

Public Document Pack



Shadow Executive

Tuesday, 22nd January, 2019, 3.30 pm

Committee Room - Brittons Ash Community Hall

Members: J Williams (Chairman), A Trollope-Bellew (Vice-Chair), R Habgood, J Warmington, M Dewdney, A Hadley, S Pugsley and A Sully

Agenda

1. **Apologies.**
2. **Minutes of the previous meeting of the Shadow Executive held on 6 December 2018.** (Pages 3 - 10)
3. **Declarations of Interest.**

To receive and record any declarations of disclosable pecuniary interests or personal or prejudicial interests in respect of any matters included on the agenda for consideration at this meeting.
(The personal interests of Councillors and Clerks of Somerset County Council, Town or Parish Councils and other Local Authorities will automatically be recorded in the minutes.)
4. **Public Participation.**

The Chairman to advise the Committee of any items on which members of the public have requested to speak and advise those members of the public present of the details of the Council's public participation scheme.
5. **Appointment of External Auditor. Report of The Principal Accountant - Corporate (attached).** (Pages 11 - 14)
6. **Appointment of SWAP Director 2019 - Shadow Exec. Report of The Interim Section 151 Officer (attached).** (Pages 15 - 20)

7. **Somerset Waste Board Constitution and Membership 2019/20. Report of The Specialist - Clienting (attached).** (Pages 21 - 116)
8. **Confidential Report - Leisure Operators Contract. Report of the Localities Manager (attached).** (Pages 117 - 136)

Shadow Executive - 6 December 2018

Present: Councillor J Williams (Chairman)

Councillors A Trollope-Bellew, R Habgood, M Dewdney, S Pugsley and A Sully

Officers: Chris Hall, Paul Harding, Mark Leeman, Marcus Prouse, Andrew Stark and Mickey Green

Also Present: Councillors P Berry and S Coles

(The meeting commenced at 6.00 pm)

32. **Apologies.**

There were apologies from Councillors A Hadley, B Maitland- Walker and J Warmington.

33. **Minutes of the previous meeting of the Shadow Executive.**

The minutes of the meeting held on 15 November 2018 were affirmed as a correct record.

34. **Declarations of Interest.**

Councillor Trollope-Bellew declared personal interests as an owner of a listed building and private water supply in relation to item 9.

Members present at the meeting declared the following personal interests in their capacity as a Member of a County, Parish or Town Council:

Name	Minute No.	Member of	Action Taken
Cllr A Trollope-Bellew	All	Crowcombe	Spoke and voted

35. **Public Participation.**

No member of the public requested to speak.

36. **New Council Branding**

The purpose of the report was to consider the branding for the New Council.

During the discussion of this item Members made comments and statements and asked questions, and the following main points were raised:

- Members commended the hard work and effort involved in creating the New Council branding.

RESOLVED that the New Council Branding be noted.

37. **New Council Implementation Plan**

The purpose of the report was to consider Implementation Plan for the Creation of a New Council for Somerset West and Taunton.

The focus of the Implementation Plan was to ensure the new council is legal, safe and functioning from 1 April 2019. The Plan sought to identify all of the actions necessary to meet these objectives.

Due to the legislative path being followed to create the new council, there was no precedent regarding the individual elements that an Implementation Plan should include nor what form the Plan should take.

Officers shared the initial draft with MHCLG officials and also looked at the approach being adopted by other councils currently in the process of creating new councils who are following the same legislative path, in order to help shape the content of the plan.

The Plan focused on ensuring Somerset West and Taunton Council:-

- had the staff and contracts in place to deliver services to the community;
- make lawful decisions (constitution, strategies, plans and policies);
- hold the necessary insurances, licences and permits to operate;
- had the necessary governance arrangements in place (statutory officers, auditors, committees);
- order necessary goods and services;
- pay its suppliers, members and staff;
- set, billing and collect income.

The Implementation Plan was set out in Appendix A. It contained the high-level actions and activities on which officers were focused. Supporting these actions were many sub-activities which were tracked within more detailed project plans.

During the discussion of this item Members made comments and statements and asked questions, and the following main points were raised:

- The implementation plan and list of processes had been compared with other Councils that had been going through the same process, which had been helpful in a common understanding.
- The Plan was required by the Change order and approved by the Shadow Council in October. This was owned by the Central Implementation Team and had a planned trajectory.
- There were no concerns with the progression of the implementation plan. Ensuring the critical tasks were complete before the creation of the New Council was the priority.
- The delay of the finance settlement wasn't likely to cause delays in the implementation plan.

- Tasks were being tracked and cross referenced with staff in the organisation that were leaving, a detailed risk register had been created and was regularly updated.
- Councillors remained Shadow Councillors between the 1st April and 2nd May.
- It was agreed that the item would be considered every two months.

RESOLVED that the Shadow Executive noted the report.

38. **Somerset Waste Partnership Business Plan**

The purpose of the report was to seek approval of the Somerset Waste Partnership's Draft Business Plan 2019-2024.

The Somerset Waste Partnership is governed through a Joint Committee known as the Somerset Waste Board. The SWB Constitution required the preparation of a Business Plan on an annual basis. The plan had a five year horizon with particular focus on the next 12 months, and it provided a framework within which the board could make decisions and steer the delivery of waste partnership services. The Board had delegated authority for decision making across all services and therefore must make proposals to the partners on how savings could be made, taking into account any requirements to make savings and proposals on how this could be achieved.

The Board's business planning cycle required a draft report to be approved by the Board in October and circulated to partners for comment prior to the adoption of the Board's Annual Budget the following February. Further to decisions taken by the Board in October 2017 the timetable for approving this plan would again be brought forward, with the Draft Business plan presented for Board Approval in November 2018, scrutinised by partner authorities in November and early December and presented for final approval at the December Board meeting. Once approved or noted by all partners, the plan would be formally adopted by the Board to provide a framework within which the Board could make decisions and steer the delivery of Waste Partnership services.

The Draft Business Plan and associated Action Plan, detailed appendix 1, were the means by which the partnership described its business, evaluated changes to the operating environment, identified strategic risks and set out its priorities. The plan had a five year horizon with particular focus on the next 12 months. It was the primary means to seek approval for and to secure the necessary resources to implement its proposals from the partner authorities.

The plan also set out the draft Annual Budget for the Waste Partnership for 2019/20, which for the Somerset West and Taunton represented an increase of £274,000.

During the discussion of this item Members made comments and statements and asked questions, and the following main points were raised:

- Encouraging recycling was still a focus, supporting and educating residents was still conducted to minimize recycling being disposed of in household waste.
- The legacy of two existing landfill sites would be communicated with Councillors.
- It was questioned if the creation of the New Council would save money through the Somerset Waste Partnership contract; along with how costs could be saved through process redesign.
- The costs has been achieved due to the service being operated through the whole of the county so the savings had already been delivered through the existing contract.
- The greater use of technology enabled smoother processes and prevented problems reoccurring in the service.
- Waste collections on new developments and ensuring these were fit for purpose should be factored in. Planning and customer interaction would was a priority and part of the future success of the process.
- A new depot was not considered necessary as part of future proposals.

RESOLVED that the Shadow Executive:-

- 1) Approve the Somerset Waste Partnership's Draft Business Plan 2019-24.
- 2) Approve the projected budget for 2019/20 subject to the finalisation of the figures.

39. **Somerset Housing Strategy**

The purpose of the report was to set out the content of the Somerset Housing Strategy and support the production of the Somerset West and Taunton Action Plan.

The Somerset Housing Strategy (SHS) is the local response to the national housing crisis. It highlights key facts and challenges within the local housing market, before proposing a vision for homes and housing across Somerset that embraces strong and effective strategic leadership; a local economy that provides opportunity for all; homes in Somerset are good for your health: and a society that supports the vulnerable.

The preparation of the SHS began in July 2017, with the publication of district housing market profiles set out in Appendix A, and a multi-agency workshop. A consultation draft was published in February 2018. TDBC and WS Scrutiny considered the draft SHS during March/April. The consultation closed on 30th April 2018. During the Summer the consultation responses had been considered and have made various amendments to the SHS.

The SHS was developed by the Somerset Strategic Housing Partnership (SSHP). TDBC and WSC were active members of SSHP. SSHP is within the governance structure of the Somerset Health and Wellbeing Board.

The next stage is for SSHP was to develop a multi-agency delivery plan (work is underway) and for SSHP partners to develop their own response in the form of

strategic housing action plans. Both TD and WS Scrutiny expressed a desire that we (SW&TC) should undertake such work.

During the discussion of this item Members made comments and statements and asked questions, and the following main points were raised:

- The finance around the HRA would be considered to see what can be done and the type of housing solutions such as housing for the elderly.
- The increase of rough sleepers in Taunton was still a concern and how this can be addressed as part of the New Council going forward.
- Second home ownership and the challenge of the elderly population in the West Somerset continued to be ongoing challenges with the New Council. A unified strategy with varied solutions would need to recognise this.
- Growth around housing provision and creation provided increased opportunity in the New Council.

RESOLVED that the Shadow Executive:-

- 1) Approve the content of the SHS (i.e. it's Vision, Themes, Priorities and Objectives)
- 2) To support the production of a SW&T action plan, commencing with conversations with Heads of Function and with Shadow Scrutiny.
- 3) Support the actions set out in 4.9 of the report.

40. **Draft 2019-20 Fees and Charges**

The purpose of the report was to set out the proposed fees and charges that are proposed to be applied to services for the first time for the new council for 2019/20. In determination of these fees and charges the following principles have been applied:-

- i) Harmonisation of fees when it has been practical to do so
- ii) Recovery of costs
- iii) Setting of fees in line with statutory guidance

In the setting of these fees and charges, a pragmatic approach has been taken for the first year of the new council. A detailed review will be undertaken once the new operating model is embedded and fully in place.

During the discussion of this item Members made comments and statements and asked questions, and the following main points were raised:

- Where practical to do so the aim was to harmonise fees and charges where possible.
- All the fees and charges would be located in one book for members of the public to access.
- Listed buildings advice for householders and developments was discussed. The changes would encourage users of the service to take advice before submitting an application.
- Parking Charges were considered, the returns on tangier coach parking charges were requested to be considered due to this car park being the only one to charge coaches across the new district.

- Open spaces would need to be charged to car parks to address the surplus, work was still to be done in relation to the accounting.

RESOLVED that the Shadow Executive recommends that Shadow Council approve the proposed Fees and Charges for 2019/20.

41. **2019-20 Budget Progress Report and Initial Budget Options**

The purpose of the report was to provide Members with an update on progress with regard to Budget Setting for 2019/20; the latest Medium Term Financial Plan (MTFP) forecasts, and the areas to be finalised. The Council's current MTFP projects a balanced budgetary position for 2019/20, but with a Budget Gap rising to £343k by 2023/24.

At the Shadow Executive meeting on 26 September 2018 a report provided Members with an initial draft on producing a 2019/20 budget for the new Somerset West and Taunton Council including a Medium Term Financial Plan and overall Financial Strategy. The report was previously shared with and reviewed by the Shadow Scrutiny Committee on 18 September 2018.

Since this report, finance officers had undertaken a thorough review of all existing budgets including reviewing the underspends and overspends identified at outturn for 2017/18 to establish if there are any ongoing savings or spending pressures that needed to be taken into account for the 2019/20. This exercise had identified a number of changes to the base budget that need to be incorporated although the overall impact is not significant. In addition, financial projections had been updated for detailed estimates related to service costs and funding based on information available to date.

The previous MTFP Summary showed that there was a broadly balanced position up to 2021/22 with a predicted budget gap of £407k by 2023/24. In overall terms, the position on the MTFP had not changed significantly since the report in September.

Further reported that there remained a number of areas where budget forecasts are to be finalised therefore there was potential for the estimated Gap to change, and this would be reported to Members as the budget process progresses.

During the discussion of this item Members made comments and statements and asked questions, and the following main points were raised:

- News relating to the business rates 75% retention pilot was expected next month.
- The risk around Hinkley B ceasing to generate after 2022/23 was considered. It was requested if the risk should be included in the MTFP. This was an unknown, although the business rate smoothing reserve existed to allow for such risks, it was recognised that this risk had an adverse impact.
- The build for Hinkley Point C was still on schedule and would start generating at the end of 2025. No clarity had been given from the

Secretary of State about the business rate generation from Hinkley Point C.

- New figures for the budgets and levels of reserves would need to be created for the new council. It was envisaged that the levels of reserves would be around the area of the two existing budgets combined.

RESOLVED that the latest Medium Term Financial Plan forecasts be noted.

42. **Forward Plan**

The purpose of this item was to approve the Forward Plan.

RESOLVED that the Shadow Executive's Forward Plan be circulated to Members of the Shadow Executive after the meeting.

43. **Future Meeting Dates**

The next meeting date had been agreed:-

- Shadow Executive – 22 January 2019 at 3.30pm, Committee Room, Brittons Ash Community Centre.

(The Meeting ended at 8.12 pm)

Somerset West and Taunton Council

Shadow Executive - 22 January 2019

Appointment of External Auditor

This matter is the responsibility of Councillors Dewdney and Sully

Report Author: Sue Williamson, Principal Accountant – Corporate

1 Executive Summary / Purpose of the Report

- 1.1 This report asks the Shadow Council to opt in to the Public Sector Auditor Appointments (PSAA) arrangement for the procurement of external audit services for SWATC.
- 1.2 This proposal was supported by the Shadow Corporate Governance and Standards Committee on 12 November 2018.

2 Recommendations

- 2.1 The Shadow Council agrees that Somerset West and Taunton Council opts in to the PSAA scheme for procuring external audit services for the period 2019/20 to 2022/23.

3 Risk Assessment

Risk Matrix

Description	Likelihood	Impact	Overall
Risk: Failure to implement and maintain appropriate, cost effective and independent external audit arrangements for 2019/20 and beyond leads to a breach in our legal obligations.	Slight 2	Major 4	Medium 8
<i>Mitigation: The Council is recommended to opt in to the PSAA framework for the appointment of external audit services for the financial periods 2019/20 to 2022/23.</i>	Very Unlikely 1	Major 4	Low 4

Risk Scoring Matrix

Likelihood	5	Very Likely	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Feasible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Slight	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Very Unlikely	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

- 4.1 The Local Audit and Accountability Act 2014 abolished the Audit Commission and requires that local authorities appoint their own external auditors.
- 4.2 The current external audit function for both Taunton Deane Borough Council (TDBC) and West Somerset Council (WSC) is provided by Grant Thornton (UK) LLP, having been procured through Public Sector Auditor Appointments (PSAA). PSAA is a not-for-profit company established by the Local Government Association that administers the current external audit contracts on behalf of central government. Both TDBC and WSC opted in to the PSAA appointment arrangements in 2014 and 2017, the latter of which provided for a five year appointment period starting with accounts for the 2018/19 financial year.
- 4.3 Grant Thornton (UK) LLP will complete the audit of the accounts of Taunton Deane Borough Council and West Somerset Council for 2018/19 under the auditor appointment already made. This work will be undertaken during 2019.
- 4.4 The Somerset West and Taunton (Local Government Changes) Order 2018 results in the abolition of West Somerset and Taunton Deane districts and the District Councils on 31 March 2019, and the creation of the new Somerset West and Taunton Council with effect from 1 April 2019.

- 4.5 A new auditor appointment will be needed for Somerset West and Taunton Council, as it will be a separate legal entity. PSAA has confirmed that Somerset West and Taunton Council is eligible to become an opted-in authority from 1 April 2019, for the remaining four years of the appointing period covering the accounts for 2019/20 to 2022/23. PSAA would anticipate appointing the firm already appointed from 2018/19 to maintain continuity of audit arrangements, subject to confirming independence and considering the views and joint working arrangements of the new authority.
- 4.6 The alternative to opting in to the PSAA would be for the implementation team to independently procure external audit arrangements which would involve 'starting from scratch' with a full tendering process.
- 4.7 Members are also advised that the Local Audit (Appointing Person) Regulations 2015 require that an opted-in authority which ceases to exist must give notice of that fact to PSAA as soon as practicable after the day on which the authority demises. The Interim S151 Officer will provide such notice on behalf of the two existing Councils at the appropriate time.

5 Links to Corporate Aims / Priorities

- 5.1 The appointment of an external auditor is a regulatory requirement, providing important independent assurance over the Council's arrangements for financial accounting and securing value for money for public services.

6 Finance / Resource Implications

- 6.1 The External Auditor provides a vital role in auditing our accounts, ensuring we are operating within the law and have proper arrangements in place for securing economy, efficiency and effectiveness in our use of resources.
- 6.2 External audit work currently costs a combined circa £111,000 annually for both councils. This covers the core fee set by PSAA, plus additional services related to auditing housing benefit subsidy claims and housing capital receipts pooling returns to Government. Our annual spend on this function and the value of the 'contract' is comparatively small. The costs of running an internal procurement exercise could be disproportionate and consequently it makes sense from a financial perspective to opt into the PSAA scheme.
- 6.3 The Interim S151 Officer has held informal discussion with Grant Thornton regarding the appointment for 2019/20 onwards, in support of the implementation plan for the new council. It is expected that the audit fee for the new council would be lower than the current combined cost of the two existing authorities, thus providing a saving to the new Council. Actual fees will be set by PSAA (if the Council opts in), in consultation with the Interim S151 Officer on behalf of the new Council, and reported to Members once agreed.

7 Legal Implications

- 7.1 We are required by law to have independent external audit arrangements in place. Section 4 of the Local Audit and Accountability Act 2014 imposes the general requirement that the accounts of a relevant authority must be audited in accordance with the Act or a provision made under it by an auditor appointed by the authority, again in accordance with the Act or a provision made under it. The section introduces the term “local auditor” to describe an auditor appointed in this way.
- 7.2 Section 7 of the Local Audit and Accountability Act 2014 provides that an auditor must be appointed by the end of 31st December in the financial year before the financial year which will be covered by the accounts to be audited. Given the timing of this report the S151 Officer has informed PSAA of the intention to opt-in, pending formal resolution by the Shadow Council. The appointment may last for more than one year but a new appointment must be made at least once every five years. The Secretary of State is empowered to alter this period of time by regulations.
- 7.3 Opting into the PSAA scheme provides us with a cost effective and low resource mechanism for delivering this responsibility.

8 Social Value Implications

- 8.1 The proposal relates to the procurement of specialist external auditing work. It will be led by a not-for-profit company established by the Local Government Association.

9 Environmental Impact, Safeguarding and/or Community Safety, Partnership, Health and Wellbeing, Equality and Diversity, Asset Management, Data Protection, Consultation Implications

- 9.1 No implications.

Democratic Path:

- Shadow Corporate Governance and Standards Committee – Yes
- Shadow Executive – No
- Shadow Full Council – Yes

Reporting Frequency: Once only

Contact Officers:

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Somerset West and Taunton Council

Shadow Executive – 22 January 2019

Appointment of SWAP Ltd Director

This matter is the responsibility of Councillor Williams, Leader of the Shadow Council

Report Author: Paul Fitzgerald, Interim S151 Officer

1 Executive Summary / Purpose of the Report

1.1 The governance arrangements for South West Audit Partnership Ltd (SWAP) were approved at Full Council meetings of West Somerset Council (WSC) and Taunton Deane Borough Council (TDBC) in February and March 2013 respectively. The approved governance structure includes a Members' Board and a Board of Directors. This report requests a new officer appointment to the Board of Directors representing Somerset West and Taunton Council.

2 Recommendations

2.1 The Shadow Executive approves the nomination of the Head of Performance and Governance (Christine Fraser) as a Director of SWAP Ltd representing Somerset West and Taunton Council at the earliest practical date to be appointed by SWAP Ltd, and no later than 1 April 2019.

2.2 The Shadow Executive approves the nomination of the Governance Manager post holder as a Director of SWAP Ltd representing Somerset West and Taunton Council, from date to be determined by the Head of Performance and Governance (estimated mid-2019).

3 Risk Assessment

Risk Matrix

Description	Likelihood	Impact	Overall
Risk: Failure to appoint a Director will not fulfil the approved governance structure for SWAP Ltd, and leave the Board of Directors without representation and voting powers on behalf of Somerset West and Taunton Council.	Slight 2	Moderate 3	Low 6
<i>Mitigation: The Council appoints a new Officer to the Board of Directors of SWAP</i>	Very Unlikely	Moderate 3	Low 3

<i>Ltd, and the existing TDBC and WSC Director representative maintains the position until the change in Directorship can be made.</i>	1		
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Risk Scoring Matrix

Likelihood	5	Very Likely	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Feasible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Slight	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Very Unlikely	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
			Impact				

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

- 4.1 The governance arrangements for South West Audit Partnership Ltd (SWAP) were approved at Full Council meetings of West Somerset Council (WSC) and Taunton Deane Borough Council (TDBC) in February and March 2013 respectively. The approved governance structure includes a Members’ Board and a Board of Directors.
- 4.2 Appointees to the Members’ Board will be Councillors representing their respective authorities. Appointees to the Board of Directors can be anyone each individual authority chooses, either officer or Councillor.

The Members’ Board

- 4.3 Each partner nominates a Councillor to represent them on this Board. It is the supreme authority of the company and would make all decisions relating to strategy, policy, appointment and dismissal of senior management and the admission of new partners.

The Board of Directors

- 4.4 The Board oversees the implementation of the strategy and policy, as well as ensuring the operational activities of the partnership are achieving the objectives set by the Members' Board. The Directorship continues to be a 'hands on' role and most Board members, in order to be effective, will need a good working understanding of internal audit and risk management. Provision has been made in the articles for other directors to be appointed, including some SWAP management.
- 4.5 The membership arrangements for the board of directors is:
- Two Councillors who would normally be the Chairman and Vice Chairmen of the Members' Board.
 - An officer representing each of the partners
 - A maximum of three executive officers from SWAP, with at least the Chief Executive being included.
- 4.6 It is proposed that the new Council will be asked to appoint a councillor, as its representative on the Members' Board, following the elections in May 2019. This report proposes an officer appointment – continuing the basis of appointment followed by both TDBC and WSC to date – to the Board of Directors to represent Somerset West and Taunton Council.

Respective Roles of the Boards

- 4.7 Summarised below is an abbreviated list of the responsibilities and powers of the two governing bodies of the company:

Members' Board	Board of Directors
<ul style="list-style-type: none"> • Admission of new partners • Approval of the Annual Business Plan • Any changes to the approved Annual Business Plan • Setting of the annual budget • Approval of annual accounts • Extending or reducing the scope of operations • Appointment or removal of Directors, in accordance with the Articles and the legal agreement • Setting and approving the form and content of the financial regulations • Appoint or remove the Chief 	<ul style="list-style-type: none"> • Agrees the preliminary budget, for submission to the Member's Board for approval • Approves all changes to the budget, except in relation to any proposals which would lead to an increase in Member contributions • Reviews and approves the annual statement of accounts, prior to submission to the Members' Board • On-going Budget monitoring • Agrees combined audit plan and ensures equity of resource distribution amongst the Members • Agrees any changes to audit plans that impact on the partnership

<p>Executive or any member of the management team</p> <ul style="list-style-type: none"> • Change the name of the Company or its registered office • Change the bankers of the Company or open or close any bank accounts • License, assign or otherwise dispose of intellectual property rights owned by the Company • Approves and reviews the annual risk register 	<ul style="list-style-type: none"> • Approves and reviews annual themed audits to ensure best practice is shared with relevant service heads at each Member • Monitors overall performance against the combined audit plan • Reviews and monitors the risk register to ensure risks are managed in accordance with the requirements of the Members' Board • Approves and monitors terms and conditions of staff
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4.8 The SWAP Board of Directors largely consists of Finance Officers, and it is recognised by the Board that a wider mix of skills, knowledge and attributes would provide a better balance to the Directorship of the company.

Director Appointment to represent Somerset West and Taunton Council

4.9 Following the fundamental reorganisation of the Council's staffing through the transformation programme, and the appointments to the new Leadership Team of the Council, it is proposed that the Head of Performance and Governance postholder (Christine Fraser) be nominated to represent Somerset West and Taunton Council on the SWAP Board of Directors. This will be subject to the formal appointment process to be followed by SWAP, and will take effect no later than 1 April 2019.

4.10 To provide some resilience to absence, it is also proposed that the Governance Manager (currently vacant due to secondment of the post holder) is nominated as an Alternate Director, who would undertake the Director duties in the event of absence of the Director.

5 Links to Corporate Aims / Priorities

5.1 The Council has a direct interest in the effective operation of SWAP Ltd, in delivering its internal audit function. It is imperative that the council has an efficient and effective Internal Audit service both to ensure our controls are sufficient and to ensure that our external auditors can rely upon the testing that the internal auditors have done appointment of an external auditor is a regulatory requirement, providing important independent assurance over the Council's arrangements for financial accounting and securing value for money for public services.

6 Finance / Resource Implications

6.1 There are no direct cost implications arising from this report. The Directorship role is estimated to require between 5-6 days of officer time per year.

7 Legal Implications

7.1 There are no new direct legal implications arising from this report. The Director will be required to observe legal responsibilities associated with holding a company director position.

8 Social Value, Environmental Impact, Safeguarding and/or Community Safety, Partnership, Health and Wellbeing, Equality and Diversity, Asset Management, Data Protection, Consultation Implications

8.1 No implications.

Democratic Path:

- Shadow Executive – 22 January 2019

Reporting Frequency: Once only

Contact Officers:

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Somerset West and Taunton Shadow Council

Shadow Executive Committee 22nd January 2019

Somerset Waste Board Constitution and Membership 2019/20

Report of Client Officer Natalie Green and Somerset Waste Partnership's Managing Director Mickey Green

(This matter is the responsibility of Executive Councillor Patrick Berry and Lead Member for Environment Councillor Brenda Maitland-Walker)

1. Executive Summary

The report sets out proposed revisions to the Somerset Waste Board's constitution and membership for 2019/20 as a result of the future amalgamation of Taunton Deane Borough Council and West Somerset Council to create the new Somerset West and Taunton local authority.

The proposed changes to the constitution and board membership will require the dissolution of the current Board and agreement to establish a new Waste Board with an amended constitution to reflect the revised membership. Subject to the Committee's approval to the proposals within this report

1. Background

1.1. Since 1992 the Somerset Waste Partnership has improved working arrangements in waste management across the County. In 2007, the partner authorities (comprising Somerset County Council, Mendip District Council, Sedgemoor District Council, South Somerset District Council, Taunton Deane Borough Council and West Somerset Council) agreed to establish the Somerset Waste Board as a Joint Committee with an Administering Authority. The Partner Authorities delegated responsibilities for waste collection, waste recycling, and waste disposal to the Waste Board.

1.2. The legal powers to constitute a Joint Committee and discharge the Partner Authorities' 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. A Joint Committee does not have a separate legal personality and as such is not able to hold contracts or employ staff. In this instance a well-established solution is that one of the authorities becomes the 'administering authority' for the purpose of holding contracts and employing staff.

1.3. The Board has a Constitution and there is also an Inter-Authority Agreement, which sets out how the partners work together and how costs are shared amongst partners.

1.4. The Constitution sets out the membership of the Waste Board, its functions and voting arrangements. Each of the six Partner Authorities is represented on the Board by two Elected Members, one of whom is the Portfolio Holder for Waste and/or Environment

functions. There are 12 elected members on the Waste Board and they are supported by officers from Somerset Waste Partnership, the Administering Authority (Somerset County Council) and from partners.

Recommendations:

The Shadow Executive is recommended to:

2.1. Endorse the proposed revision to the draft Constitution (Appendix A) for the Somerset Waste Partnership Board and recommend this for approval by the Executive Committee.

2.2. Delegate authority to the Board's Treasurer in consultation with the Administering Authority's Monitoring Officer to update the Inter-Authority Agreement (IAA), as set out in Appendix B, to reflect the various changes agreed previously by the Board.

2.3. Recommend that with effect from 1 April 2019 the current Board and its membership (comprising six partner authorities) is dissolved and to then agree the formation of a new Somerset Waste Board (comprising five partner authorities) and appoint members to that Board.

2.4. Delegate authority to the Monitoring Officer of the Administering Authority to take forward the above recommendations in conjunction with the partner authorities.

3. Future constitutional matters for the Board

3.1. Following the approval to the Structural Change Order, work has progressed to review the Constitution and Inter Authority Agreement (IAA). The process for this is set out in clause 20 of the IAA and section 16 of the Constitution.

3.2. Section 16 of the Board's Constitution outlines that 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 the existing Constitution (as varied by agreement of the proposed Partner Authorities) being completed. Essentially this requires the Partner Authorities to approve the dissolution and replacement of the current IAA and Constitution, along with the membership of the Board to coincide with the creation of the new authority.

3.3. The proposed revised Constitution and revised IAA are set out in Appendices 1 and 2. The key revisions as a result of the creation of the new authority are:

3.3.1 A revised membership of the Board to replace references to Taunton Deane and West Somerset councils with the new authority.

3.3.2 The new authority will be entitled to two representatives.

3.3.3 The Board membership will reduce from 12 members to 10 members (still reflecting two members per partner authority)

3.3.4 Revise the quorum requirements from six members to five members, with the requirement for at least one member from each of three (currently four) different Partner Authorities.

3.3.5 The need to review the scrutiny arrangements and in particular the membership of the Joint Scrutiny Panel.

Democratic Path:

- **Scrutiny - No**
- **Executive – Yes**
- **Full Council – No**

Reporting Frequency: One off

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3. Background papers

3.1 Draft Somerset Waste Board Constitution

3.2 Draft Somerset Waste Partnership Inter Authority Agreement



**SOMERSET
WASTE BOARD**

DRAFT CONSTITUTION

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CONSTITUTION

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) SOMERSET WEST AND TAUNTON COUNCIL of The Deane House, Belvedere Road, Taunton, Somerset, TA1 1HE ("Somerset West and Taunton").

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution, unless the context otherwise requires:

"2000 Act"

means the Local Government Act 2000;

"2000 Regulations"

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

"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 Business Plan"

means the Business Plan approved by the Board in accordance with paragraph 10. The Business Plan shall include an action plan and a risk register;

"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;

"Chairman"

means the chairman from time to time of the Board elected in accordance with **paragraph 1.1 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 of 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 entered into by the Administering Authority on behalf of the Board on 12th October 2007 and subsequently extended by Deed of Variation dated 19th October 2012 until 1st October 2021;

"Commencement Date"

means 30 September 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;

"Inter Authority Agreement"

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

“Joint Scrutiny Panel”

Means an informal advisory scrutiny panel as defined in paragraph 13.2 and Appendix 5 paragraph 1.17

"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 (including the Annual Action 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 (including a change which has a material impact on service design or the cost of the services provided under the Principal Contracts) and which it considers must be subject to approval by elected members of the Partner Authority;

"Monitoring Officer"

means the 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 and Somerset West and Taunton whilst ever they remain as Partner Authorities and such other local authorities which from time to time become Partner Authorities in accordance with **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 the Administrative Authority 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 Scrutiny Arrangements;

"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 (which shall be those of the Administering Authority), subject to such amendments or additions as the Board sees fit except amendments to the financial regulations and contract standing orders which shall be those of the Administering Authority;

"Strategic Management Group" or "SMG"

means the board comprising the Director or Senior Manager from the Partner Authorities with responsibility for Environmental Services and/or Commissioning 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**;

"SWB Scrutiny Arrangements"

means the arrangements set out in **Appendix 5**;

"Treasurer"

means the appropriately qualified financial officer 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 1.1 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, 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 the Principal Contracts.
- 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.
- 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, nominate a Substitute Member to attend a meeting of the Board in his place.
- 4.9 Except where permitted under 4.8A below, 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.

- 4.9A If both SWB Members representing one authority are Members of that Partner Authority's Executive and wish to nominate a Substitute Member in accordance with paragraph 4.8 above, then either one (but not both) of the two SWB Members may nominate a Substitute who is not a member of the 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 or the Administering Authority 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 to the Administering Authority 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

10. BUSINESS PLAN

- 10.1 No later than 30 September in each year the Managing Director shall, having consulted with SMG, submit an outline draft Annual Business Plan to the Board in respect of the next ensuing five Financial Years (covering the next Financial Year and the following four Financial Years). The outline draft will indicate key changes and actions that might be undertaken in the period and included in the Annual Business Plan, so far as can be reasonably proposed at the time, and seek the views of the Board on these and any other potential areas of focus as may be proposed by members of the Board or Partner Authorities.
- 10.2 Subject to having considered any comments or suggested amendments from the Board, SMG and the Joint Scrutiny Panel and, having regard to the timetable in paragraph 10.3 below, 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) .
- 10.3 No later than 24 December in each year the Board shall consider the suitability of the draft Business 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 (subject to such amendments as the Board may require) for consultation with the Partner Authorities.
- 10.4 No later than the first Friday in the February of each Financial Year each Partner Authority will submit a report to its elected members to obtain approval for the draft Annual Business Plan. In addition, each Partner Authority will provide any comments or proposed amendments to the draft Annual Business Plan to the Board.
- 10.5 No later than 28 February in each financial year the Board, having taken into consideration any comments or proposed amendments by the Partner Authorities, and subject to such further amendments as the Board may require, shall use its best endeavours to adopt the draft Business Plan as its approved Annual Business plan.
- 10.6 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.
- 10.7 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 for that Financial Year to accommodate any unforeseen circumstances and to assist the Board in achieving the Aims and Objectives.

- 10.8 Where the Board is to consider amendments to the Business Plan in accordance with **paragraph** 10.5 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 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.
- 10.9 Where no Partner Authorities serve notice (in accordance with **paragraph** 10.6) on the Managing Director, the Board may implement such proposed amendments.
- 10.10 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. Partner authorities may make comments to the proposed amendments which do not constitute a material change and in these circumstances these comments will be considered by the Board.

11. ANNUAL BUDGET

- 11.1 The Board and the Partner Authorities will prepare the Annual Budget for each Financial Year in accordance with the following deadlines:
- 11.1.1 No later than 31 July 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 Treasurer, the Single Client Group and the Administering Authority;
- 11.1.2 No later than 30 September 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;
- 11.1.3 Subject to having considered any comments or suggested amendments from the Board, SMG, s151 officers and the Joint Scrutiny Panel, and any new information, the Treasurer shall, having regard to the timetable below, submit to the Board the draft Budget in respect of the following Financial Year.
- 11.1.4 No later than 24 December in each year the Board shall consider the suitability of the draft Budget and shall use its reasonable endeavours to approve the draft Budget (subject to such amendments as the Board may require) for consultation with the partner authorities.

- 11.1.5 No later than 1 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 Treasurer and the Single Client Group;
- 11.1.6 No later than the first Friday in the February of 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. In addition, each Partner Authority will provide any comments or proposed amendments to the draft Annual Budget to the Board;
- 11.1.7 The Board shall use its best endeavours to approve the Annual Budget by no later than 28 February in each Financial Year.
- 11.2 If the Partner Authorities or the Board are unable to approve the draft Annual Budget for a Financial Year before 28 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, tax and prevalent demographic growth as required under the terms of the Principal Contracts and to meet any increased costs of employment of the existing Single Client Group, until such time as the Partner Authorities and Board can approve an Annual Budget.
- 11.3 At any time within a Financial Year the Board may agree by a majority vote amendments to the Annual Budget for that Financial Year to accommodate any unforeseen change in circumstances and/or to assist the Board in achieving the performance of its statutory functions and/or other activities in accordance with the Aims and Objectives.
- 11.4 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.
- 11.5 Where no Partner Authorities serve notice (in accordance with **paragraph 11.5**) on the Managing Director the Board may implement such proposed amendment.
- 11.6 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.

- 11.7 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 proposes 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 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. Partner authorities may make comments to the proposed amendments which do not constitute a material change and in these circumstances these comments will be considered by the Board.
- 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 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 ARRANGEMENTS

- 13.1 The decisions, actions and activities of the Board shall be subject to the formal

Scrutiny Arrangements of each Partner Authority.

- 13.2 Subject to paragraph 13.1 the Joint Scrutiny Panel may make recommendations to the Board or to individual partner authorities so far as they concern matters associated with the function or activities delegated to the Board.

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 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.

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 4**.

17.2 The Board shall appoint the Managing Director through an appointment panel made up of SWB Members as agreed by the Board.

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 shall also receive regular reports from the Treasurer and the Managing Director 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, s34A, s.45, s45A, s.46A, s46B, s46C, s46D, s.47, s47ZA, s47ZB, s.48, s.51, s. 52, s.55, s59, s63A, s71, s73A;
2. Waste and Emissions Trading Act 2003 s.9, s.12,s.31; s.32;
3. Environment Act 1995 s.108, 108A, 109;
4. Refuse Disposal (Amenity) Act 1978 section 2(1)(b)
5. 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;
6. 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; and
7. Localism Act 2011 s.1, in so far as the use of the general power set out therein is calculated to facilitate the discharge of any of the functions referred to in Part II of this Appendix

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 Managing Director and the Administering Authority (including the Single Client Group) in the performance of their duties and functions under this Constitution;
3. approve and implement the Business Plan;
4. approve and implement the Annual Budget;
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) under 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) Anti-Social Behaviour Act 2003;
 - (e) Clean Neighbourhoods and Environment Act 2005;
 - (f) Refuse Disposal (Amenity) Act 1978 (insofar as this relates to abandoned vehicles, public safety and amenity);
 - (g) Environmental Protection (Waste Recycling Payments) Regulations 1992 (as amended 1994);
 - (h) EU Landfill Directive (Council Directive 1993/317 EC);
 - (i) EU IPPC Directive (Council Directive 967 617 EC);
 - (j) Landfill Tax Regulations and the Finance Act 1996;
 - (k) Controlled Waste (England and Wales) Regulations 2012;
 - (l) Environmental Protection (Duty of Care) Regulations 1991;
 - (m) Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991;
 - (n) Environment Act 1995;
 - (o) Waste Emissions Trading Act 2003;
 - (p) Household Waste and Recycling Act 2003;
 - (q) EU Waste Electronic and Electrical Equipment Directive;
 - (r) Local Government Act 1999 (best value duty);
 - (s) Local Government Act 2003 (duties under the Code of Practice for Workforce Matters);
 - (t) Controlled Waste (Registration of Carriers and Seizure of Vehicles) (Amendment) Regulations 1998, SI 605;
 - (u) End-of-Life Vehicles Regulations 2003, SI 2635;

- (v) End-of-Life Vehicles (Producer Responsibility) Regulations 2005, SI 263;
- (w) Environmental Protection (Duty of Care) (England) (Amendment) Regulations 2003, SI 63;
- (x) The Waste (England and Wales Regulations) 2011 as amended

- (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.
- (ii) The Waste (England and Wales) Regulations 2011 (as amended)
- (jj) The Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- (kk) The Waste Electrical and Electronic Regulations 2013 (as amended)

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 AGM meeting the Board shall:
 - 1.1 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;
 - 1.2 Review, as required, the Constitution, its Standing Orders, Rules of Procedure and Scheme of Delegation
 - 1.3 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 5 , 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. 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.
4. 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 notice of requisition.
5. 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.
6. The quorum for a meeting of the Board shall be five SWB Members, which shall include at least one SWB Member appointed by each of three different Partner Authorities; no business may be transacted at a meeting of the Board unless a quorum is present.

7. 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.
8. 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.
9. 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).
10. 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.
11. 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

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

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 (subject to obtaining the prior written consent of the relevant Partner

Authority(ies)) 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 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;
- 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;
- 2.1.9 prepare and submit for approval by the Board an annual internal audit plan. Regularly report on the findings of any audits undertaken to the Board and to the section 151 officers of all of the Partner Authorities; and
- 2.1.10 prepare a strategic risk register relating to the functions of the Board and regularly submit this, together with details of any mitigation actions implemented, to the Board.

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 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 to 16.4 of the Inter Authority Agreement.

APPENDIX 5

SWB 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 co-operate 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 Board 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.
- 1.17 Subject to the above paragraphs the partners may, without compulsion, appoint up to two members to an informal Joint Waste Scrutiny Panel, for the purpose of reviewing the draft annual business plan and any topic requested by the partners. The Joint Scrutiny Panel is not a formal scrutiny body as defined in paragraph 13.1 or within this Appendix but it may make recommendations to the Board or to individual partner authorities so far as they concern matters associated with the function or activities delegated to the Board.

-

SOMERSET COUNTY COUNCIL

and

MENDIP DISTRICT COUNCIL

and

SEDGEMOOR DISTRICT COUNCIL

and

SOUTH SOMERSET DISTRICT COUNCIL

and

SOMERSET WEST AND TAUNTON COUNCIL

INTER AUTHORITY AGREEMENT
relating to the Somerset Waste Board

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Lacon House
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London WC1X 8RW

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INTER-AUTHORITY AGREEMENT

DATE 30TH SEPTEMBER

2007

PARTIES

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

IT IS AGREED AS FOLLOWS:

RECITALS:

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

- (E) Each of the Partner Authorities recognises in particular the need to address central government and European targets for waste minimisation, recycling and recovery of waste and the promotion of sustainable development including the use of waste as a resource.
- (F) The Partner Authorities have an aspiration to move towards the creation of a joint waste authority when legislation permits.
- (G) The Partner Authorities have each resolved to:
1. form the Board with effect from the date of this Agreement;
 2. delegate to the Board their statutory functions in relation to waste disposal or waste collection and the recycling of waste as set out in appendix 1 of the Constitution; and
 3. to agree the Constitution.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:

"2000 Act"

means the Local Government Act 2000;

"2000 Regulations"

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

"Administering Authority"

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

"Agreement"

means this agreement (including its schedules);

"Aims and Objectives"

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

"Annual Action Plan"

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

"Annual Budget"

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

"Authority"

means any Partner Authority;

"Best Value"

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

"Board"

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

"Business Day"

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

"Business Plan"

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

"CEDR"

means the Centre for Effective Dispute Resolution;

"Chief Executive"

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

"Clerk of the Board" or "Clerk"

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

"Collection Contract"

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

"Collection Contractor"

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

"Commencement Date"

means the date of this Agreement;

"Confidential Information"

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

"Constitution"

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

"Disposal Contracts"

means together the following contracts:

- (a) the core services contract;
- (b) the N WTF 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;

"Landfill Allowances Trading Scheme" or "LATS"

means the landfill allowances trading scheme established pursuant to the Waste and Emissions Trading Act 2003 and the Landfill Allowances and Trading Scheme (England) Regulations 2004;

"LGA 1972"

means the Local Government Act 1972;

"Managing Director"

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

"Material Change"

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

"Monitoring Officer"

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

"Partner Authority"

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

"Personal Data"

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

"Precept Dates"

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

"Principal Contracts"

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

"Prohibited Act"

means:

- (a) offering, giving or agreeing to give to any servant of a Partner Authority any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement, the Principal Contracts or in relation to the operation and administration of the Board; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement, the Principal Contracts or in relation to the operation and administration of the Board;
- (b) entering into this Agreement or any other contract with a Partner Authority or other public body relating to this Agreement or the Board in connection with which commission has been paid or has been agreed to be paid by a Partner Authority or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any

such contract for the payment thereof have been disclosed in writing to the other Partner Authorities;

- (c) committing any offence relating to this Agreement, the Principal Contracts or in relation to the operation and administration of the Board:
 - (i) under the Prevention of Corruption Acts 1889 -1916;
 - (ii) under the LGA 1972;
 - (iii) under legislation creating offences in respect of fraudulent acts; or
 - (iv) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with a Partner Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud a Partner Authority in relation to this Agreement, the Principal Contracts or in relation to the operation and administration of the Board;

"Review Notice"

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

"Review Report"

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

"Single Client Group" or "SCG"

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

"Standing Orders and Rules of Procedure"

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

"Strategic Management Group" or "SMG"

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

"SWB Member"

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

"Treasurer"

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

"TUPE"

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

"VAT"

means value added tax;

"Workforce Code"

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

1.2 Interpretation

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

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

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

2. COMMENCEMENT AND DURATION

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

3. FORMATION OF THE SOMERSET WASTE BOARD

3.1 The Partner Authorities have each agreed and resolved to form the Board with effect from the Commencement Date.

3.2 The Partner Authorities have each agreed and resolved that the Board should discharge their respective statutory functions with respect to waste disposal, waste collection and the recycling of waste which statutory functions are set out in appendix 1 part I of the Constitution.

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

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

Appointment

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

Roles of the officers

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

Administrative support to the Board

- 4.4 Legal advice and services shall be provided to the Board by the Administering Authority. In the event of conflict of interest or potential conflict of interest between the interests of the Board and the interests of the Administering Authority, the Board shall appoint the Head of Legal Services of one of the other Partner Authorities to advise and act on behalf of the Board.
- 4.5 Human resources advice and services shall be provided to the Board by the Administering Authority.
- 4.6 The Administering Authority shall provide or arrange such additional administrative services, resources and office facilities that may be reasonably necessary to enable the Single Client Group and the Board to discharge their roles and functions.
- 4.7 The costs of providing the above advice and services shall form part of the Annual Budget of the Board and shall be funded by the Partner Authorities in accordance with the principles set out in **Schedule 5** (Budget and Cost Sharing Agreement).

5. ROLE AND RESPONSIBILITIES OF THE ADMINISTERING AUTHORITY

- 5.1 The Partner Authorities agree that the County Council shall be the Administering Authority for the purposes of this Agreement until removed or replaced in accordance with **clause 7**.
- 5.2 The Administering Authority shall:
 - 5.2.1 arrange for the Single Client Group to discharge its roles and functions as set out in **clause 8**;
 - 5.2.2 receive each Partner Authority's share of the Annual Budget calculated in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement);
 - 5.2.3 make the payments due under the Principal Contracts;
 - 5.2.4 ensure that the Board operates in accordance with the Constitution and Standing Orders and Rules of Procedure including notifications for meetings of the Board;
 - 5.2.5 arrange for the Treasurer to promptly and diligently perform the role of accounting officer for all funds held on account of the Board and to make and provide all appropriate banking and accounting arrangements and services required for the due and proper receipt holding and application of such funds and to assist the Board in the discharge of its functions;

- 5.2.6 arrange for the Monitoring Officer to promptly and diligently perform the role of monitoring officer in relation to the Board and to notify the monitoring officers of the other Partner Authorities should it appear to him at any time that any proposal decision or omission of the Board constitutes or may give rise to a contravention of any enactment or rule of law or maladministration under Part III of the Local Government Act 1974;
 - 5.2.7 subject to **clause** 4.4, provide or arrange promptly and diligently such legal advice as requested by the Board from time to time;
 - 5.2.8 provide or arrange promptly and diligently such human resources advice and services as requested by the Board from time to time;
 - 5.2.9 provide or arrange promptly and diligently such additional administrative services, resources and office facilities that may be reasonably necessary to discharge the Board's functions;
 - 5.2.10 where agreed by the Board hold any capital assets in respect of the Principal Contracts and the Single Client Group on behalf of the Board and/or the Partner Authorities;
 - 5.2.11 be the contracting authority on behalf of the Board;
 - 5.2.12 to carry out any functions delegated to it by the Board; and
 - 5.2.13 instigate and defend legal proceedings on behalf of the Board, the other Partner Authorities (subject to obtaining the prior written consent of the relevant Partner Authority(ies)) and itself as appropriate.
- 5.3 The Administering Authority shall be responsible for the appointment, employment and management of the staff of the Single Client Group (save that the Managing Director shall be appointed by the Board in accordance with paragraph 17.2 of the Constitution) and for the payment of the salaries, wages, income tax, national insurance contributions, and all other payments and emoluments of such staff provided that such payments shall not, without the approval of the Board exceed the amount specified within the Annual Budget for such expenditure.
- 5.4 The Administering Authority shall provide such administrative services, resources and arrange or provide such office facilities that may be reasonably necessary to enable the Single Client Group to carry out its functions and activities.
- 5.5 The Administering Authority shall ensure that all contracts entered into by it on behalf of the Board shall contain provisions enabling them to be novated to all or any of the Partner Authorities, at no cost to the Partner Authorities other than reasonable legal costs incurred in completing such novations.

6. ROLE AND RESPONSIBILITIES OF THE PARTNER AUTHORITIES

- 6.1 Each Partner Authority acknowledges the role and responsibilities of the Administering Authority and each Partner Authority's obligations to share in good faith the costs of the Board in accordance with this Agreement and the Constitution.
- 6.2 The Partner Authorities acknowledge and agree that they shall promptly pay any money properly due in accordance with this Agreement and the Constitution (including but not limited to their contributions to the Annual Budget) to the Administering Authority.
- 6.3 Where any Partner Authority (acting in good faith) disputes all or any part of any sum due the undisputed amount of such sum shall be paid to the Administering Authority in accordance with

clause 13 and the principles set out in **Schedule 5** (Budget and cost sharing agreement) and the provisions of **clause 32** shall apply in respect of the disputed amount.

- 6.4 Following resolution of the dispute in question any amount agreed or determined to have been payable shall be paid forthwith to the Administering Authority together with any additional amount calculated in accordance with **clause 13.6**.
- 6.5 The Partner Authorities shall use all reasonable endeavours to make any decisions or ratify any decisions of the Board as required by this Agreement or the Constitution as soon as reasonably practicable.
- 6.6 Each Partner Authority shall consider any proposed amendments to the Business Plan (including the Annual Action Plan) under paragraph 10.7 of the Constitution in good faith and act reasonably in considering whether or not the proposed amendments amount to a material change (as defined in the Constitution) requiring the approval of the Partner Authority.
- 6.7 Each Partner Authority shall consider any such proposed amendments to the Annual Budget under paragraph 11.5 of the Constitution in good faith and act reasonably in considering whether or not to approve any proposed amendments.
- 6.8 Each Partner Authority shall grant to the Administering Authority leases and give consent to the grant of underleases to the Collection Contractor (in forms to be agreed by the relevant Partner Authority and the Administering Authority) of its respective depot(s) or part thereof as may be reasonably required by the Collection Contractor for the provision of the services under the Collection Contract and as agreed by the relevant Partner Authority acting reasonably and taking into account any other operational requirements for which the depot is or may be required.
- 6.9 The Partner Authorities shall comply with their obligations as set out in **Schedule 2** (Transition arrangements).

7. REPLACEMENT OR REMOVAL OF THE ADMINISTERING AUTHORITY

7.1 Resignation of the Administering Authority

- 7.1.1 The Administering Authority may upon giving at least one year's written notice to the Managing Director and to the Chief Executives of the other Partner Authorities resign from the position of Administering Authority.
- 7.1.2 The Partner Authorities shall upon receipt of such notice as soon as possible agree (in consultation with the Board) that one of the other Partner Authorities shall replace the resigning Administering Authority with effect from the expiry of such notice.
- 7.1.3 The provisions of **Schedule 3** (Change of Administering Authority) shall apply as to the novation of the Principal Contracts (but excluding the Disposal Contracts which shall remain with the County Council) and the arrangements for the transfer of the staff of the Single Client Group and all assets, property, rights and liabilities of the outgoing Administering Authority held by it or undertaken on behalf of the Board to the incoming Administering Authority.

7.2 Removal of the Administering Authority

- 7.2.1 If the Administering Authority:
- (a) commits a substantial or persistent breach of the terms of this Agreement or of the provisions of the Constitution; or
 - (b) fails to redress substantial or persistent under-performance of its duties under this Agreement or fails to meet the reasonable requirements of the Board; or

- (c) commits gross misconduct contrary to the provisions of local government legislation or contrary to proper practices and conduct,

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

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

8. THE SINGLE CLIENT GROUP

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

8.1.10 prepare a strategic risk register relating to the functions of the Board and regularly submit this, together with details of any mitigation actions implemented, to the Board.

8.2 The provisions of **Schedule 2** (Transition agreement) shall apply in relation to the transfer of staff, assets and equipment from the other Partner Authorities to the Administering Authority in respect of the establishment of the Single Client Group with effect from the Commencement Date.

9. THE MANAGING DIRECTOR

9.1 The Partner Authorities agree that the Managing Director shall be appointed by the Board in accordance with paragraph 17.2 of the Constitution and shall report to the Board.

9.2 The duties and functions delegated to the Managing Director shall be agreed by the Board in accordance with the scheme of delegation adopted by the Board in accordance with paragraph 8.1 of the Constitution.

10. STRATEGIC MANAGEMENT GROUP

10.1 The Partner Authorities shall with effect from the Commencement Date form the SMG.

10.2 The SMG shall meet as and when required and the Partner Authorities shall share (in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement) the administrative costs and arrangements required for the SMG.

10.3 The Partner Authorities agree that the SMG shall have the following roles and responsibilities:

10.3.1 to ensure that the legal duties and statutory functions of the Partner Authorities delegated to the Board in accordance with the Constitution are being discharged effectively in accordance with relevant legislation and with due economy, efficiency and effectiveness;

10.3.2 to ensure that the duties of the Partner Authorities with respect to Best Value are complied with including any duties under the Workforce Code;

10.3.3 to review each Business Plan and Annual Action Plan prepared by the Single Client Group and make recommendations for any changes it deems necessary (acting reasonably) in accordance with paragraph 10 of the Constitution prior to submission to the Board for approval;

10.3.4 to review the Annual Budget prepared by the Treasurer and where relevant make recommendations for any changes it deems necessary (acting reasonably) in accordance with paragraph 11 of the Constitution before submission to the Board and each Partner Authority for approval;

10.3.5 to consider the reports submitted by the Managing Director regarding the performance of the Board; and

10.3.6 to review the effectiveness of the Board in:

(a) helping each Partner Authority to meet its statutory and local targets; and

(b) achieving efficiency savings on behalf of all of the Partner Authorities,

following which it shall report and, where appropriate, make recommendations to the Partner Authorities on the effectiveness of the Board and any changes or amendments necessary to improve the effectiveness of the Board.

11. BUSINESS PLAN

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

12. ANNUAL BUDGET

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

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

- 13.1 The Partner Authorities shall contribute to the Annual Budget in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).
- 13.2 The amount of each Partner Authority's annual contribution towards the costs of the Board in any Financial Year shall be such amounts as shall be specified for that Partner Authority in the schedule of payments attached to the Annual Budget for that Financial Year.
- 13.3 Each Partner Authority shall pay to the Administering Authority on behalf of the Board monthly instalments each equal to one twelfth of the annual sum payable by it to the Board in accordance with this **clause 13** and **Schedule 5** (Budget and cost sharing agreement) on the Precept Dates.
- 13.4 Where any Partner Authority (acting in good faith) disputes all or any part of any sum due the undisputed amount of such sum shall be paid to the Administering Authority forthwith and the provisions of **clause 32** shall apply in respect of the disputed amount.
- 13.5 Following resolution of the dispute in question any amount agreed or determined to have been payable shall be paid forthwith to the Administering Authority together with the reasonable costs and compensation for any losses incurred by the Administering Authority calculated in accordance with **clause 13.6**.
- 13.6 In the event of any Partner Authority failing to make a payment under **clause 13.3** on the relevant Precept Date, it shall pay to the Administering Authority reasonable costs and compensation for any losses incurred by the Administering Authority in respect of the outstanding instalments such amount to be calculated on a daily basis (commencing from the first Business Day after the relevant Precept Date) for each day a Partner Authority is late in making such payment.
- 13.7 Before the start of each Financial Year, the Administering Authority shall issue to each Partner Authority an annual payment and invoicing schedule for the forthcoming Financial Year, identifying the twelve monthly payments due on the Precept Dates.
- 13.8 The County Council shall report the number of allowances bought and sold and financial details of all LATS trades to the Single Client Group and the Board.

- 13.9 The Partner Authorities agree to keep under review the structure of the payment of contributions under this Agreement to minimise any adverse VAT implications for any of the Partner Authorities.

14. CESSATION OF MEMBERSHIP

- 14.1 Any of the Partner Authorities can withdraw from membership of the Board in the manner set out in paragraph 16 of the Constitution.
- 14.2 In the event that a Partner Authority withdraws from the Board that Partner Authority shall continue to meet in full:
- 14.2.1 its contributions in respect of any period during which that Partner Authority was a member of the Board in accordance with **clause** 13 including any arrears of such contributions;
- 14.2.2 any additional contractual or other financial commitments and liabilities incurred by the Board on its behalf not covered within its contributions under **clause** 13; and
- 14.2.3 its ongoing contributions and liabilities in respect of the Principal Contracts as notified from time to time by the Administering Authority and shall remain subject to this Agreement in respect of such ongoing contributions and liabilities calculated in accordance with the principles set out in **Schedule** 5 (Budget and cost sharing agreement).
- 14.3 A Partner Authority withdrawing from the Board shall be entitled to receive its fair share of any assets held by or on behalf of the Board at the date of their withdrawal when those assets are realised or sold by or on behalf of the Board unless the remaining Partner Authorities decide to retain such assets in which event they shall compensate the withdrawing Authority for its share of the market value of such assets.
- 14.4 If more than one Partner Authority gives notice of withdrawal from membership of the Board in any Financial Year the provisions of paragraph 16.4 of the Constitution shall apply.
- 14.5 If it is agreed by all Partner Authorities that another local authority should be permitted to join the Board then pursuant to Regulation 11(2)(c) of the 2000 Regulations the Board shall be dissolved and this Agreement terminated with a view to a new Board being established and a replacement agreement on similar terms to this Agreement (as varied by agreement of the proposed Partner Authorities) being completed with effect from the date of termination of this Agreement.

15. DISSOLUTION OF THE BOARD

- 15.1 A majority of the Partner Authorities may at any time (whether as a result of the Board's recommendations or otherwise) agree (by formal resolutions by each of them) that the Board should be dissolved with effect six months from the date of the decision or the date on which the agreement referred to in **clause** 15.2 below is completed if later.
- 15.2 In the event of agreement that the Board should be dissolved or in the event of the termination of this Agreement in accordance with **clause** 31 the Partner Authorities shall (acting reasonably) negotiate and seek to agree and execute a legally binding agreement dealing with the novation or termination of the Principal Contracts (excluding the Disposal Contracts) and the allocation amongst the Partner Authorities of the property, assets, rights, staff and liabilities held or employed by the Administering Authority on behalf of the Board. Such agreement shall include, as a minimum, provisions to deal with the matters listed in **Schedule** 6 (Exit arrangements).

- 15.3 This Agreement shall terminate upon the relevant date the agreement entered into by the Partner Authorities in accordance with **clause** 15.2 above becomes legally binding or upon such date as the Partner Authorities agree unanimously that no further liabilities, assets or ongoing obligations, including those under the terms of the Principal Contracts, shall exist in relation to the Board.

16. ACCOUNTS, AUDIT AND REPORTING

- 16.1 The Administering Authority shall procure that the Treasurer shall maintain the accounts of the Board in accordance with 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. Revenue and Customs 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 (where applicable) shall be submitted to the Board for approval and copies shall be provided to the section 151 officer of each Partner Authority by no later than 15 May in each Financial Year in respect of the un-audited accounts and by no later than 31 August in each Financial Year in respect of the audited accounts.
- 16.4 The Administering Authority shall procure that the Treasurer shall provide sufficient financial information to the section 151 officer of each Partner Authority to enable each Partner Authority to report on the financial status of the Board against the relevant Annual Budget.

17. ARRANGEMENTS INSURANCE, INDEMNITIES AND CONDUCT OF CLAIMS

Indemnities

- 17.1 Excluding any liabilities in respect of the Collection Contract (which shall be subject to **clause** 19.5) insofar as the Administering Authority shall perform its obligations and functions as Administering Authority in accordance with the provisions of this Agreement, the Partner Authorities hereby agree to be bound by and comply with any or all outcomes of the exercise of such obligations and functions and each Partner Authority hereby undertakes to pay to the Administering Authority its appropriate share of any additional costs, contributions to claims or liabilities which may arise as a result of the performance by the Administering Authority of its obligations under this Agreement in accordance with the principles set out in **Schedule** 5 (Budget and cost sharing agreement).
- 17.2 Each of the Partner Authorities shall indemnify the others of them from and against any damages or awards (including legal expenses on an indemnity basis) paid by them to their employees or their personal representatives or to third parties in settlement of any claims arising from a breach by that Partner Authority of this Agreement, negligence of that Partner Authority or its employees or agents acting in the course of their employment, damage to real and personal property or injury to persons including injury resulting in death.
- 17.3 Neither the Administering Authority nor any other Partner Authority shall be responsible or obliged to indemnify any other Partner Authority for:

- 17.3.1 any liability which arises as a direct result of a Partner Authority acting on the instructions of the Partner Authority claiming under any indemnity in this Agreement (to the extent that the other Partner Authority is entitled to give such instructions); or
- 17.3.2 any injury, loss, damage, cost and expense caused by the negligence, wilful misconduct or a breach of this Agreement by the Partner Authority claiming under any indemnity in this Agreement or an agent, contractor or employee of that Partner Authority.
- 17.4 None of the Partner Authorities shall be liable in tort to any other or others of the Partner Authorities for any negligent act or omission of that other Partner Authority or those other Partner Authorities relating to this Agreement and the only remedy of such other Partner Authority or Authorities is under this Agreement. Each Partner Authority shall use reasonable endeavours to procure that no agent, contractor or employee of it brings a claim in tort or otherwise against any of the other Partner Authorities.
- 17.5 Any indemnity under this **clause** 17 shall be without prejudice to any indemnity by the same Partner Authority under any other provision of this Agreement.
- 17.6 None of the indemnities under this Agreement shall apply, and there shall be no right to claim damages for breach of this Agreement whatsoever to the extent that any loss claimed is for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential or for indirect loss of any nature allegedly suffered by any Partner Authority.

Insurance

- 17.7 The Administering Authority shall take out and maintain the following insurances (or make suitable provision to self-insure) in respect of the employees, premises and equipment allocated to the Single Client Group:
- 17.7.1 public liability insurance;
- 17.7.2 employees liability insurance;
- 17.7.3 buildings and/or contents insurance; and
- 17.7.4 any other insurances required by law or agreed by the Board to be appropriate.
- 17.8 In relation to the insurances referred to in **clause** 17.7:
- 17.8.1 the interests of the other Partner Authorities shall be noted on the policies;
- 17.8.2 none of the Partner Authorities shall take any action or fail to take any action nor allow anything to occur which would entitle an insurer to refuse a claim under any of the insurance policies or which may render such a claim wholly or partially repayable; and
- 17.8.3 the Administering Authority shall provide on request to the other Partner Authorities copies of insurance policies referred to in this **clause** 17.7 and evidence of the payment of the premiums and that the insurances are in full force and effect.
- 17.9 The Administering Authority may (subject to the prior agreement of the Board and the other Partner Authorities) decide to self insure in respect of any risks or interest as defined and agreed by the Board and the other Partner Authorities on the basis that the Partner Authorities through their funding of the Board under this Agreement shall meet that liability as if the Board were an insurer of such risks or interest.
- 17.10 Each Partner Authority shall assist each of the other Partner Authorities in respect of the insurance requirements and obligations in this Agreement.

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

19. COLLECTION CONTRACT

- 19.1 The Administering Authority shall enter into the Collection Contract on behalf of the Board and each of the other Partner Authorities.
- 19.2 Each Partner Authority acknowledges that it accepts the terms of and agrees to be bound by the Collection Contract.
- 19.3 The Partner Authorities agree that the provisions of this **clause** 19 and **Schedule** 7 (Collection Contract) shall apply in respect of the administration of the Collection Contract.
- 19.4 The Administering Authority shall (acting as a reasonable local authority) administer the Collection Contract in accordance with its terms.

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

20. REVIEW OF AGREEMENT

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

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

21. CONFIDENTIALITY

Confidentiality

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

Receiving Party shall notify the Requesting Party forthwith if it does not hold the requested information.

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

Announcements

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

22. EQUAL OPPORTUNITIES

- 22.1 The Board shall adopt a policy to comply with its statutory obligations under the Race Relations Act 1976 (as amended), the Sex Discrimination Act 1975 (as amended), the Disability Discrimination Act 1995 (as amended), the Equality Act 2006, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Sex Discrimination) Regulations 2005, the Employment Equality (Age) Regulations 2006, or any other relevant legislation relating to discrimination in the employment of employees and accordingly will not unlawfully treat one group of people less favourably than others because of their colour, race, disability, sex, sexual orientation, nationality, ethnic origin or age in relation to decisions to recruit, train, promote, discipline or dismiss its personnel.

- 22.2 In the event of any finding of unlawful discrimination being made against the Board, the Administering Authority or a contractor of the Administering Authority in respect of any matter relating to this Agreement by any court or industrial tribunal, or of any adverse finding in any formal investigation by the Commission for Equality and Human Rights the Administering Authority shall inform the other Partner Authorities of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 22.3 The Board or as the case may be the Administering Authority shall, on request, provide the other Partner Authorities with details of any steps taken under **clause** 22.2.
- 22.4 The Board or, as the case may be, the Administering Authority shall set out its policy on the prevention of unlawful discrimination:
- 22.4.1 in instructions to those concerned with recruitment, training and promotion;
- 22.4.2 in documents available to its personnel, recognised trade unions or other representative groups of its personnel; and
- 22.4.3 in recruitment advertisements and other literature.
- 22.5 The Board or as the case may be the Administering Authority shall observe as far as possible, and at least in accordance with the Administering Authority's published criteria, the Code of Practice relevant to employment matters issued by the Commission for Equality and Human Rights (or its predecessor organisations).
- 22.6 The Board or as the case may be the Administering Authority shall provide such information as the other Partner Authorities may reasonably request for the purpose of assessing the compliance of the Board or as the case may be the Administering Authority with this **clause** 22.
- 22.7 The Board or as the case may be the Administering Authority shall procure that any contractors or sub-contractors (including the contractors and sub-contractors under the Principal Contracts) providing services to the Partner Authorities comply with the obligations set out in **clauses** 22.1 and 22.3 to 25.5 (inclusive).

23. LOCAL COMMISSIONER

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

24. DATA PROTECTION

- 24.1.1 In relation to all Personal Data, the Board, the Administering Authority and the other Partner Authorities shall at all times comply with the DPA as a data controller if necessary, including

maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with this Agreement.

24.1.2 The Board or as the case may be the Administering Authority and the other Partner Authorities shall only undertake processing of Personal Data reasonably required in connection with this Agreement and shall not transfer any Personal Data to any country or territory outside the EEA.

24.1.3 The Board, the Administering Authority and the other Partner Authorities shall not disclose Personal Data to any third parties other than:

(a) to the other Partner Authorities to whom such disclosure is reasonably necessary in order for the other Partner Authorities to carry out their obligations under this Agreement; or

(b) to the extent required under a court order,

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

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

24.2 Indemnity

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

25. WAIVER AND SEVERABILITY

25.1 Waiver

25.1.1 No term or provision of this Agreement shall be considered as waived by any Partner Authority unless a written waiver is given by that Partner Authority.

25.1.2 No waiver under **clause** 25.1.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

25.2 Severability

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

26. NO PARTNERSHIP

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

27. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

29. EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE

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

30. VARIATIONS

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

31. PREVENTION OF CORRUPTION

31.1 Corrupt gifts and fraud

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

31.2 Termination for corrupt gifts and fraud

- 31.2.1 If a Partner Authority or a SWB Member (or anyone employed by or acting on behalf of any of them) or any of its or their agents commits any Prohibited Act, then any Partner Authority shall be entitled to act in accordance with the provisions of this **clause** 31.
- 31.2.2 Upon discovering that a Prohibited Act has occurred any Partner Authority may serve notice on the Managing Director of the Prohibited Act that has occurred and the Partner Authority affected. Upon receiving such notice of a Prohibited Act the Managing Director shall serve a

notice on the Chief Executive of the Partner Authority subject to the Prohibited Act copied to the Chief Executives of all of the other Partner Authorities (a "**Notice of a Prohibited Act**").

- 31.2.3 Upon receipt of a Notice of a Prohibited Act the Partner Authority subject to the Prohibited Act shall have 3 months to take such steps and actions as are reasonable and are agreed by the Board taking account of the nature of the Prohibited Act which may include suspending the relevant employee and taking action under the Partner Authority's disciplinary procedure or where the Prohibited Act relates to an SWB Member removing its SWB Member from the Board.
- 31.2.4 Where a Partner Authority fails to take action in accordance with clause 31.2.2 the other Partner Authorities shall meet to decide what further action to take against the Partner Authority and may by unanimous vote agree to:
- (a) where the Partner Authority subject to a Notice of a Prohibited Act is the Administering Authority the Administering Authority shall be removed and the provisions of **clause 7.2** (Removal of the Administering Authority) and **schedule 3** (Change of Administering Authority) shall apply unless within 3 months of the vote the Administering Authority takes such steps and actions as are reasonable and are agreed by the Board in accordance with **clause 31.2.3**;
 - (b) where the Partner Authority subject to a Notice of a Prohibited Act is not the Administering Authority then the IAA shall terminate and the provisions of **clause 15** (Dissolution of the Board) shall apply unless within 3 months of the vote the Partner Authority subject to a Notice of a Prohibited Act takes such steps and actions as are reasonable and are agreed by the Board in accordance with **clause 31.2.3**; or
 - (c) take such other action or steps as are reasonable taking into account the nature of the Prohibited Act and its effect on the Board.

32. DISPUTE RESOLUTION

- 32.1 Any dispute arising from the interpretation and operation of this Agreement shall in the first instance be referred to the SMG, which shall, acting in good faith, attempt to resolve such dispute.
- 32.2 Where either the SMG is unable to resolve such dispute, or where in the opinion of the SMG such dispute might be more effectively resolved in another forum, the SMG may refer such dispute to the following bodies/forums (listed in order of referral) until such dispute is resolved:
- 32.2.1 a meeting of the Chief Executives and/or leaders of each of the Partner Authorities; then
 - 32.2.2 a mediator appointed by the Partner Authorities in accordance with **clause 32.3**; then
 - 32.2.3 an arbitrator appointed by the Partner Authorities in accordance with **clause 32.4**.
- 32.3 **Mediation**
- 32.3.1 A referral of a dispute to mediation shall be in accordance with the CEDR Model Mediation Procedure.
 - 32.3.2 If the Partner Authorities cannot agree on a mediator, the Partner Authorities shall appoint a mediator nominated by CEDR.
 - 32.3.3 The Partner Authorities shall use their reasonable endeavours to conclude the mediation within 40 Business Days of referral of the dispute to mediation.
 - 32.3.4 The Partner Authorities shall each bear their own costs incurred in relation to any mediation and any costs incurred by the Administering Authority acting on behalf of the Board shall be

shared in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).

32.4 Arbitration

- 32.4.1 If the dispute is not resolved in accordance with **clause 32.3** within 40 Business Days of referral of the dispute to mediation, any Partner Authority may (by service of a written notice on the other Partner Authorities within 10 Business Days of expiry of the period for mediation) refer the dispute to an arbitrator who shall be of not less than 10 years standing or qualification.
- 32.4.2 If the Partner Authorities cannot agree on an arbitrator within 15 Business Days of service of the written notice referred to in **clause 32.4.1** above, the Partner Authorities shall appoint an arbitrator nominated by the President for the time being of the Chartered Institute of Arbitrators.
- 32.4.3 Any reference to arbitration in accordance with this **clause 32.4** shall be conducted in accordance with the Rules of the London Court of International Arbitration and the arbitration shall be held at a venue agreed by the arbitrator.
- 32.4.4 The arbitrator's decision shall be final and binding on the parties.
- 32.4.5 The costs of the arbitration shall be paid as directed by the arbitrator.

33. GOVERNING LAW AND ENFORCEMENT

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

34. NOTICES

34.1 Form and service of notices

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

The Board

County Hall, Taunton, Somerset TA1 4DY

01823 356113

Partner Authority

Somerset County Council

County Hall, Taunton, Somerset TA1 4DY

01823 356113

Partner Authority

Mendip District Council

Cannards Grave Road, Shepton Mallet,
Somerset BA4 5BT

01749 344050

Sedgemoor District Council

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

01278 446412

South Somerset District Council

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

01935 462188

Somerset West and Taunton Council

The Deane House, Bevedere Road,
Taunton, Somerset. TA1 1HE

01823 356329

34.2 Provision of information to representatives

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

34.3 Change of details

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

34.4 Notices by post

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

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

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

35. COUNTERPARTS

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

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

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

Authorised Officer

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

Authorised Signatory

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

Authorised Signatory

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

Chief Solicitor

SCHEDULE 1

The Constitution

SCHEDULE 2

Transition arrangement

1. DEFINITIONS

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

"Relevant Employees"

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

"Relevant Transfer"

means a relevant transfer for the purposes of TUPE;

"Transfer Date"

means the Commencement Date;

"Transferring Employees"

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

2. TRANSFER OF ASSETS

- 2.1 The assets required by the Collection Contractor are identified in the list attached as **Appendix 1** to this **Schedule 2** and shall be transferred at nil cost from the relevant Partner Authorities into the possession and ownership of the Administering Authority on the service commencement date of the Collection Contract in order that they can be made available by the Administering Authority to the Collection Contractor in accordance with the Collection Contract.
- 2.2 Where any additional assets are required to be transferred to the Administering Authority, the relevant Partner Authority(ies) shall promptly cooperate with the Board in the transfer of such assets to the Administering Authority.

3. TRANSFER OF EMPLOYEES

3.1 **Application of TUPE**

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

3.2 **Administering Authority's responsibilities**

The Administering Authority shall:

- 3.2.1 subject to the right of any Transferring Employee to object to being employed by the Administering Authority, accept into employment the Transferring Employees on 0:01am on the Transfer Date upon the same terms and conditions of employment and length of service as they enjoyed immediately prior to the Transfer Date;
- 3.2.2 become responsible for the payment of all salaries and provision of other contractual benefits (including those implied through custom and practice) and making any deductions from the salaries of any Relevant Employees with effect from the Transfer Date.
- 3.2.3 If any contract of employment of a person other than a Transferring Employee has effect as if originally made between the Administering Authority and such person as a result of TUPE, then the Administering Authority will consult with the Board to establish whether the person shall be deployed within the Single Client Group or be given notice to terminate such contract of employment where such action is permitted by law.

3.3 **Partner Authorities' responsibilities**

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

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

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

5. **DEPOTS**

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

- 5.3 Where a Partner Authority grants only temporary access to the relevant depot or part thereof under **paragraph** 5.2 above it shall subsequently grant a lease to the Administering Authority and give consent to the grant of an underlease to the Collection Contractor (in forms to be agreed by the relevant Partner Authority and the Administering Authority) of the relevant depot or part thereof in accordance with **clause** 6.8.

SCHEDULE 3

Change of Administering Authority

PART 1

1. INTRODUCTION

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

"Administering Authority Obligations"

means the obligations of the Administering Authority under this Agreement which for the avoidance of doubt shall include the Collection Contract Obligations;

"Board Assets"

means any assets purchased by the Outgoing Administering Authority using the funds of the Board (including any assets transferred at the Commencement Date);

"Collection Contract Obligations"

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

"Exit Assistance"

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

"Exit Plan"

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

"Exiting Employee"

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

"Exiting Employees List"

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

"Exiting Personnel"

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

"Exiting Personnel List"

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

"Handover Date"

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

"Key Personnel"

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

"Novation Date"

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

"Novation Notice"

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

"Ordinary Course of Business"

means either:

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

"Outgoing Administering Authority Assets"

means together:

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

"Outgoing Administering Authority Employees"

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

"Outgoing Administering Authority"

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

"Outgoing Administering Authority Personnel"

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

"Outgoing Administering Authority Personnel Information"

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

- (a) regarding each member of the Outgoing Administering Authority Personnel, identified by a unique reference number or code which shall remain the same each time the Outgoing Administering Authority Personnel Information is provided by the Outgoing Administering Authority to the Replacement Administering Authority: type of worker (self-employed contractor, contractor employed by a third party, agency staff or other); current employer; start date and (if different) date of commencement of continuous employment; job title and post held; the delivery of the Administering Authority Obligations in which the Outgoing Administering Authority Employee is engaged; current salary or hourly rate, all overtime, shift and other allowances, and any bonus or commission earned in the last twelve months; date of next salary review and percentage increase in last review; length of service; notice period for termination of employment (stating any difference between the notice given by the employer or employee); date of birth; location; hours of work; contract type (permanent or temporary); percentage of working time spent on the Administering Authority Obligations; holiday entitlement; benefits (including without limitation health insurance, life insurance, sickness benefits, car, bonus, commission) and total benefit cost; pension membership and pension cost (including employer contribution to pension scheme); entitlement to any enhanced redundancy benefits or payments. This Outgoing Administering Authority Personnel Information shall be presented in excel spreadsheet format or some other easily intelligible form acceptable to the Replacement Administering Authority; and

- (b) regarding all the Outgoing Administering Authority Personnel: total costs of the (i) salaries; (ii) benefits; (iii) social security and national insurance costs; and (iv) miscellaneous costs (such as staff loans and training grants) in respect of all the Outgoing Administering Authority Personnel; copies of any staff handbooks and policies applicable to them; terms and conditions of employment or engagement; copies of any agreement between the Outgoing Administering Authority and a trade union or labour organisation or employee representatives or details of any other arrangements for informing and consulting with Outgoing Administering Authority Personnel or representatives; positions vacant; death benefits; disability benefits; details of any applicable bonus schemes, commission arrangements; pay scales and structures; current or anticipated claims or other litigation or other disputes and details of any accidents, injuries or health and safety issues; details of any Outgoing Administering Authority Personnel on leave (including without limitation maternity leave, adoption leave and sick leave) including whether the individual is receiving contractual sick pay and, if so, when this entitlement expires;

"Parties"

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

"Replacement Administering Authority"

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

PART 2

2. EXIT PLANNING

2.1 Date for provision of Exit Plan

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

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

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

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

- 2.1.4 The Exit Plan shall not be effective until approved by the Replacement Administering Authority and the Board.
- 2.1.5 The Parties shall review and update the Exit Plan in consultation with the Board and the SMG as appropriate up to and including the Handover Date.
- 2.2 **Exit Management Roles**
- 2.2.1 Each Party shall appoint a suitable individual to manage the exit process (an "**Exit Manager**").

PART 3

3. EXIT ARRANGEMENTS

3.1 Date for provision of Exit Assistance

- 3.1.1 The Outgoing Administering Authority shall provide the Exit Assistance and fulfil all the obligations set out in this **Schedule 3** within 40 Business Days of:
- (a) where the Outgoing Administering Authority has decided to resign, the date of the written notification provided in accordance with **clause 7.1.1**; or
 - (b) where the Partner Authorities have agreed to replace the Administering Authority, the date of receipt of written notification provided in accordance with **clause 7.2.1**.
- 3.1.2 The obligation to provide the Exit Assistance and fulfil all the obligations of this **Schedule 3** from the relevant date is independent of and not contingent upon the Parties having an agreed form of Exit Plan in place. Where there is an agreed Exit Plan in place, the Outgoing Administering Authority shall provide to the Replacement Administering Authority and to the Board weekly reports of progress against the Exit Plan and of any problems, anticipated problems and delays and of any appropriate actions to be taken by the Outgoing Administering Authority in response.
- 3.1.3 At the Board or the Replacement Administering Authority's request, the Outgoing Administering Authority shall continue to provide the Exit Assistance and continue with the implementation of the Exit Plan for a period of up to six months (or such longer period as the Replacement Administering Authority may request) from the Handover Date.

3.2 Option to purchase or use Outgoing Administering Authority Assets

- 3.2.1 The Outgoing Administering Authority shall prepare a list of the Outgoing Administrating Authority Assets and the Board Assets as part of the Exit Plan.
- 3.2.2 Upon the Handover Date, at the direction and discretion of the Replacement Administering Authority in consultation with the Board:
- (a) the Replacement Administering Authority shall have the option to acquire through purchase all or any of the Outgoing Administering Authority Assets excluding land and buildings and software in consideration of the payment by the Replacement Administering Authority of the net book value of these assets; or
 - (b) the Replacement Administering Authority shall have the option where possible to continue to use such assets.
- 3.2.3 The Outgoing Administering Authority shall immediately transfer any Board Assets to the Replacement Administering Authority and the provisions of **paragraph 3.2.6** shall apply to such assets as if they were transferring Outgoing Administering Authority Assets.

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

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

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

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

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

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

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

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

3.4 **Novation of the Collection Contract**

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

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

3.5 **Software**

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

3.6 Accommodation

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

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

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

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

and shall take effect on the Handover Date.

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

3.7 Intellectual property rights

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

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

3.8 Exiting Employees

3.8.1 No later than:

(a) six months prior to the Handover Date where the Outgoing Administering Authority is resigning in accordance with **clause 7.1**; or

(b) three months prior to the Handover Date where the Outgoing Administering Authority is being replaced in accordance with **clause 7.2**,

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

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

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

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

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

3.9.1 During the period of:

(a) six months prior to the Handover Date where the Outgoing Administering Authority has resigned; and

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

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

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

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

3.10 **Information and Consultation**

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

- 3.10.2 The Outgoing Administering Authority shall offer the Replacement Administering Authority the opportunity to attend and participate in any meetings prior to the Handover Date where information is given to or there is consultation with Outgoing Administering Authority Personnel and their representatives under TUPE or regarding it ceasing to be the Administering Authority. The Replacement Administering Authority shall co-operate with the Outgoing Administering Authority and shall discuss with the Outgoing Administering Authority in advance of any meeting any information which the Replacement Administering Authority is to impart to the Outgoing Administering Authority Personnel.
- 3.10.3 The Replacement Administering Authority and the Outgoing Administering Authority shall jointly report to the Board and the SMG (in a form to be agreed) before the Handover Date.
- 3.10.4 The Outgoing Administering Authority and the Replacement Administering Authority shall jointly communicate to the Exiting Employees in a form to be agreed by the Board before the Handover Date (in order to meet their respective obligations under TUPE).

3.11 **Outgoing Administering Authority Shadowing**

3.11.1 Either:

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

the Outgoing Administering Authority shall provide reasonable assistance to the Replacement Administering Authority to familiarise itself with the delivery of the Administering Authority Obligations and this may include reasonable information on and access to:

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

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

3.12 **General obligations**

- 3.12.1 No later than 20 Business Days following the Handover Date, and after the final payroll, the Outgoing Administering Authority shall provide the Replacement Administering Authority with updated payroll information and tax and statutory details for the Exiting Employees.
- 3.12.2 During the six months after the Handover Date, the Outgoing Administering Authority shall not, without the Replacement Administering Authority's prior consent, solicit from the

Replacement Administering Authority any Exiting Personnel or Exiting Employee. This restriction shall not apply to situations where such Exiting Personnel or Exiting Employee or person makes an unsolicited response to a general recruitment advertisement by the Outgoing Administering Authority.

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

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

3.13 **Employment warranties and indemnities**

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

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

3.13.2 In respect of any claims and/or losses arising directly or indirectly out of or in connection with:

- (a) a failure by the Outgoing Administering Authority to comply with its obligations under TUPE including without limitation any order to pay compensation or any award made pursuant to TUPE in connection with this Agreement or the termination of it including without limitation any claim for its or their failure to inform and/or consult pursuant to TUPE and any claim pursuant to sections 188 to 193 of the Trade Union and Labour Relations (Consolidation) Act 1992, provided the Outgoing Administering Authority's breach was not due to the failure of the Replacement Administering Authority to comply with its TUPE obligations;
- (b) any claim by or on behalf of Outgoing Administering Authority Employees arising from their employment with or its termination by the Outgoing Administering Authority except as provided in this **Schedule 3**;
- (c) any act or omission of the Outgoing Administering Authority in relation to the Outgoing Administering Authority Employees or the Outgoing Administering Authority Personnel;
- (d) any failure to provide or any inaccuracy in the Outgoing Administering Authority Personnel Information; and/or
- (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 Outgoing Administering Authority, the Outgoing Administering Authority shall indemnify and keep indemnified the Replacement Administering Authority in respect of such claims and/or losses. Where any such claims and/or losses arise which are not a result of a negligent act or omission of the Outgoing Administering Authority, the Partner Authorities shall share the amount of such claims and/or losses in accordance with the principles set out in **Schedule 5** (Budget and cost sharing agreement).

- 3.13.3 If any contract of employment of a person other than an Exiting Employee has effect as if originally made between the Replacement Administering Authority and such person as a result of TUPE, then the Replacement Administering Authority will consult with the Board to establish whether the person shall be deployed within the Single Client Group or to give notice to such person to terminate such contract of employment where such action is permitted by law.

3.14 **Apportionments, information and general**

- 3.14.1 The Outgoing Administering Authority shall provide, as soon as practicable following the Handover Date, copies of all tax, PAYE, social security and national insurance records and, if requested by the Replacement Administering Authority, copies of any other documents or records (agreed by the Replacement Administering Authority and the Outgoing Administering Authority) which the Replacement Administering Authority thinks are relevant to the Exiting Employees provided that:

- (a) the Outgoing Administering Authority shall preserve the originals of such records or documents for a period of at least three years (or such longer period required by law) after the Handover Date and shall allow the Replacement Administering Authority access to the same at all reasonable times as necessary to enable the Replacement Administering Authority to deal with any matters relating to the Exiting Employees and any employees who transfer by TUPE and, if requested by the Replacement Administering Authority, shall produce them for the appropriate authorities; and
- (b) if the Outgoing Administering Authority wishes to dispose of or destroy such records or documents earlier, it shall inform the Replacement Administering Authority in advance and the Replacement Administering Authority may require any such records and documents to be delivered up to it.

3.15 **Bonuses and commission payments**

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

3.16 **Ordinary Course of business**

- 3.16.1 From:
- (a) the date of the written notice provided in accordance with **clause 7.1.1**; or
 - (b) the date of receipt of written notice provided in accordance with **clause 7.2.1**,
- up to and including the Handover Date, the Outgoing Administering Authority shall:
- 3.16.2 not, without the Replacement Administering Authority's prior consent, act outside the Ordinary Course of Business;
- 3.16.3 devote time and resources to the continued delivery of the Administering Authority Obligations to ensure that there are no disruptions and no reductions in the level of service provided; and
- 3.16.4 notify the Replacement Administering Authority of matters of which it is aware which adversely affect the Outgoing Administering Authority Assets or the Outgoing Administering Authority Personnel.

SCHEDULE 4

Form of Annual Budget

SWB FORM OF ANNUAL BUDGET

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

Payment in Lieu of Recycling Credits

Vehicle Financing Net Saving

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
Payment in Lieu of Recycling Credits

Total Income

Total Net Expenditure

SCHEDULE 5

Budget & Cost Sharing Agreement

Definitions

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

"Communal Refuse Collection Capacity"

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

T x F

Where:

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

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

"Communal Recycling Sites"

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

"County"

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

"Earmarked Reserve Accounts"

means the account established by the Board in the name of each Partner Authority into which surpluses and deficits shall be allocated in accordance with the relevant cost sharing formula (for example, where a surplus is generated in the depot costs budget, it shall be allocated to the Earmarked Reserve Account of the Waste Collection

Authorities using the Waste Collection Authorities un-weighted formula as set out in **paragraph 3** of this **Schedule**);

"Neighbourhood Bring Sites"

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

"Payment in Lieu of Recycling Credits"

means the prevailing rate of contribution to the Annual Budget paid by the Waste Disposal Authority for each tonne of dry recyclable waste collected and recycled as a result of the functions of the Waste Collection Authorities which have been delegated to the Board and set at £33.08 per tonne in 2007/08 and increased by 3% in each Financial Year thereafter;

"Residential Properties"

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

"Sparsity Weighting Factor"

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

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

"Strategic Bring Sites"

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

"Waste Collection Authority (ies)"

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

"Waste Collection Authority Area"

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

"Waste Disposal Authority"

means the County Council.

1. COST SHARING PRINCIPLES

- 1.1 These cost sharing principles are intended to ensure that the costs of the Board and the relevant services administered by the Board on behalf of the Partner Authorities are shared on a fair and equitable basis between the Partner Authorities.
- 1.2 The general approach adopted is to identify each cost element and to apportion it in the most logical and transparent way possible, being mindful of the need to avoid any one Partner Authority subsidising another.
- 1.3 Each cost element is apportioned according to one of the formulae or bases set out in **paragraphs 2 to 14** below.
- 1.4 Each Partner Authority shall set a budget for the waste management service within their own Authority's budget to reflect their respective share of the Annual Budget calculated in accordance with this **Schedule**. The Administering Authority shall invoice the other Partner Authorities (including VAT where appropriate) in accordance with **clause 13**. A six monthly budget versus actual reconciliation will take place for Actual Usage Basis and Payment in Lieu of Recycling Credits items as calculated in accordance with this **Schedule**.
- 1.5 All surpluses and deficits at the end of each Financial Year shall be identified by the Board and the Board shall establish the Earmarked Reserve Accounts to allocate any surpluses and deficits. Where the Board recommends the distribution of surpluses or additional contributions to fund deficits to the Partner Authorities (subject to the approval of the Partner Authorities) the Earmarked Reserve Accounts shall be used to ensure fair distribution of surpluses or deficits. Where a surplus or deficit is generated outside of the Board's budgeted activities, allocation to Earmarked Reserve Accounts should be on the basis of the client cost formula as set out in **paragraph 2** of this **Schedule** unless otherwise agreed by the Board. Where a deficit is created in any budget item funded by the Waste Disposal Authority in accordance with the formulae set out in **paragraph 2** of this **Schedule** such a deficit cannot be funded by reserves residing in the Earmarked Reserve Accounts of the Waste Collection Authorities without the prior agreement of all of the Waste Collection Authorities. Where a deficit is created in any budget item funded Waste Collection Authorities in accordance with the formulae set out in **paragraph 2** of this **Schedule** such a deficit cannot be funded by reserves residing in the Earmarked Reserve Accounts of the Waste Disposal Authority without the prior agreement of the Waste Disposal Authority.
- 1.6 In each Financial Year the Board shall set the Annual Budget in accordance with the provisions of this Agreement and the Constitution. The Annual Budget shall be a forecast of the costs and income of the Board for the forthcoming Financial Year, reflecting the actual costs and income of the previous Financial Year but also taking account of the price review mechanisms in the Principal Contracts and forecast changes in the costs of the Single Client Group and the Administering Authority. The Board shall follow normal local government conventions in setting the Annual Budget and shall ensure that the Annual Budget setting process is transparent and open to scrutiny by all of the Partner Authorities.
- 1.7 The Annual Budget setting process shall take account of savings targets set by the Board in consultation with the Partner Authorities. In each Financial Year the Board shall be required to assess budgets and performance to drive out inefficiencies. The section 151 officers from each Partner Authority shall meet with the Strategic Management Group annually to consider any proposals for savings targets and to share relevant financial information.
- 1.8 Amendments to the cost sharing formulae shall be made in accordance with the provisions of **clause 20** of this Agreement. There may be circumstances in which the Board may agree to dampen the immediate financial effect of such amendments in order to ensure ongoing affordability of waste management services to all Partner Authorities.

- 1.9 The Board shall support and advise the County Council in respect of trading under LATS. The County Council shall own the proceeds of the sale of any landfill allowances. Any costs associated with purchasing any landfill allowances, or fines levied by central government under LATS shall be the direct responsibility of the County Council. The County Council shall work in close consultation with and update, support and advise the Single Client Group and Board with regard to the waste strategy implications of its trading activities and plans.
- 1.10 Net surpluses generated (after taking into account treasury management costs and any changes in financial rates and capital financing costs) by the Administering Authority as a result of its management of positive cash flows on behalf of the other Partner Authorities shall be allocated to their respective Earmarked Reserve Accounts. Whilst the County Council remains the Administering Authority these allocations shall be made in accordance with the Waste Collection Authorities un-weighted formula as set out in **paragraph 3 of this Schedule**.
- 1.11 The cost sharing formulae shall apply to the Board in respect of its budget for the 2007/08 – part Financial Year and all future Financial Years unless amended in accordance with this Agreement.

2. CLIENT COSTS FORMULA

- 2.1 The initial division of costs is between the Waste Disposal Authority and the Waste Collection Authorities with the Waste Disposal Authority responsible for 45.76 per cent of costs and the Waste Collection Authorities 54.24 per cent.
- 2.2 Following this initial division, the actual share payable by each Partner Authority shall be calculated as follows:

Waste Collection Authority share

The Waste Collection Authorities shall each be responsible for costs in equal proportion to the percentage of Residential Properties registered for Council Tax in the County located within their area.

Waste Collection Authority share = $(\text{Cost} \times 54.24\%) \times (\text{NR} \div \text{TRC})$

Where:

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

TRC – total number of Residential Properties in the County

Waste Disposal Authority share

Waste Disposal Authority share = $\text{Cost} \times 45.76\%$.

3. WASTE COLLECTION AUTHORITIES UN-WEIGHTED FORMULA

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

The formula is:

Waste Collection Authority share = $\text{Cost} \times (\text{NR} \div \text{TRC})$

Where:

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

TRC – total number of Residential Properties in the County.

4. WASTE COLLECTION AUTHORITIES ALL COUNCILS WEIGHTED FORMULA

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

The formula is:

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

Where:

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

CNR – the sum of NR x Sparsity Weighting Factor for each Waste Collection Authority.

5. WASTE COLLECTION AUTHORITIES SERVICE LEVEL BASED WEIGHTED FORMULA

5.1 The division of costs is between the Waste Collection Authorities, with each responsible in equal proportions relative to the level of service for the cost item concerned (for example all Waste Collection Authorities offering the 'Sort It! Service' shall pay the same proportion of the service cost).

5.2 Each Waste Collection Authority shall be responsible for costs in equal proportion to the percentage of Residential Properties registered within their area, as a proportion of Residential Properties in all Waste Collection Authority Areas covered by the level of service in question, adjusted using the Sparsity Weighting Factor.

The formula is:

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

Where:

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

TNR – the sum of Residential Properties in the Waste Collection Authority Area x Sparsity Weighting Factor for the Waste Collection Authorities offering the level of service in question.

6. WASTE COLLECTION AUTHORITIES SERVICE LEVEL BASED UN-WEIGHTED FORMULA

6.1 The division of costs is between the Waste Collection Authorities, with each responsible in equal proportions relative to the level of service for the cost item concerned and the number of Residential Properties registered within their area (for example all Waste Collection Authorities offering the 'Sort It! Service' shall pay the same proportion of the cost of internally and externally cleaning wheeled bins).

6.2 Each Waste Collection Authority shall be responsible for costs in equal proportion to the percentage of Residential Properties registered within their area, as a proportion of Residential Properties in all Waste Collection Authority Areas covered by the level of service in question.

The formula is:

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

Where:

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

UNR – the sum of Residential Properties in the Waste Collection Authority Area for the Waste Collection Authorities offering the level of service in question.

7. STRATEGIC BRING SITES 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 County located within their area.

The formula is:

Waste Collection Authority share = Cost x (SA ÷ SC)

Where:

SA – number of Strategic Bring Sites in the relevant Waste Collection Authority Area; and

SC – number of Strategic Bring Sites in the County.

8. NEIGHBOURHOOD BRING SITES FORMULA

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

The formula is:

Waste Collection Authority share = Cost x (NA ÷ NC)

Where:

NA – number of Neighbourhood Bring Sites in the relevant Waste Collection Authority Area; and

NC – number of Neighbourhood Bring Sites in the County.

9. COMMUNAL REFUSE FORMULA

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

The formula is:

Waste Collection Authority share = Cost x (CA ÷ CC)

Where:

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

CC – Communal Refuse Collection Capacity in the County.

10. COMMUNAL RECYCLING FORMULA

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

The formula is:

Waste Collection Authority share = Cost x (CRA ÷ CRC)

Where:

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

CRC – number of Communal Recycling Sites in the County.

11. PAYMENT IN LIEU OF RECYCLING CREDITS FORMULA

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

The formulae are:

Waste Disposal Authority contribution = WC x CADR

Where:

WC - tonnes of dry recyclable waste collected and recycled as a result of Waste Collection Authority functions in the County; and

CADR - current rate of Payment in Lieu of Recycling Credits

Waste Collection Authority offset = DRWA x CADR

Where:

DRWA – tonnes of dry recyclable waste collected and recycled as a result of Waste Collection Authority functions within the relevant Waste Collection Authority Area; and

CADR – current rate of Payment in Lieu of Recycling Credits

12. SWAP TEAM FORMULA

12.1 The initial division of costs is between the Waste Disposal Authority and the Waste Collection Authorities, with the Waste Disposal Authority responsible for 82.35 per cent of costs and the Waste Collection Authorities 17.65 per cent.

12.2 Following this initial division, the Waste Collection Authorities will each be responsible for costs in equal proportion to the percentage of Residential Properties located within their area.

The formulae are:

Waste Disposal Authority share = Cost x 82.35%

Waste Collection Authority share = (Cost x 17.65%) x (NR ÷ TRC)

Where:

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

TRC – total number of Residential Properties in the County.

13. CUSTOMER SERVICES

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

14. ACTUAL USAGE BASIS

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

15. DIRECTLY ASSOCIATED COSTS BASIS

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

16. COST SHARING FORMULAE APPLYING TO THE BOARD BUDGET 2007/08

Expenditure

Single Client Group

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

SWAP Team	SWAP 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
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)
Garden Waste Collections	Actual Usage Basis
Household Refuse	
Fortnightly	WCA Service Level Based Weighted Formula
(TDBC;MDC;SSDC)	
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)
Bulky Waste Collections	Actual Usage Basis
Communal Recycling	Communal Recycling Formula
Schools & SS Refuse	Directly Associated Costs Basis (allocated to County Council)
Commercial Waste	
Commercial waste collection	Actual Usage Basis
Commercial waste disposal	Actual Usage Basis
SWB Directed Collections	WCA un-weighted Formula
Container Maint & Delivery	
Internally and externally clean	WCA Service Level Based Un-weighted Formula
'Basic Maintenance/repairs'	WCA un-weighted Formula

'Major Maintenance/repairs'	WCA un-weighted Formula
2 Wheeled Bin Repair	WCA Service Level Based Un-weighted Formula Delivery of Sort-it! New HH Kit
WCA Service Level Based Un-weighted Formula Delivery of Sort-it! New HH Kit	WCA Service Level Based Un-weighted Formula Delivery of 4 wheeled bins
WCA un-weighted Formula	
Delivery of 2 wheeled bins	WCA Service Level Based Un-weighted Formula
Delivery of Kerbside Box	WCA un-weighted Formula
Delivery of Food Containers	WCA Service Level Based Un-weighted Formula
Day Works	WCA un-weighted Formula
Admitted Body Pension Costs	
Base pension cost	Directly Associated Costs Basis (allocated to South Somerset)
Incremental pension cost	WCA un-weighted Formula
Transitional Costs	WCA un-weighted Formula
Depot Costs	WCA un-weighted Formula
Bring Site Bin Financing	Actual Usage Basis
Schools Bin Financing	Directly Associated Costs Basis (allocated to County Council)
ECT Discount	WCA un-weighted Formula
Inter Authority Transfers	
Transfer Station Avoided Cost	Directly Associated Costs Basis (allocated to County Council)
Payment in Lieu of Recycling Credits	Payment in Lieu of Recycling Credits Formula
Vehicle Financing Net Saving	Client Costs Formula
Income	
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
Payment in Lieu of Recycling Credits	Payment in Lieu of Recycling Credits Formula

SCHEDULE 6

Exit arrangements

1. DEFINITION

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

"District Authorities"

means all of the Partner Authorities excluding the County Council;

"Dissolution Agreement"

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

2. INTRODUCTION

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

3. TRANSFER OF ASSETS

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

4. 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 (except the County Council) may order a change to the Services (including the provision of new services) by serving a notice of change (a "**Partner Notice of Change**") on the Administering Authority, the Board and all other Partner Authorities setting out the required change in the Services in sufficient detail to enable the Collection Contractor to provide an Estimate.
- 2.2 A Partner Authority shall not issue a Partner Notice of Change which:
- 2.2.1 requires the Services to be performed in a way that infringes legislation;
 - 2.2.2 would cause any Planning Permission or Necessary Consent to be breached and/or revoked;
 - 2.2.3 would materially and adversely affect the health and safety of any person; and/or
 - 2.2.4 would substantially alter the scope of the Services.
- 2.3 Within 20 Business Days of receipt of the Partner Notice of Change, the Administering Authority shall invite a meeting of the Board to consider the implications of the Partner Notice of Change and to recommend any changes to the Partner Notice of Change.
- 2.4 On receipt of any comments from the Board and/or the Partner Authorities the Partner Authority issuing the Partner Notice of Change shall consider at its absolute discretion whether any amendment to the Partner Notice of Change is required.

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

3. WITHDRAWAL FROM THE COLLECTION CONTRACT

- 3.1 Any of the Partner Authorities (other than the County Council) may on giving 12 months' written notice to the Clerk of the Board withdraw from the joint collection and recycling arrangements.
- 3.2 In the event of a Partner Authority serving notice under **paragraph 3.1** of this **Schedule** the Administering Authority shall obtain from the Collection Contractor an Estimate of the costs of

removing the relevant Partner Authority from the Collection Contract for the remainder of the original contract term or the period of such extension as may have been agreed at the point of service of the notice under **paragraph 3.1** of this **Schedule**.

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

4. EXTENSION OF THE COLLECTION CONTRACT

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

5. DISPUTES

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

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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