to such a report.
- 1.15 The Clerk shall monitor the operation of the provisions relating to call-in and urgency annually, and submit a report to the Board with proposals for review if necessary.
- 1.16 A Scrutiny Committee should notify one of the SWB Members for his Partner Authority if it includes in its work programme any aspect of policy development or review relating to the work or functions of the Board.

APPENDIX B

DATED

2007

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SOMERSET COUNTY COUNCIL

and

MENDIP DISTRICT COUNCIL

and

SEDGEMOOR DISTRICT COUNCIL

and

SOUTH SOMERSET DISTRICT COUNCIL

and

TAUNTON DEANE BOROUGH COUNCIL

and

WEST SOMERSET DISTRICT COUNCIL

---

INTER-AUTHORITY AGREEMENT  
relating to the Somerset Waste Board

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## INTER-AUTHORITY AGREEMENT

**DATE**

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) TAUNTON DEANE BOROUGH COUNCIL of The Deane House, Belvedere Road, Taunton, Somerset TA1 1HE ("**Taunton Deane**"); and
- (6) WEST SOMERSET DISTRICT COUNCIL of 20 Fore Street, Williton, Somerset TA4 4QA ("**West Somerset**").

### **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 and in order that they may 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.
- (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 a joint committee to be known as The Somerset Waste Board (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 of the Board as set out in **Schedule 1** (The Constitution).

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:

**“2000 Act”**

means the Local Government Act 2000;

**"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;

**"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 to the Board appointed pursuant to **clause** 4.1.1;

**"Collection Contract"**

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

**"Collection Contractor"**

means [insert collection contractor's details];



**"Commencement Date"**

means [ July] 2007;

**"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;

**"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**;

**"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, Taunton Deane and West Somerset 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 the 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 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 a Partner Authority;
- (c) committing any offence relating to this Agreement, the Principal Contracts or in relation to the operation and administration of the Board:
  - (iii) under the Prevention of Corruption Acts 1889–1916;
  - (iv) under the LGA 1972;
  - (v) under legislation creating offences in respect of fraudulent acts; or
  - (vi) 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** to serve the Board;

**"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 as adopted by the Board from time to time;

**"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 as 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;

### **"the 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;

### **"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;

### **"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 to the nature or operation of this Agreement, 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 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.

3.6 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 in accordance with paragraph 12.4 of the Constitution.

3.7 The Board shall continue in existence unless and until dissolved in accordance with 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 Chief Financial Officer of the Administering Authority;
- 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 to provide clerical and administrative support to the Board including, but not limited to, calling meetings of the Board, taking minutes at meetings and circulating agendas, minutes and other papers.
- 4.3 The role of the Treasurer shall be to perform the role and functions as set out in this Agreement and in particular those duties set out in **clauses** 5.2.5, 16.1 and 16.3 of this Agreement.

#### **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 (Pooled 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 (Pooled 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 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 employed in accordance with **clause** 5.5) 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 be responsible for the employment of the Managing Director on such terms and conditions as agreed by the Board and the Administering Authority shall be responsible for the payment of the salary, wages, income tax, national insurance contributions, and all other payments and emoluments of the Managing Director provided that such payments shall not, without the approval of the Board exceed the amount specified within the Annual Budget for such expenditure.

- 5.6 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** (Pooled 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 promptly and as soon as reasonably practicable.
- 6.6 Each Partner Authority shall consider any such proposed amendments to the Business Plan (including the Annual Action Plan) under paragraph 10.9 of the Constitution in good faith and act reasonably in considering whether or not the proposed amendments amount to a material change 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.

## **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 Clerk of the Board 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 and the provisions of **clause 15** and **Schedule 7** (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:

- 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 the consideration by the Board, support the setting of the strategic direction of the Board and the context within which services are developed, managed and operated;
- 8.1.5 ensure that where any information is received from or requested by a supplier or contractor, 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 the 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. 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; and
  - 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.
- 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.

## 9. THE MANAGING DIRECTOR

- 9.1 The Partner Authorities agree that the Managing Director shall be appointed by the Board in accordance with 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 and in accordance with the scheme of delegation adopted by the Board in accordance with paragraph 17.2 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** (Pooled 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 role 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 Best Value are complied with;
  - 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 and to the Board 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 and to the Board 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** (Pooled 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 Each Partner Authority should pay to the Board by way of 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** (Pooled Budget and Cost Sharing Agreement) on the Precept Dates.

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 within the first 10 Business Days of each month 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 11<sup>th</sup> Business Day of such month) for each day a Partner Authority is late in making such payment.

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

- 14.1 Any of the Partner Authorities may on giving 12 months' written notice to the Clerk of the Board and the Managing Director in any year withdraw from membership of the Board.
- 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;
- 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 (Pooled 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 which require a legal agreement between the Partner Authorities.

## **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 the requirements of the Local Authorities (Accounts and Audit) Regulations 2003 and the Audit Commission Act 1998 and with the requirements of relevant central government departments, H.M. Customs and Revenues, and all other applicable requirements.
- 16.2 The Administering Authority shall procure that the accounts of the Board shall be audited annually in accordance with the requirements of the Audit Commission Act 1998 and the Local Authorities (Accounts and Audit) Regulations 2003 by the external auditor appointed by the Audit Commission.
- 16.3 The Administering Authority shall procure that the Treasurer shall ensure that all financial statements including information relating to group accounts and audit reports shall be submitted to the Board for approval and copies shall be provided to the s151 officer of each Partner Authority by no later than 31 July in each Financial Year.

## **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** (Pooled 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 any other Partner Authority (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, wilful misconduct or a breach of this Agreement by any other Partner Authority or an agent, contractor or employee of any other 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 any provision of this Agreement 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.

### **Conduct of claims**

- 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
  - (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** (Pooled 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 of 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 they accept the terms of and agree 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** (Pooled 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** (Pooled 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 Clerk of the Board.
- 20.2 A meeting of the Board shall be convened by the Clerk within 20 Business Days from the date of service of the Review Notice and the SMG shall determine the terms of reference of the review and the person or persons 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 proposes to make to this Agreement and report to the Partner Authorities with its recommendations.
- 20.5 Where the Board has agreed any proposed 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 to this Agreement that Partner Authority 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.
- 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, 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 to 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 Authority 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 Practices 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 a compliance of the Board or as the case may be the Administering Authority with this **clause 22.6**.
- 22.7 The Board or as the case may be the Administering Authority shall procure that any contractors or sub-contractors 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 witness 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** (Data Protection) 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**

25.2.1 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**

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**

Except where expressly provided, this Agreement constitutes the entire agreement between the 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**

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 the Board or a Partner Authority (or SWB Member or anyone employed by or acting on behalf 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 If a Prohibited Act is committed by the Board, a Partner Authority, a SWB Member or by an employee not acting independently of the Board then any of the other Partner Authorities may terminate this Agreement by giving notice to the Clerk of the Board and to the Chief Executives of the other Partner Authorities.
- 31.2.3 If the Prohibited Act is committed by a SWB Member or an employee of the Administering Authority or by a Partner Authority acting independently of the Board or the other Partner Authorities, then any Partner Authority may give notice to the Clerk to the Board and to the other Partner Authorities of termination and this Agreement will terminate, unless within 20 Business Days of receipt of such notice the Administering Authority or the relevant Partner Authority suspends the employee's employment and

takes action under the Partner Authority's disciplinary procedure or the relevant SWB Member is removed from the Board by his Partner Authority.

- 31.2.4 Any notice of termination under this **clause 31** shall specify:
- (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the relevant Partner Authority believes has committed the Prohibited Act; and
  - (c) the date on which this Agreement will terminate, in accordance with the applicable provision of this **clause 31**.
- 31.2.5 In the event of termination under this **clause 31** the provisions of **Schedule 6** shall apply.

## **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.

### **32.4 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, a Partner Authority may refer the dispute to an arbitrator.

32.4.2 If the Partner Authorities cannot agree on an arbitrator, the Partner Authorities shall appoint an arbitrator nominated by the chairman for the time being of the Chartered Institute of Arbitrators.

32.4.3 The arbitration shall be governed by the provisions of the Arbitration Act 1996.

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

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to **clause 32** (Dispute Resolution), 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

[INSERT ADDRESS]

[INSERT FAX NUMBER]

For the attention of:

#### Partner Authority

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

County Hall, Taunton, Somerset TA1 4DY

01823 356113

For the attention of: Corporate Director - Environment

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

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

01278 446412

For the attention of: Corporate Director (Regeneration)

##### **Taunton Deane Borough Council**

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

#### Partner Authority

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

Cannards Grave Road, Shepton Mallet, Somerset BA4 5BT

01749 344050

For the attention of: Business Unit Manager – Planning & Environment

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

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

01935 462188

For the attention of: Corporate Director (Environment)

##### **West Somerset Council**

20 Fore Street, Williton, Somerset TA4 4QA

01823 356329

01984 635365

For the attention of: Strategic Director

For the attention of: Corporate Director

**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 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.

**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 collection and recycling services or any services which are substantially the same as the management of waste 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;

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

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

#### 2. COMMENCEMENT

On the Commencement Date the provisions of this **Schedule 2** shall apply.

#### 3. TRANSFER OF ASSETS

- 3.1 The assets identified in the list (the **"Asset List"**) attached as **Appendix 1** to this **Schedule 2** shall be transferred from the relevant Partner Authorities into the possession and ownership of the Administering Authority.
- 3.2 Where any additional assets are required to be transferred into the Administering Authority, the relevant Partner Authority(ies) shall cooperate with the Board in the transfer of such assets to the Administering Authority.

#### 4. TRANSFER OF EMPLOYEES

##### 4.1 **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.

#### **4.2 Administering Authority's responsibilities**

The Administering Authority shall:

- 4.2.1 subject to the right of any Transferring Employee to object to being employed by the Administering Authority, accept into employment the Transferring Employees on the Commencement Date upon the same terms and conditions of employment and length of service as they enjoyed immediately prior to the Commencement Date;
- 4.2.2 become responsible for the payment of all salaries and provision of other contractual benefits (including those implied through custom and practice) and deductions of any Relevant Employees with effect from the Commencement Date.
- 4.2.3 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 to give notice to such person to terminate such contract of employment.

#### **4.3 Partner Authorities' responsibilities**

- 4.3.1 The Partner Authority who employed the relevant Transferring Employees immediately prior to the Commencement 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 Commencement Date (whether or not due for payment at the Commencement Date).

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

- 5.1 The Partner Authority 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 come to an end upon the commencement date for the Collection Contract.
- 5.2 Each Partner Authority shall remain responsible for its current waste collection and recycling arrangements until the commencement date for the Collection Contract or such other date as agreed by the Partner Authorities in consultation with the Board.
- 5.3 Each Partner Authority shall have due regard to any instructions issued by the Board in respect of the operation of its current waste collection and recycling services and shall not make any material change to its current arrangements without consulting the Board.

## **APPENDIX 1**

### Asset List

## **APPENDIX 2**

### Transferring Employees

## 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 In this **Schedule 3**, the following words shall have the following meaning:

**"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;

**"Board Assets"**

means any assets purchased by the Outgoing Administering Authority using the funds of the Board;

**"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 a 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 **paragraph 4.2** of this **Schedule 3** and the Collection Contract;

**"Novation Notice"**

means the notice served on the Collection Contractor in accordance with **paragraph 4.2** of 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 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 has 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 agreed to resign 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.
- 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**

- 3.2 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**.

3.3 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 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.

3.4 At 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.

### 3.5 **Option to Purchase or Use Outgoing Administering Authority Assets**

3.5.1 The Outgoing Administering Authority shall prepare a list of the Outgoing Administrating Authority Assets and the Board Assets.

3.5.2 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; and

3.5.3 The Outgoing Administering Authority shall immediately transfer any Board Assets to the Replacement Administering Authority and the provisions of **paragraph** 3.5.6 shall apply to such assets as if they were transferring Outgoing Administering Authority Assets.

3.5.4 An option set out in **paragraph** 3.5.2 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 one month prior to the Handover Date, and the option shall take effect on the Handover Date.

3.5.5 Within five Business Days of receipt of notice from the Replacement Administering Authority that it shall exercise an option set out in **paragraph** 3.5.2 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.

3.5.6 Whenever, pursuant to this **paragraph** 3.5, 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.

### 3.6 **Assignment or Novation of Third Party Contracts and Outgoing Administering Authority Subcontracts**

3.6.1 In relation to any third party contracts (other than the Collection Contract), where no third party consents are required to assign such contracts, the Outgoing Administering Authority shall prepare and execute assignments of such contracts to the Replacement Administering Authority.

3.6.2 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.

3.6.3 Where a third party consents to the assignment or novation of a contract, the Partnering Authority 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** (Pooled Budget and Cost Sharing Agreement).

### 3.7 **Novation of the Collection Contract**

3.7.1 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.

3.7.2 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 provision of 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, 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.

### 3.8 **Software**

The Outgoing Administering Authority shall transfer (or shall use all reasonable endeavours to procure the transfer) 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.

### 3.9 **Accommodation**

3.9.1 Upon the Handover Date, at the direction and discretion of the Replacement Administering Authority, the Replacement Administering Authority shall have the option to request the use of 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**.

3.9.2 The option set out in **paragraph 3.9.1** above, shall be exercisable by the Replacement Administering Authority by serving notice upon the Outgoing Administering Authority as soon as possible following any Novation Notice being given 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.

3.9.3 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 Outgoing Administering Authority's accommodation used and the period of use. The Parties agree that (subject to this **paragraph 3.9.3**) such use shall be subject

to such reasonable terms and conditions as are agreed between the Parties from time to time.

### 3.10 Intellectual Property Rights

3.10.1 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.

3.10.2 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).

### 3.11 Exiting Employees

3.11.1 No later than:

- (a) nine months prior to the Handover Date where the Outgoing Administering Authority is resigning in accordance with **clause 7.1**; or
- (b) 20 Business Days 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.

3.11.2 Within 30 Business Days of provision of the list described in **paragraph 3.11.1** above, the Outgoing Administering Authority and the Replacement Administering Authority shall agree: (a) 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.

3.11.3 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.

3.11.4 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.

**3.12 Outgoing Administering Authority Information and Outgoing Administering Authority Personnel Exit Information**

- 3.12.1 During the period of:
- (a) six months prior to the Handover Date where the Outgoing Administering Authority has resigned;
  - (b) 20 Business Days prior to the Handover Date where it has been agreed to replace the Outgoing Administering Authority; and
  - (c) within 20 Business Days of the Replacement Administering Authority's request, the Outgoing Administering Authority shall provide the Replacement Administering Authority with the Outgoing Administering Authority Personnel Information.
- 3.12.2 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.
- 3.12.3 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.

**3.13 Information and Consultation**

- 3.13.1 The Outgoing Administering Authority shall consult and keep informed the Replacement Administering Authority regarding any information flow or consultation it proposes to have with Outgoing Administering Authority Personnel and their representatives under TUPE or regarding exit from all or part of this Agreement.
- 3.13.2 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 exit from all or part of this Agreement. 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 to impart to the Outgoing Administering Authority Personnel.
- 3.13.3 The Replacement Administering Authority and the Outgoing Administering Authority shall jointly communicate to the Board and the SMG (in a form to be agreed) before the Handover Date.
- 3.13.4 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.

**3.14 Outgoing Administering Authority Shadowing**

- 3.14.1 Within



- (a) nine months prior to the Handover Date where the Outgoing Administering Authority is resigning in accordance **clause 7.1**; or
- (b) 20 Business Days from receipt of written notice from the other Partner Authorities that they intend to appoint the Replacement 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 as 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.

### 3.15 **General obligations**

- 3.15.1 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.
- 3.15.2 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.
- 3.15.3 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.
- 3.15.4 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.

### 3.16 **Employment warranties and indemnities**

3.16.1 The Outgoing Administering Authority warrants that as at any 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 outgoing and accrued liabilities of any nature for which it is liable as employer of the Exiting Employees.

3.16.2 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
- (e) 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,

and such claims and/or losses arise as a result of a negligent act or omission of the Administering Authority, the 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 and which are not a result of a negligent act or omission of the 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** (Pooled Budget and Cost Sharing Agreement).

3.16.3 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.

### 3.17 **Apportionments, information and general**

3.17.1 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.

### 3.18 **Bonuses and commission payments**

3.18.1 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.

### 3.19 **Ordinary Course of Business**

3.19.1 From:

- (a) 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) the date of receipt of written notification provided in accordance with **clause 7.2.1** where the Partner Authorities have agreed to replace the Outgoing Administering Authority.

up to and including the Handover Date, the Outgoing Administering Authority shall:

- 3.19.2 not, without the Replacement Administering Authority's prior consent, act outside the Ordinary Course of Business;
- 3.19.3 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
- 3.19.4 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

(14 October 2007 to 31 March 2008 )

#### Expenditure

##### Single Client Group

- Salaries & on-costs
- Travel & Subsistence
- Admin, training, meetings & IT
- Advertising & campaigns
- Office rent & accommodation
- SWAP Team

##### Support Services

- Legal
- Insurance
- Finance
- Audit
- Human Resources
- ICT
- Customer Services
- Other support services

##### Direct Services

##### Waste Disposal

- Disposal - Landfill
- Disposal - HWRCs
- Disposal - IVC (food waste)
- Disposal - Hazardous waste
- Composting

##### Kerbside Recycling

- Weekly (TDBC;MDC;SSDC)
- Fortnightly (WSDC;SDC)
- Cardboard Collection (WSDC)

##### Garden Waste Collections

##### Household Refuse

- Fortnightly (TDBC;MDC;SSDC)
- Weekly (WSDC;SDC)
- Weekly (TDBC;MDC)
- Household Refuse - Communal

##### Food Waste Transfer

##### Bring Banks

- Strategic sites
- Neighbourhood sites

**Schools & SS Recycling****Clinical Waste**

- Household Collections
- Other Collections
- Clinical Waste Disposal

**Bulky Waste Collections****Communal Recycling****Schools & SS Refuse****Commercial Waste**

- Commercial waste collection
- Commercial waste disposal

**SWB Directed Collections****Container Maintenance & Delivery**

- Internally and externally clean
- 'Basic Maintenance/repairs'
- 'Major Maintenance/repairs'
- 2 Wheeled Bin Repair
- Delivery of Sort-it! New Household Kit
- Delivery of Sort-it! New Household Kit
- Delivery of 4 wheeled bins
- Delivery of 2 wheeled bins
- Delivery of Kerbside Box
- Delivery of Food Waste Containers

**Day Works****Admitted Body Pension Costs**

- Base pension cost
- Incremental pension cost

**Transitional Costs****Depot Costs****Bring Site Bin Financing****Schools Bin Financing****ECT Discount****Inter Authority Transfers****Transfer Station Avoided Cost****WDA Avoided Disposal****Vehicle Financing****Total Direct Expenditure****Income**

- Garden waste charges
- Bulky waste charges
- Hazardous waste grant
- Commercial waste charges

DEFRA Waste Performance & Efficiency Grant

Schools & Social Services

Avoided Waste Transfer

WDA Avoided Disposal

**Total Income**

**Total Net Expenditure**

**SCHEDULE 5**  
**POOLED BUDGET & COST SHARING AGREEMENT**

**DRAFT SUBJECT TO FINAL LEGAL REVIEW**

**Cost Sharing Principles**

**Definitions**

**“Somerset County Council area”**

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

**“District or Borough Council area”**

means the area within the administrative boundaries of one of the District or Borough Councils within the Somerset County Council area;

**“Residential properties registered for Council Tax”**

means residential properties as defined by the District Valuer and included in his Valuation List at 20th December each year;

**“Sparsity Weighting Factor”**

means the coefficient agreed from time to time designed to reflect the variation in unit waste collection cost that results from variation in population density. The Sparsity Weighting Factors for each Waste Collection Authority at commencement of the Somerset Waste Board are:

Mendip District Council	99.22%
Sedgemoor District Council	93.34%
South Somerset District Council	99.22%
Taunton Deane District Council	93.59%
West Somerset District Council	108.78%

**“Communal Refuse Collection Capacity”**

means the amount of capacity for communal refuse collection in any one District or Borough Council area, calculated for each Waste Collection Authority as the sum of (total volume of communal refuse collection containers made available to residents at each collection site in the District or Borough Council area X the frequency of collection at each site);

**“Avoided Disposal Contribution”**

means the prevailing rate of contribution to the Somerset Waste Board budget by the Waste Disposal Authority per tonne of dry recyclable waste sent for recycling as a result of Waste Collection Authority functions, set at £33.08 per tonne in 2007/08 and increasing by 3% at 1st April each year thereafter.



## 1. GENERAL PRINCIPLES

These cost sharing principles are intended to ensure that the costs of operating the services delegated to the Somerset Waste Board are shared on a fair and equitable basis. The approach adopted is to identify each cost element and to apportion it on the most logical and transparent way possible, being mindful of the need to avoid any one Council subsidising another. Each cost element is apportioned according to one of the formulae or bases set out in paragraphs 2 – 14 below. The cost Sharing Formulae Applying to the Somerset Waste Board Budget 2007/08 are set out in paragraph 15.

## 2. CLIENT COSTS FORMULA

The initial division of costs is between the Waste Disposal Authority and Waste Collection Authorities, with the Waste Disposal Authority responsible for 45.76% of costs and the Waste Collection Authorities 54.24%. Following this initial division, the Waste Collection Authorities will each be responsible for costs in equal proportion to the percentage of residential properties registered for Council Tax in the Somerset County Council area located within their District or Borough Council area. The formula can be described as follows:

- Waste Disposal Authority share = Cost  $\times$  45.76%
- Waste Collection Authority share = (Cost  $\times$  54.24%)  $\times$  (residential properties registered for Council Tax in the District or Borough area  $\div$  residential properties registered for Council Tax in the Somerset County Council area)

## 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 registered for Council Tax in the Somerset County Council area located within their District or Borough Council area. The formula can be described as follows:

- Waste Collection Authority share = Cost  $\times$  (residential properties registered for Council Tax in the District or Borough area  $\div$  residential properties registered for Council Tax in the Somerset County Council area)

## 4. WASTE COLLECTION AUTHORITIES ALL COUNCILS WEIGHTED FORMULA

The division of costs is between all Waste Collection Authorities with each responsible for costs in equal proportion to the percentage of residential properties registered for Council Tax in the Somerset County Council area located within their District or Borough Council area, adjusted

using the Sparsity Weighting Factor to take account of relative density or sparsity of each District or Borough Council area. The formula can be described as follows:

- Waste Collection Authority share =  $\text{Cost X (residential properties registered for Council Tax in the District or Borough area X Sparsity Weighting Factor)} \div (\text{the sum of residential properties registered for Council Tax in the District or Borough area X Sparsity Weighting Factor for each District and Borough})$

## **5. WASTE COLLECTION AUTHORITIES SERVICE LEVEL BASED WEIGHTED FORMULA**

The division of costs is between Waste Collection Authorities that each have the same level of service for the cost item concerned (e.g. all Councils offering the Sort It! service). Each Council is responsible for costs in equal proportion to the percentage of residential properties registered for Council Tax within their District or Borough Council area, as a proportion of properties registered for Council Tax in all areas covered by the level of service in question, adjusted using the Sparsity Weighting Factor to take account of relative density or sparsity of each District or Borough Council area offering that level of service. The formula can be described as follows:

- Waste Collection Authority share =  $\text{Cost X ((residential properties registered for Council Tax in the District or Borough area X Sparsity Weighting Factor)} \div (\text{the sum of residential properties registered for Council Tax in the District or Borough area X Sparsity Weighting Factor for all Districts and Boroughs})) \div (\text{the sum of residential properties registered for Council Tax in the District or Borough area X Sparsity Weighting Factor for all Districts and Boroughs offering the level of service in question})$

## **6. STRATEGIC BRING SITE FORMULA**

The division of costs is between the Waste Collection Authorities with each responsible for costs in equal proportion to the percentage of Strategic Bring Sites in the Somerset County Council area located within their District or Borough Council area. The formula can be described as follows:

- Waste Collection Authority share =  $\text{Cost X (Strategic Bring Sites in the District or Borough area} \div \text{Strategic Bring Sites in the Somerset County Council area})$

## **7. NEIGHBOURHOOD BRING SITE FORMULA**

The division of costs is between the Waste Collection Authorities with each responsible for costs in equal proportion to the percentage of Neighbourhood Bring Sites in the Somerset County Council area located within their District or Borough Council area. The formula can be described as follows:

- Waste Collection Authority share =  $\text{Cost X (Neighbourhood Bring Sites in the District or Borough area} \div \text{Neighbourhood Bring Sites in the Somerset County Council area})$

## 8. COMMUNAL REFUSE FORMULA

The division of costs is between the Waste Collection Authorities with each responsible for costs in equal proportion to the percentage of Communal Refuse Collection Capacity in the Somerset County Council area located within their District or Borough Council area. The formula can be described as follows:

- Waste Collection Authority share = Cost **X** (Communal Refuse Collection Capacity in the District or Borough area ÷ Communal Refuse Collection Capacity in the Somerset County Council area)

## 9. COMMUNAL RECYCLING FORMULA

The division of costs is between the Waste Collection Authorities with each responsible for costs in equal proportion to the percentage of Communal Recycling Sites in the Somerset County Council area located within their District or Borough Council area. The formula can be described as follows:

- Waste Collection Authority share = Cost **X** (Communal Recycling Sites in the District or Borough area ÷ Communal Recycling Sites in the Somerset County Council area)

## 10. WDA AVOIDED DISPOSAL FORMULA

The Avoided Disposal Contribution made to the Somerset Waste Board budget by the Waste Disposal Authority against each tonne of dry recyclable waste sent for recycling in the Somerset County Council area as a result of Waste Collection Authority functions, apportioned to offset the contribution of each Waste Collection Authority to the Somerset Waste Board budget in accordance with the actual tonnage of dry recyclable waste sent for recycling collected as a result of Waste Collection Authority function in each District or Borough area. The formula can be described as follows:

- Waste Disposal Authority contribution = tonnes of dry recyclable waste collected as a result of Waste Collection Authority functions in the Somerset County Council area **X** current rate of Avoided Disposal Contribution
- Waste Collection Authority offset = tonnes of dry recyclable waste collected as a result of Waste Collection Authority functions within the District or Borough Council area **X** current rate of Avoided Disposal Contribution

## 11. SWAP TEAM FORMULA

The initial division of costs is between the Waste Disposal Authority and Waste Collection Authorities, with the Waste Disposal Authority responsible for 82.35% of costs and the Waste Collection Authorities 17.65%. Following this initial division, the Waste Collection Authorities will each be responsible for costs in equal proportion to the percentage of residential properties registered for Council Tax in the Somerset County Council area located within their District or Borough Council area. The formula can be described as follows:

- Waste Disposal Authority share = Cost  $\times$  82.35%
- Waste Collection Authority share = (Cost  $\times$  17.65%)  $\times$  (residential properties registered for Council Tax in the District or Borough area  $\div$  residential properties registered for Council Tax in the Somerset County Council area)

## 12. CUSTOMER SERVICES FORMULA

The initial division of costs is between the Waste Disposal Authority and Waste Collection Authorities, with the Waste Disposal Authority responsible for [ ]% of costs and the Waste Collection Authorities [ ]%. Following this initial division, the Waste Collection Authorities will each be responsible for costs in equal proportion to the percentage of residential properties registered for Council Tax in the Somerset County Council area located within their District or Borough Council area. The formula can be described as follows:

- Waste Disposal Authority share = Cost  $\times$  [ ]%
- Waste Collection Authority share = (Cost  $\times$  [ ]%)  $\times$  (residential properties registered for Council Tax in the District or Borough area  $\div$  residential properties registered for Council Tax in the Somerset County Council area)

## 13. ACTUAL USAGE BASIS

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

## 14. DIRECTLY ASSOCIATED COSTS BASIS

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

## 15. COST SHARING FORMULAE APPLYING TO THE SOMERSET WASTE BOARD BUDGET 2007/08

### Expenditure

#### Single Client Group

Salaries & on-costs	Client Costs Formula
Travel & Subsistence	Client Costs Formula
Admin, training, meetings & IT	Client Costs Formula
Advertising & campaigns	Client Costs Formula
Office rent & accommodation	Client Costs Formula
SWAP Team	SAWP Team Formula

#### Support Services

Legal	Client Costs Formula
Insurance	Client Costs Formula
Finance	Client Costs Formula
Audit	Client Costs Formula
Human Resources	Client Costs Formula
ICT	Client Costs Formula
Customer Services	Customer Services Formula
Other support services	Client Costs Formula

#### Direct Services

##### Waste Disposal

Disposal - Landfill	Directly Associated Costs Basis (allocated to County Council)
Disposal - HWRCs	Directly Associated Costs Basis (allocated to County Council)
Disposal - IVC (food waste)	Directly Associated Costs Basis (allocated to County Council)
Disposal - Hazardous waste	Directly Associated Costs Basis (allocated to County Council)
Composting	Directly Associated Costs Basis (allocated to County Council)

##### Kerbside Recycling

Weekly (TDBC;MDC;SSDC)	WCA Service Level Based Weighted Formula
Fortnightly (WSDC;SDC)	WCA Service Level Based Weighted Formula
Cardboard Collection (WSDC)	Directly Associated Costs Basis (allocated to West Somerset)
<b>Garden Waste Collections</b>	Actual Usage Basis

##### Household Refuse

Fortnightly (TDBC;MDC;SSDC)	WCA Service Level Based Weighted Formula
Weekly (WSDC;SDC)	WCA Service Level Based Weighted Formula
Weekly (TDBC;MDC)	WCA Service Level Based Weighted Formula
Household Refuse - Communal	Communal Refuse Formula

##### Food Waste Transfer

Directly Associated Costs Basis (allocated to County Council)

##### Bring Banks

Strategic sites	Strategic Bring Sites Formula
Neighbourhood sites	Neighbourhood Bring Sites Formula

##### Schools & SS Recycling

Directly Associated Costs Basis (allocated to County Council)

##### Clinical Waste

Household Collections	WCA un-weighted Formula
Other Collections	WCA un-weighted Formula
Clinical Waste Disposal	Directly Associated Costs Basis (allocated to County Council)

<b>Bulky Waste Collections</b>	Actual Usage Basis
<b>Communal Recycling</b>	Communal Recycling Formula
<b>Schools &amp; SS Refuse</b>	Directly Associated Costs Basis (allocated to County Council)
<b>Commercial Waste</b>	
Commercial waste collection	Actual Usage Basis
Commercial waste disposal	Actual Usage Basis
<b>SWB Directed Collections</b>	WCA un-weighted Formula
<b>Container Maint' &amp; Delivery</b>	
Internally and externally clean	WCA Service Level Based Weighted Formula
'Basic Maintenance/repairs'	WCA un-weighted Formula
'Major Maintenance/repairs'	WCA un-weighted Formula
2 Wheeled Bin Repair	WCA Service Level Based Weighted Formula
Delivery of Sort-it! New HH Kit	WCA Service Level Based Weighted Formula
Delivery of Sort-it! New HH Kit	WCA Service Level Based Weighted Formula
Delivery of 4 wheeled bins	WCA un-weighted Formula
Delivery of 2 wheeled bins	WCA Service Level Based Weighted Formula
Delivery of Kerbside Box	WCA un-weighted Formula
Delivery of Food Containers	WCA Service Level Based Weighted Formula
<b>Day Works</b>	WCA un-weighted Formula
<b>Admitted Body Pension Costs</b>	
Base pension cost	Directly Associated Costs Basis (allocated to South Somerset)
Incremental pension cost	WCA un-weighted Formula
<b>Transitional Costs</b>	WCA un-weighted Formula
<b>Depot Costs</b>	WCA un-weighted Formula
<b>Bring Site Bin Financing</b>	Actual Usage Basis
<b>Schools Bin Financing</b>	Directly Associated Costs Basis (allocated to County Council)
<b>ECT Discount</b>	WCA un-weighted Formula
<b>Inter Authority Transfers</b>	
<b>Transfer Station Avoided Cost</b>	Directly Associated Costs Basis (allocated to County Council)
<b>WDA Avoided Disposal</b>	WDA Avoided Disposal Formula
<b>Vehicle Financing Saving</b>	Client Costs Formula
<b>Income</b>	
Garden waste charges	Actual Usage Basis
Bulky waste charges	Actual Usage Basis
Hazardous waste grant	Directly Associated Costs Basis (allocated to County Council)
Commercial waste charges	Actual Usage Basis
DEFRA WPE Grant	As per existing 2007/08 budgets
Schools & Social Services	Directly Associated Costs Basis (allocated to County Council)
Avoided Waste Transfer	WCA un-weighted Formula
WDA Avoided Disposal	WDA Avoided Disposal Formula

## SCHEDULE 6

### Exit arrangements

#### 1. DEFINITION

In this **Schedule**, the following words shall have the following meaning:

**"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 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.
- 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. NOVATION 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 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 The 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 42.2 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 42.3 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, their approval shall be deemed not to have been given and the Notice of Change will be withdrawn in accordance with clause 42.4 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** (Pooled 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** (Pooled 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** (Pooled 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 42 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 Administering Authority) 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.
- 3.3 If the relevant Partner Authority confirms in writing to the Administering Authority 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** (Pooled 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** 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 proposal from the Managing Director (in accordance with **paragraph 4.1** above) in which to consider it. Where a Partner Authority (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).
- 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 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.