

**WEST OF ENGLAND PARTNERSHIP GOVERNANCE
JOINT WORKING AGREEMENTS**

RECOMMENDATION

That the Committee considers the draft proposed Joint Working Agreements and provides Scrutiny's views.

SUMMARY

The report provides the draft Joint Working Agreements which set out the arrangements for joint working under the auspices of the Joint Committees being established by the four authorities in the West of England.

The views of the Bristol Sustainable Development & Transport Scrutiny Commission are also being requested, at their meeting on 8th October 2008.

THE SIGNIFICANT ISSUES IN THE REPORT ATTACHED ARE:

The terms of the Joint Working Agreements.

POLICY CONTEXT

- 1 Earlier this year the West of England Partnership Board took stock of its progress in setting direction, providing leadership and ensuring delivery of its priority outcomes. It decided on four key actions for 2008/09:
 - Strengthening Governance
 - Strengthening the operation of the Partnership
 - Negotiating a Multi Area Agreement
 - Setting up an arms length delivery to advise on and commission major infrastructure projects
- 2 This report focuses on the Joint Working Agreements which set out the arrangements for joint working under the auspices of the Joint Committees being established by the four authorities in the sub-region.

CONTEXT

- 3 The potential benefits of the proposed arrangements for Joint Committees include:
 - providing the legal basis for collectively holding and allocating resources secured from government and other sources, and managing and sharing risk
 - acquiring additional local powers devolved from the region, government and its agencies - as envisaged in the Sub National Review of Economic Development & Regeneration, and in the Local Transport Bill.
 - collectively demonstrating a more decisive and consistent political focus on key sub regional issues which require greater investment, joint working and the collective exercise of existing and newly devolved powers.
 - increased confidence in the sub region, leading to increases in public and private investment to match the projected high levels of growth, ensure a better quality of life and deliver Vision 2026.
 - more effective engagement of strategic partners.
 - retain democratic accountability.
 - greater authority when lobbying government and its agencies.

PROPOSAL.

Joint Working Agreements

- 4 Legal Officers are finalising Joint Working Agreements for each of the Joint Committees for approval by Leaders of Councils during the first part of October. These agreements are the operational documents which set out the arrangements for joint working under the auspices of the Joint Committees. They include the:
 - principles of working together
 - confirmation of delegations to the Joint Committee
 - nomination of lead officers and the appointment of officers responsible for preparing and ensuring compliance with project plans
 - cost sharing
 - mediation and dispute resolution
 - right to withdraw, subject to specific indemnity arrangements.
- 5 The current working drafts of the Agreements are appended to this report for consideration as follows:

- A . Joint Working Agreement : Phase 2 Waste Strategy
- B . Joint Working Agreement : Phase 3 Waste Strategy
- C. Joint Working Agreement: Transport

- 6 Most sections of the Joint Working Agreements are common, others are specific to the particular projects.. For example the right to withdraw from a project or major phase and the principles of indemnity arrangements will be common but the indemnities themselves will be specific.

Other Options Considered

- 7 It is in the interest of the West of England to continue to work and strengthen arrangements on strategic issues which reflect the economic geography of the sub-region with neighbouring local authorities and with strategic partners, government and its agencies.
- 8 Some consideration has been given to Joint Committees with different combinations of portfolios, and to an Integrated Authority for Transport mooted in the Draft Transport Bill. These were discounted on the basis that the two now proposed give early and clear focus on two areas of major importance to delivering sub-regional strategies and investment key to the sub-region's needs and ambitions.

Risk Assessment

- 9 The progress, achievements and ambitions of the West of England Partnership require a strengthening of governance and delivery arrangements. The establishment of the two Joint Committees, as well as the strengthening of the overall operation of the Partnership, will strengthen the capacity of the Local Authorities and the Partnership to secure the key potential benefits set out above.
- 10 The sub-region needs: to provide a legal basis for collectively dealing with resources and risk and the basis for additional local powers; to demonstrate a more decisive and consistent political focus if it is to increase confidence in its leadership and capacity to deliver; and, to exercise more influence with strategic partners, government, its agencies and the private sector.
- 11 The cross-party arrangements and public accountability planned for the strengthened governance will retain democratic accountability. The consistent engagement of the councils' Executive Members on transport and waste management through the Joint Committees will deepen Elected Members authority over direction and prioritisation, within long-term policy and investment programmes approved through the Councils' Policy and Budget Frameworks.
- 12 Any failure by the Partnership and the Local Authorities to strengthen governance would risk major public investment in the sub-region; both DfT and Defra are pressing for collective arrangements, which reflect and support the economic geography of the sub-region and retain democratic accountability

Legal Implications

- 13 The recommendations in the report are lawful and justified. The Leaders of Council (together with the Cabinet) has the power to establish joint executive committees with other Councils in order to improve the environmental, economic or social well being of the area.
- 14 The West of England Partnership has done work of considerable importance over recent years but does not have any independent existence in its own right - i.e. it is not a legal entity, and it has no decision making power. Given the importance of the issues affecting the sub-region strong and clear governance arrangements are essential.
- 15 The Joint Committees will have decision powers but can only take decisions which are consistent with the Policy Framework and Budget adopted within their parent authorities. The decisions are susceptible to call-in.
- 16 The Constitutions have been developed with input from the four legal teams and from two firms of nationally renowned solicitors. The Constitutions are robust and clear.
- 17 The joint working arrangements have benefited from considerable legal and financial input. They are clear as to where liabilities arise, and the consequence of leaving the arrangements. Indemnities provide certainty and clarity about the consequences of decisions. It would be unreasonable for any of the councils to enter into major decisions which will have financial consequences for them not to have clear and certain indemnities.

Financial Implications

- 18 The development of policy and securing and delivering investment within the sub-region is undertaken within existing budgets by council officers, partners and the West of England Partnership Office.
- 19 The cost of setting up the new governance arrangements will be shared between the four unitary authorities on an equitable basis. Costs to date have been contained within current budgets.
- 20 The Joint Working Agreements include appropriate provisions to protect the remaining authorities in the event of withdrawal by one authority from partnership projects. For example, if an authority withdrew from Phase 2 of the Waste Strategy after the start of the procurement phase, in accordance with Appendix A, paragraph 14.5.4 (2) the cost would be significant, including: other authorities LATS liability caused by delay, costs of a revised procurement exercise and tenderers costs relating to changes in requirement.

Terry Wagstaff
01/10/2008

Bath and North East Somerset Council

And

Bristol City Council

And

North Somerset Council

And

South Gloucestershire Council

Joint Working Agreement

**For the Development and Delivery of
the Phase Two Waste Project**

- 2.5 Agree that decisions on future long-term waste treatments (that is, beyond 2020) should be developed in due course when there is greater clarity on long-term waste tonnage predictions and to allow new and evolving technologies to be fully assessed. (Phase 4 of the Strategy)
- 3 The Authorities have established the Joint Waste Management Committee as a Joint Executive Committee.
- 4 It is the intention of the authorities to enter into an agreement in respect of Phase 2, which agreement shall include indemnities

IT IS HEREBY agreed as follows –

1 Interpretation

- 1.1 In This Phase Two Agreement unless the context otherwise requires the following expressions have the following meanings –

“The Phase Two Agreement” means this Phase Two Agreement comprising the terms and conditions together with the Schedules hereto.

“the Authorities” shall be taken as references to Bath and North East Somerset Council, Bristol City Council, North Somerset Council and South Gloucestershire Council, and **“the Authority”** shall mean one of the Authorities.

“The Authority Lead Officer” shall mean the officer of each Authority appointed by that Authority in accordance with Clause 6 of This Phase Two Agreement to ensure that that Authority provide sufficient support to secure the effective performance of the Phase of the Phase Two Project.

“The Bidders” means those organisations who have expressed an interest in, and pre-qualified for, carrying out the Contract and as may be reduced through the procurement process.

“The Chair” means the person elected as Chair of the Joint Waste Management Committee for the purpose of the Local Government Act 1972.

“The Commencement Date” means the date on which this Phase Two Agreement is executed by the Authorities.

“The Contract” means any external contract entered, or proposed to be entered by the Authorities or any of the Authorities for the provision of works, facilities or services for the purpose of the Phase Two Project.

“The Contractor” means the contractors appointed or to be appointed by the Authorities in pursuance of the Phase Two Project under this Agreement.

“The Delegated Powers” means the powers as delegated by each authority to the Joint Waste Management committee in accordance with Clause 6 of this Phase Two Agreement

“Independent Decision” means a decision taken by an Authority in exercise of the powers which it has delegated to the Joint Waste Management Committee

“Joint Waste Management Committee” means the Joint Waste Management Committee established by the Authorities.

“The Lead Authority” means any Authority which, in accordance with this Phase Two Agreement, the Joint Waste Management Committee has appointed to carry out a particular function.

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

“The Members” means the members of the Joint Waste Management Committee, and **“Member”**, shall mean a member of the Joint Waste Management Committee.

“Notice of Dispute” shall mean a notice issued pursuant to Clause 14.4

“Officer Project Board” means a meeting of Authority Lead Officers.

“The Officers” means the officers of the Authorities who are engaged on the Phase Two Project.

“The Phase Two Project” comprises the procurement and subsequent management of short to medium term residual waste treatment capacity to reduce the amount of waste which each of the Authorities is consigning to landfill and thereby to reduce the cost to each of the Authorities of Landfill Tax and to avoid or to minimise the cost of LATS fines to each of the Authorities and / or of needing to acquire Landfill Allowance Trading Scheme (LATS) Permits between 2011 and 2015.

“The Preferred Bidder” means any Bidder for the Contract who has been selected by the Joint Waste Management Committee as preferred bidder in respect of Phase 2 of the Strategy.

“The Procurement” means the procurement of the Contract, and **“the Procurement Stage”** means that part of the Phase Two Project which relates to the procurement of the Contract commencing with the publication of an OJEU Notice

“The Procurement Cost Sharing Scheme” mean the principles and arrangements set out in Schedule A for determining the allocation of costs of the procurement of the Phase Two Project as between the four Authorities..

“Project Initiation Document” means the document described in Clause 6 that brings together the key information required to start the Phase Two Project.

“Protocol” means the protocol in Schedule C.

“The Reserved Matters” means the decisions specified in Clause 6.3 hereof and paragraph 3 of the Constitution of the Joint Waste Management Committee which are outside the powers delegated by each of the Authorities to the Joint Waste Management Committee.

“Senior Responsible Officer” means the officer so identified in the Project Initiation Document

“The Service Phase” means in respect of any Contract procured in pursuance of the Phase Two Project, the duration of such Contract.

“The Policy and Budget Plan Framework” for an Authority comprises the plans and policies approved by the Council of that Authority for the purpose of Regulation 4 and Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended or replaced

“The West of England Partnership” shall mean such joint strategic organization of the Authorities as shall be operated by the Authorities from time to time

“Vision 2026” means the West of England Partnership’s vision for the sub-region in 2026.

“Waste Project Director” means the person so appointed by the Wets of England Partnership.

“Working Day” in respect to an Authority, means any day other than weekends and Bank Holidays

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

2 Term

This Phase Two Agreement shall come into effect on the Commencement Date and shall continue unless this Agreement is revised or terminated in accordance with the terms of this Agreement.

3 General Principles

- 3.1 This Phase Two Agreement has been entered into by the Authorities to establish and effect provisions for the following and to clarify the Authorities’ responsibilities in respect thereof and to each other in respect of the Phase Two Project:
- 3.2 The Authorities will work together in respect of each separate phase of the Phase Two Project in good faith and in an open, co-operative and collaborative manner. The Authorities’ members and officers will work together in the spirit of mutual trust and in compliance with the Protocol, in order to ensure the successful implementation of the Waste Management Phase Two Project and will respond in a timely manner to all relevant requests from each other.
- 3.3 The Authorities will work together to secure external funding from the Department for the Environment and Rural Affairs (DEFRA) and any other available source in respect of the Phase Two Project.

- 3.4 Each of the Authorities hereby represents to the others that it has obtained all necessary consents sufficient to ensure the delegation of functions provided for by this Phase Two Agreement.
- 3.5 The Authorities shall use all reasonable endeavours to procure that their respective members and officers who are involved in the Waste Management Phase Two Project (?) shall at all times act in the best interests of the Phase Two Project. The Authorities expressly acknowledge that their members and officers involved in carrying out activities under this Phase Two Agreement will have regard to the benefits to all the Authorities and accordingly may be required to balance the wider interests of the sub-region with those of their Authority in reaching a consensus, and the Authorities hereby authorise them to act in such a manner.
- 3.6 The Authorities commit to share data and knowledge relevant to the Phase Two Project where appropriate.
- 3.7 Whilst this Phase Two Agreement details the arrangements between the Authorities for the Procurement Stage of the Phase Two Project, the Authorities agree to work together in good faith to agree such amendments and amplification of the Phase Two Agreement as may be necessary to enable the Authorities to work together throughout the Service Phase of the Phase Two Project.
- 3.8 The Authorities are proposing the establishment of a Joint Delivery Organisation to provide the resource and expertise required for the effective commissioning and delivery of the Strategy.
- 3.9 The Authorities commit themselves to work together to secure the continuous improvement of the discharge of their waste disposal functions within the scope of the Phase Two Project.

4 Status of this Phase Two Agreement

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

5 Status of this Phase Two Agreement

- 5.1 In appointing members to the Joint Waste Management Committee, each Authority will normally appoint the member of the Executive of that Authority who has portfolio responsibility for waste functions within that Authority.
- 5.2 Each Member of the Joint Waste Management Committee shall have responsibility for championing the Phase Two Project within their own Authority and for securing, as far as possible that any matter which is recommended to that Authority by the Joint Waste Management Committee for decision shall be considered and determined expeditiously and having due regard to the benefits to the Authorities.
- 5.3 The Reserved Matters shall not be matters within the powers of the Joint Waste Management Committee.
- 5.4 The Chief Executives of each of the Authorities shall seek to secure that the function of Overview and Scrutiny of the functions and actions of the Joint Waste Management Committee in respect of the Phase Two Project shall be delegated to a Scrutiny Committee of three Members, and that such Scrutiny Committees of each Authority shall meet together to discharge their functions in a co-ordinated manner.

6 Delegation of Powers to the Joint Waste Management Committee

- 6.1 The Executive of each Authority hereby delegates to the Joint Waste Management Committee the Delegated Powers set out in Clause 6.2
- 6.2 The Delegated Powers shall comprise the executive functions and powers of that Authority as may be necessary, calculated to facilitate, incidental or conducive to the discharge of the functions of the Joint Waste Management Committee in respect of the Phase Two Project as detailed in, and subject to such limitations and conditions set out in, the Constitution annexed to this Agreement (Annex A).

7 Authorities' Lead Officers and Senior Responsible Owners

- 7.1 Each Authority will nominate an Authority Lead Officer with senior management responsibilities for waste management functions in their area. The Authority's Lead Officer shall ensure that his / her Authority provides the support necessary to secure the effective achievement of the Phase Two Project. In this context, "support" shall include the involvement and time of capable officers, the provision of information and the prompt consideration of matters referred to his / her authority for determination.
- 7.2 The Joint Waste Management Committee shall be advised by the Waste Project Director, and the Senior Responsible Officer for the Phase Two Project on the advice of the Authorities' Lead Officers.
- 7.3 The Senior Responsible Officer for the Phase Two Project will be accountable to the Joint Waste Management Committee for ensuring the production of a Project Initiation Document. The Project Initiation Document will make provision for the management of the Phase Two Project at officer level, including:
 - 7.3.1 the appointment of one or more officers to be engaged full-time on the Phase Two Project
 - 7.3.2 the secondment of officers from each of the Authorities and the West of England Partnership Office, full or part-time, to be engaged on the Phase Two Project.
 - 7.3.3 The establishment of an Officer Project Board comprising the Authority Lead Officers, the Waste Project Director and stakeholders to ensure the overall officer co-ordination of work to deliver the Phase two Project
 - 7.3.4 the terms of reference and the powers to be delegated from the Joint Waste Management Committee to the Officer Project Board
 - 7.3.5 the appointment of legal, financial and technical officers, and external advisers as required
 - 7.3.6 the appointment of an Authority as Lead Authority for various functions in connection with the Phase Two Project
- 7.4 The Waste Project Director at the West of England Partnership Office will:
 - 7.4.1 lead in the delivery of the Phase Two project (including regular monitoring and review) and will recommend any appropriate revisions to the Project to the Joint Waste Management Committee

- 7.4.2 co-ordinate the preparation and submission of bids for external funding for the Phase Two Project

8 Authority to enter Contracts etc.

- 8.1 The Project Initiation Document shall provide which officers shall be the only persons who are authorised to negotiate contracts in respect of the Phase Two Project.
- 8.2 Where any person negotiates any contract or communicates with any prospective Bidder, Bidder or the Contractor he/she shall make it clear in any such contract or communication that he/she does so on behalf of the Authorities.
- 8.3 The Authorities are proposing the establishment of a Joint Delivery Organisation to provide a centre of excellence for the procurement, design and management of major projects, and it is therefore anticipated that the Joint Waste Management Committee may wish to utilise the Joint Delivery Organisation for the purpose of the Phase Two Project.

9 Liabilities, Immunity and Indemnities

9.1 Member and Officer Liability

- 9.1.1. When working as a member of the Joint Waste Management Committee, the members shall be deemed to be working on behalf of their own Authority even where the particular matter under consideration relates to or also relates to the other Authority.
- 9.1.2. When working on the delivery of the Phase Two Project officers shall be deemed to be working on behalf of both their employing Authority, and made available and working on behalf of the other Authority under Section 113 of the Local Government Act 1972.
- 9.1.3. In consequence of the above, both members and officers shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875, as amended, in respect of their actions or omissions in respect of the Phase Two Project.

9.2 Losses to each Authority

An Authority shall not have any liability to any other Authority in respect of any loss which that other Authority may suffer as a consequence of any action or omission by any Officer, whilst working on the delivery of the Phase Two Project on behalf of the Joint Waste Management Committee.

9.3 General Indemnity

Each authority shall indemnify each other Authority in respect of, and pay to each other Authority upon demand, any loss suffered by that other Authority as a consequence of the first Authority failing to comply with the terms of this Phase Two Agreement

10 Lead Authority

- 10.1 The Lead Authority for any function shall act on behalf of the Authorities in respect of that function.
- 10.2 The Lead Authority shall act under the direction of the Joint Waste Management Committee and the Officer Project Board.
- 10.3 Where the Lead Authority for any function incurs any costs or liability in discharging this function, the officer of the Lead Authority discharging that function shall from time to time inform the Officer Project Board promptly of that cost or liability and such cost or liability shall be apportioned between the Authorities pursuant to Clause 12.

11 Intellectual Property

- 11.1 All intellectual property in any material created by or on behalf of the Authorities or any of the Authorities in the course of the Phase Two Project shall be owned jointly and severally by those Authorities which are participating in the Phase Two Project and shall be available equally to each such Authority.
- 11.2 Each Authority warrants that any intellectual property created by its officers for the purposes of the Phase Two Project does not infringe any third party's intellectual property rights.
- 11.3 Each Authority shall indemnify the other Authorities against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of the first Authority's intellectual property for the purpose of the Phase Two Project.
- 11.4 Where existing intellectual property of an Authority has been used for the purpose of the Phase Two Project, that Authority agrees to grant the other Authorities a non-exclusive perpetual non transferable and royalty free licence to use, modify, amend and develop the same for the purpose of the Project.

12 Cost Allocation

- 12.1 The Authorities shall share the income arising from and the costs reasonably incurred by each Authority in respect of the Procurement Stage in proportion to the Authorities residual waste in accordance with the Procurement Costs Allocation Scheme set out in Schedule A.
- 12.2 For this purpose, the Joint Waste Management Committee after considering the recommendations of the Officer Project Board may agree that specified costs incurred or to be incurred by an Authority in acquisition of land, in works for the preparation of that land for development and in obtaining any consents (including planning permission) necessary for the use of that land for the Phase Two Project shall be treated as costs reasonably incurred for the Phase Two Project, subject to such terms as the Joint Waste Management Committee may determine as to repayment in the event of early termination of the Phase Two Project.
- 12.3 The Officer Project Board shall recommend to the Joint Waste Management Committee, and the Joint Waste Management Committee shall agree, a scheme for the allocation of the costs reasonably incurred by any Authority in respect of the Service Stage of the Phase Two Project, having regard to the Principles set out in Schedule B to this Phase Two Agreement.

- 12.4 The Authorities shall ensure that costs and expenditure incurred in connection with the Phase two Project are audited in accordance with the arrangements and standards applicable to the local authorities.

13 Remediation and Dispute Resolution

- 13.1 Where an Authority is of the opinion that one or more of the other authorities is failing to comply with the provisions of this Phase Two Agreement in respect of any matter, including the provisions of Clause 3.3 to work together in good faith and in an open, co-operative and collaborative manner, the Authorities shall use their best endeavours to resolve any such matter amicably without resort to the formal remediation and dispute resolution procedures set out below.
- 13.2 Notwithstanding Clause 14.1, above, at any time the Chief Executive of any Authority ("the first Authority") may serve on the Chief Executive of any one of the other Authorities a " Default Notice", alleging that that Authority ("the second Authority") has failed to comply with its obligations under this Phase Two Agreement, setting out any suggested remedial action and any damage which the first Authority has or is likely to suffer as a result of the alleged failure.
- 13.3 An Authority ("the second Authority") in receipt of a Default Notice shall have 14 days within which to serve on the Chief Executive of the first Authority who served the Default Notice a "Counternotice", setting out in respect of every matter contained in the Default Notice, proposals for the remediation of the alleged failure and making good any loss which the first Authority may have suffered or may suffer as a result of the failure, or the reasons why that alleged failure is disputed.
- 13.4 Within 14 days of receipt of a Counternotice, the Chief Executive of the first Authority shall send to the Chief Executive of the second Authority a "Notice of Acceptance" of any proposals contained in the Counternotice in so far as those proposals are accepted by the first Authority, and may send a "Notice of Dispute" in so far as no proposal satisfactory to the first Authority is contained in the Counternotice, setting out in respect of each proposal which is not accepted by the first Authority why it is considered to be unacceptable.
- 13.5 Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the second Authority shall implement that proposal.
- 13.6 Where any matter is contained in a Notice of Dispute, it shall fall to be dealt with under the Disputes Procedure set out in Clause 19.
- 13.7 Copies of all notices issued under this Clause 14 shall be sent to all other Authorities' Proper Officers.

14 Withdrawal and Indemnity for Consequences of Withdrawal

- 14.1 Each Authority acknowledges that, if it withdraws from this Phase Two Agreement, during the Procurement Stage, or if it takes an Independent Decision, that withdrawal or Independent Decision is likely to cause additional cost to the other Authorities including, but not limited to, the cost of undertaking a separate procurement, loss of external funding, and following any contract award the costs attendant upon the delayed availability of the facilities which would enable it to secure the effective treatment and disposal of residual waste, thereby reducing its

liability for Landfill Tax and minimising its need to purchase additional LATS (Landfill Allowance Trading Scheme) allowances.

- 14.2 Each Authority acknowledges that, if it withdraws from this Phase Two Agreement during the Service Stage of the Phase Two Project, or if it takes an Independent Decision, that withdrawal or Independent Decision is likely to cause additional cost to the other Authorities including, but not limited to, any claims which the Contractor may have against the Authorities as a result of the failure on the part of the Authorities to comply with the Contract, the cost to the other Authorities of procuring a new contract with a third party or of negotiating a new or renegotiated contract with the Contractor, the loss of external funding, the loss to the other Authorities of the use of the Contractor's facilities during this process, with the result that the other Authorities may incur additional Landfill Tax costs and need to purchase additional LATS (Landfill Allowance Trading Scheme) allowances.
- 14.3 Each Authority may withdraw from this Phase Two Agreement by giving notice in writing of its intention to withdraw to the other Authorities. Such notice shall be three month's notice in respect of any withdrawal to take place prior to entry into any Contract, and six months' notice in respect of any withdrawal to take place upon or after entry into any Contract and may expire at any time.
- 14.4 Subject to Clause 14.5, each Authority agrees that in the event that it gives notice of withdrawal to the other Authorities as set out at Clauses 15.1 to 15.3, or if it takes an Independent Decision, it will use its reasonable endeavours to minimise, and will indemnify the other Authorities against, any loss and expense which the other Authorities may suffer as a result of its withdrawal from this Phase Two Agreement or its Independent Decision.
- 14.5 Where any Authority withdraws from this Phase Two Agreement –
- 14.5.1 The obligations of each Authority in respect of the furtherance of the Phase Two Project shall cease on such withdrawal;
 - 14.5.2 The Phase Two Agreement shall continue in force as respect any financial liabilities which have or may arise out of the performance of this Phase Two Agreement and the Contract;
 - 14.5.3 The Phase Two Agreement shall remain in force in respect of any liability of either Authority to indemnify the other Authorities under this Clause of the Phase Two Agreement;
 - 14.5.4 Its liability to indemnify the other parties pursuant to clause 14.4 shall be limited as follows;
 - (1) Where the withdrawal takes place prior to the commencement of the Procurement Stage the indemnity shall only apply to any loss or expense incurred up to that point
 - (2) Where the withdrawal takes place after the commencement of the Procurement Stage but prior to the award of the Contract the indemnity shall only extend to Loss relating to
 - (a) likely LATS liability that may reasonably be anticipated as flowing from any delay in letting the Contract occasioned by the withdrawal,
 - (b) additional costs and expenses incurred in the procurement exercise (including in amending the Contract requirements)

- (c) reasonable and proper claims made by tenderers for costs and expenses arising out of any changes to the Contract requirements or in the procurement process
 - (d) any other reasonable and proper Losses incurred directly as a result of the withdrawal.
- (3) In the event of such withdrawal the lead authority shall as soon as reasonably practicable produce an assessment of the Loss arising pursuant to clause 14.5.4(2) and submit the same to the withdrawing authority for payment. Any dispute over the assessment shall be dealt with in accordance with Clause 18.2
 - (4) For the avoidance of doubt, any withdrawal after the award of the Contract shall be subject to clause 14.4 without limitation
- 14.5.5 Clause 15 of this Phase Two Agreement (confidential information) shall continue without limit of time and shall survive the termination of this Phase Two Agreement;
- 14.5.6 All parties will seek to minimise costs arising from one withdrawing
- 14.6 The Authorities may agree that all or any parts of this Phase Two Agreement shall continue in force for such period thereafter as may be agreed in order to secure continuity of service and to minimise the loss which either Authority may suffer as a result of an Authority withdrawing from this Phase Two Agreement; and
- 14.7 The Disputes Procedure set out in Clause 19 of this Phase Two Agreement shall remain in force in respect of any of the matters arising from the performance of or withdrawal of an Authority under this Phase Two Agreement.

15 Confidential Information

- 15.1 Subject to Clause 17, the Authorities shall at all times use their reasonable endeavours to keep confidential and ensure that such information is used only for the purpose of the Phase Two Project (and to procure that their respective employees agents consultants contractors and sub-contractors shall keep confidential and shall use such information only for the purpose of the Phase Two Project) all Confidential Information concerning the Phase Two Project or the business and affairs of the other Authority which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Authority, such consent not to be unreasonably withheld.
- 15.2 For the purpose of this Phase Two Agreement “Confidential Information” means any information imparted to any of the Authorities- or their employees agents consultants contractors or sub-contractors (“the Receiving Party”) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Authorities on the basis that it was to be kept confidential or is of commercial value in relation to the Phase Two Project but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.
- 15.3 This Clause shall not prevent the disclosure of any Confidential Information relating to the Phase Two Project which is reasonably disclosed for the furtherance of any Phase of the Phase Two Project or the promotion of the Phase Two Project provided that the Authority or person disclosing the information takes all steps that

are commercially practicable to preserve the confidentiality of the information and shall not prevent the disclosure of any Confidential Information where required by law.

16 Compliance with Laws

- 16.1 The Authorities shall at all times comply with all laws including but not limited to the Data Protection Act 1998 and will, where appropriate maintain a valid and up to date registration or notification under such laws.
- 16.2 Each Authority shall indemnify and keep indemnified the other Authorities against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the other Authorities in respect of any breach of this Clause by the Authority and/or any act or omission of any employee, agent, consultant, contractor or sub-contractor.
- 16.3 Each Authority shall grant to the other Authorities the right of reasonable access to all records of Personal Data relevant to the Phase Two Project, as defined in the Data Protection Act 1998, and shall provide reasonable assistance at all times during the currency of This Phase Two Agreement to ensure the quality and security of data collected.

17 Freedom of Information Act 2000 and Environmental Information Regulations 2004

- 17.1 Each Authority acknowledges that the other Authorities are subject to the requirements of the Freedom of Information Act 2000 ("FoIA") and the Environmental Information Regulations 2004 ("EIR") and each Authority shall where reasonable assist and co-operate with the other Authorities (at their own expense) to enable the other Authorities to comply with these information disclosure obligations.
- 17.2 Where an Authority receives a request for information under either the Freedom of information Act 2000 or the Environmental Information Regulations 2004 in relation to information which it is holding on behalf of any of the other Authorities in relation to the Phase Two Project, it shall (and shall procure that its sub-contractors shall):
 - 17.2.1 transfer the request for information to the other Authorities as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
 - 17.2.2 provide the other Authorities with a copy of all information in its possession or power in the form that the Authorities require within ten Working Days (or such longer period as the Authorities may specify) of the Authority requesting that information;
 - 17.2.3 provide all necessary assistance as reasonably requested by the other Authorities to enable the Authority to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 17.3 Where an Authority receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 which relates to The Phase Two Agreement or the Phase Two Project, it shall inform the other Authorities of the request for information as soon as practicable after receipt and in any event at least two Working Days before disclosure and shall use all reasonable endeavours to consult with the other Authorities prior to disclosure and

shall consider all representations made by the other Authorities in relation to the decision whether or not to disclose the information requested.

17.4 The Authorities shall be responsible for determining in their absolute discretion whether any information requested under the Freedom of Information Act 2004 or the Environmental Information Regulations 2004:

17.4.1 is exempt from disclosure under the FOIA or the EIR;

17.4.2 is to be disclosed in response to a request for information.

17.5 Each Authority acknowledges that the other Authorities may be obliged under the FOIA or the EIR to disclose information:

17.5.1 without consulting with the other Authorities where it has not been practicable to achieve such consultation; or

17.5.6 following consultation with the other Authorities and having taken their views into account.

18 Dispute Resolution

18.1 In the event of any dispute arising between the Authorities (including the service of a Notice of Dispute), as a matter of urgency, the Authorities will first attempt to settle the issue in dispute by referring the matter as follows;

(a) Initially to a meeting of the Lead Officers

(b) In the event of a failure of the Lead Officers to agree a resolution to the Joint Committee

(c) In the event of the Joint Committee failure to resolve the matter to a meeting of the Leaders of the Authorities still participating in Phase Two.

18.2 If dispute is not resolved by such means within 14 days of such reference, the Authorities will attempt to settle the issue in dispute ("Dispute") by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Authorities. To initiate a mediation, any Authority may give notice in writing (a "Mediation Notice") to any one or more of the others requesting mediation of the Dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Authorities, asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. If there is any point in respect of the conduct of the mediation upon which the Authorities are unable to agree within ten (10) Working Days from the date of the Mediation Notice, CEDR will, at the request of one of the Authorities, decide that point for the Authorities, having consulted with them. The Authorities will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or, in the absence of such determination, such costs will be shared equally.

18.3 None of the Authorities may commence any court proceedings in relation to any Dispute until they have attempted to settle it by mediation under Clause 18.2 and/or such mediation has terminated. The Authorities will take no further steps in the court proceedings until any such mediation commenced under Clause 18.2 has terminated. Nothing in this Clause shall prevent an Authority from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

- 18.4 If the Dispute has not been resolved by the mediation procedure detailed in Clause 19.2 within one (1) month of the initiation of such procedure, the Dispute shall be referred to the courts for resolution.

19 Severance

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

20 Entire Agreement

This Phase Two Agreement constitutes the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Phase Two Agreement.

21 Waiver

- 21.1 The failure to exercise or delay in exercising a right or remedy provided by This Phase Two Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 21.2 A waiver of a breach of any of the terms of this Phase Two Agreement or of a default under this Phase Two Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of This Phase Two Agreement.
- 21.3 A waiver of a breach of any of the terms of this Phase Two Agreement or of a default under this Phase Two Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

22 Variation of this Phase Two Agreement

Any Authority may propose to the Joint Waste Committee a variation of this Phase Two Agreement. Where such variation is proposed, the Joint Waste Management Committee shall consider whether to recommend such variation for the approval of the Authorities.

23 General

- 23.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers duties and obligations in the exercise of their functions as local authorities and/or in any other capacity and all rights powers discretions duties and obligations of the Authorities under all laws may at all times be fully and effectually exercised as if the Authorities were not party to this Phase Two Agreement and as if this Phase Two Agreement had not been made.
- 23.2 The Authorities shall only represent themselves as being an agent partner or employee of any of the other Authorities to the extent specified by this Phase Two Agreement and shall not hold themselves out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of any of the other Authorities except to the extent specified in this Phase Two Agreement.
- 23.3 This Phase Two Agreement shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

- 23.4 This Phase Two Agreement is personal to the Authorities and no authority shall assign transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Phase Two Agreement.
- 23.5 No person other than the Authorities shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 23.6 Any notice required or permitted to be given by an Authority to the other Authorities under this Phase Two Agreement shall be in writing and addressed to the Chief Executive of the other Authorities at their principal office.

The Common Seal of **Bath and North East Somerset Council** was affixed hereto in the presence of the undersigned

The Common Seal of **Bristol City Council** was affixed hereto in the presence of

The Common Seal of **North Somerset Council** was affixed hereto in the presence of

The Common Seal of **South Gloucestershire Council** was affixed hereto in the presence of

Schedule A

Procurement Cost Allocation (Clause 12.1)

- 1 The costs of undertaking the Procurement Stage shall be pooled and shared in proportion to the tonnage volume of each of the Authorities' residual waste streams in the previous financial year.
- 2 For this purpose the costs of undertaking the Procurement Stage" ("Procurement Costs") shall comprise:
 - 2.1 The salary and on-costs reasonably incurred by the Lead Authority in employing any officers specified for this purpose by the Programme Board.
 - 2.2 The salary and on-costs reasonably incurred by the Authorities in employing and supporting any officers specified for this purpose by the Programme Board calculated pro rata in respect of the time which they actually spend working on the Phase Two Project on behalf of the Joint Waste Management Committee.
 - 2.3 "On costs" shall be determined in accordance with CIPFA Accounting principles and practice, and shall include, but not be limited to, National Insurance, employers' pension contributions, costs of providing working tools, telephones, computers and ICT services and facilities, costs of providing office accommodation, and travel and subsistence costs.
 - 2.4 Costs incurred for the purposes of the Phase Two Project on the instruction of the Joint Waste Management Committee or the Project Board, including, but not limited to -
 - 2.4.1 consultant's fees;
 - 2.4.2 advertising costs;
 - 2.4.3 costs of holding meetings of the Joint Waste Management Committee and Programme Board; and
 - 2.4.4 members' allowances in respect of attendance at meetings of the Joint Waste Management Committee by members of the Joint Waste Management Committee.
 - 2.5 Redundancy costs reasonably incurred by any Authority as a result of the transition to the Contract and the new arrangements for managing the Contract.
- 3 For this purpose, the Procurement Costs shall not include:
 - 3.1 The salary and on-costs incurred by the Authorities in employing any officer in so far as that officer actually spend time working on the Phase Two Project on behalf of their employing Authority.
 - 3.2 The salary and on-costs incurred by any officer of any Authority when not working on the Phase Two Project.

- 3.3 Costs incurred by the Authorities in preparing the schedule of the Authority's property and securing valuations thereof for the purpose of the Phase Two Project, or in making such property or information in respect of such property available to prospective Bidders, Bidders or the Contractor.
 - 3.4 Costs incurred by any Authority in undertaking any remedial action arising under Clause 16 of the Phase Two Agreement.
- 4 Each Authority shall be responsible for securing that any Procurement Costs incurred by that Authority are notified to the Programme Board.
- 5 The Project Board shall arrange for –
 - 5.1 Receipt of all notifications of claimed Procurement Costs and confirming that such Costs have been properly incurred for the purpose of this Schedule.
 - 5.2 Maintaining a record of all such accepted claims for Procurement Costs and calculating on a quarterly basis any payment required from one Authority to the other to achieve the principle set out in Paragraph 1 above.
 - 5.3 Providing the Programme Board and each Authority with a quarterly statement of Procurement Cost expenditure against the Budget approved for the Procurement Stage of the Phase Two Project by the Joint Waste Management Committee, including a statement of the payment (“ Equalisation Payment”) required to be made by the Authorities to achieve the Principle set out in Paragraph 1 above.
- 6 Within 30 days of receipt of a quarterly statement from the Programme Board to the Joint Waste Management Committee, each Authority shall make any Equalisation Payments to the other Authorities as set out in that statement.

Schedule B

Service Cost Allocation (Clause 12.3)

- 1 This Schedule sets out the Principles upon which the Officer Project Board will develop and recommend to the Joint Waste Management Committee for approval a scheme of allocation of the costs incurred or to be incurred by the Authorities in the course of the Service Stage of the Phase Two Project.
- 2 The Principles shall apply separately to each Contract entered by each Authority in pursuance of the Phase Two Project as follows:
 - 2.1 The Contractor's ordinary charges to the Authorities' and any ordinary payments by the Contractor to the Authorities shall be allocated among the Authorities which utilise the facilities provided under the Contract in accordance with the actual tonnages of waste delivered to the facilities by or on behalf of the particular Authority.
 - 2.2 Each Authority shall be directly responsible for any charges imposed by the Contractor in respect of that Authority's failure to accord with the provisions of the Contract.
 - 2.3 Each Authority shall be entitled to receive and retain any payments made by the Contractor under the Contract in respect of any loss suffered by that Authority as a result of any failure by the Contractor to accord with the provisions of the Contract.
 - 2.4 Subject to and in accordance with the principles in clause 14.1 and 14.2 each authority shall indemnify each other Authority in respect of, and pay to each other Authority upon demand, any loss suffered by that other Authority as a consequence of
 - the first Authority failing to comply with the terms of this Phase Two Agreement,
 - the first Authority failing to meet any targets relating to residual waste which bear on the financial model for the Project and pricing mechanism for the contract(s) (including recycling targets or tonnages to be put through the Phase 2 project)
 - withdrawing from this Phase Two Agreement,
 - taking an Independent Decision in respect of any matter relating to the Phase Two Project.

Schedule C

Protocol

1. Each Council shall act towards the other Councils fairly and properly at all times in relation to the Procurement.
2. The Councils will work together in good faith and in an open, co-operative and collaborative manner for the duration of this Agreement.
3. The Councils' members and officers will work together in the spirit of mutual trust in order to endeavour to procure the successful implementation of the Project and will respond in a timely manner to all relevant requests from the other Councils.
4. The Lead Council shall, as far as practicable, ensure that the other Councils are fully informed and able to access information as to the conduct of the Procurement.
5. The Councils agree that any advisory work that is specific to only one Council shall be called off by that Council at their own cost, unless agreed otherwise.

Annex A

The Constitution of the Joint Waste Management Executive Committee

Draft Waste Phase 3 Joint Agreement
PINSENT MASONS 2/10/08

Bristol City Council

And

North Somerset Council

And

South Gloucestershire Council

Joint Working Agreement

For the Development and Delivery of the “PFI Waste Project”

THIS AGREEMENT is made the

day of

2008

BETWEEN

BRISTOL CITY COUNCIL of

AND

NORTH SOMERSET COUNCIL of

AND

SOUTH GLOUCESTERSHIRE COUNCIL of

WHEREAS

- 1 The Authorities are Waste Disposal Authorities under Section 30(2) of the Environmental Protection Act 1990 and are under a duty to dispose of controlled waste within their respective areas under Section 51 of the Environmental Protection Act 1990.
- 2 The Authorities have agreed a Joint Waste Management Strategy ("the Strategy") through which they have resolved to work together to:
 - 2.1 Develop a sustained and co-ordinated programme to reduce the amount of waste generated and to increase the opportunities to re-use and re-cycle, together with Bath and North East Somerset Council.
 - 2.2 Procure short to medium term residual waste treatment capacity to reduce the amount of waste which each of the Authorities is consigning to landfill and thereby to reduce the cost to each of the Authorities of Landfill Tax and to avoid or to minimise the cost of Landfill Allowance Trading Scheme ("**LATS**") fines to each of the Authorities and/or of needing to acquire LATS permits between 2011 and 2015, together with Bath and North East Somerset Council.
 - 2.3 Procure a Contractor who will construct, provide and operate facilities for the treatment (and, should the Authorities agree, the disposal) of residual waste for the Authorities. Such facilities will be able to generate heat and power and help to recover value from waste and to secure the most effective discharge of the Authorities' functions in respect of the treatment and disposal of residual waste.
 - 2.4 Agree that decisions on future long-term waste treatments (that is, beyond 2020) should be developed in due course when there is greater clarity on long-term waste tonnage predictions and to allow new and evolving technologies to be fully assessed, together with Bath and North East Somerset Council.
- 3 This Agreement relates to the procurement of the PFI Project and shall operate independently of the other phases/objectives referred to in Clause 2. For the avoidance of doubt, the implementation of the PFI Project is not dependent on the implementation of any other phase.
- 4 The Authorities have established the Joint Waste Management Committee as a Joint Executive Committee.
- 5 The Authorities acknowledge that this Agreement shall regulate the procurement of the PFI Project up to the end of the final Procurement Stage and following the successful award of the Contract, the Authorities have agreed to enter into an agreement which will set out the respective rights and obligations of each Authority in relation to the implementation and

operational phases of the PFI Project. Such agreement ("**the Inter-Authority Agreement**") is intended to reflect the terms of the Contract and as such cannot be completed until the Authorities have agreed the terms of the Contract.

IT IS HEREBY agreed as follows –

1 Interpretation

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

"Agreed Proportions" means the agreed proportions in which any costs and/or liabilities arising under this Agreement shall be shared between the Authorities as set out in Schedule A (Procurement Cost Sharing Scheme) to this Agreement.

"the Authorities" shall be taken as references to Bristol City Council, North Somerset Council and South Gloucestershire Council, and **"the Authority"** shall mean any one of the Authorities.

"Authority Lead Officer" shall mean the officer of each Authority appointed by that Authority in accordance with Clause 6 of this Agreement to ensure that the Authorities provides sufficient support to secure the effective performance of the PFI Project.

"Bidders" means those organisations who have expressed an interest in, and pre-qualified for, carrying out the Contract and as may be negotiated through the competitive dialogue process.

"Budget" means the budget for the Procurement approved by the Joint Waste Management Committee.

"Chair" means the person elected as Chair of the Joint Waste Management Committee for the purpose of the Local Government Act 1972.

"Commencement Date" means the date on which this Agreement is executed by the Authorities.

"Contract" means the PFI contract entered (or proposed to be entered) by the Lead Authority (on behalf of all the Authorities) and the Contractor for the carrying out of the works and the provision of the services from the Facility once procured in accordance with the terms of this Agreement.

"Contractor" means the contractors to be appointed by the Authorities in pursuance of the PFI Project in accordance with the terms of this Agreement.

"Decision Period" means a period of 20 Working Days from receipt by an Authority of a Liability Report or such other time as is unanimously agreed by all the Authorities.

"DEFRA" means the Department for Environment, Food and Rural Affairs or any replacement authority.

“Delegated Powers” means the powers as delegated by each Authority to the Joint Waste Management Committee in accordance with Paragraph 6 of this Agreement.

“EU Procurement Regime” means the Public Contracts Regulations 2006.

"Facility" means the new waste treatment facility to be procured in pursuance of the PFI Project in accordance with the terms of this Agreement.

“Financial Model” means the financial model for the reference case which form part of the Outline Business Case.

“Independent Decision” means a decision taken by an Authority within the powers which it has delegated to the Joint Waste Management Committee.

“Joint Waste Management Committee” means the Joint Waste Management Committee established by the Authorities, together with Bath and North East Somerset Council, in accordance with the Constitution as set out in Schedule C to this Agreement.

“Lead Authority” means the Authority appointed under Clause 10 whose duties are set out in Clause 10A.

"Liability Report" means a report prepared by the Lead Authority (or such other Authority nominated under Clause 14A.7) acting reasonably setting out the financial liabilities of the relevant Authority under Clause 14 or 14A including the items set out in Schedule C (Liability Report).

“Members” means the members of the Joint Waste Management Committee, and **“Member”** shall mean a member of the Joint Waste Management Committee.

"Notice of Dispute" shall have the meaning set out in Clause 15.4.

“Officer Project Board” means a meeting of Authority Lead Officers, other senior officers and stakeholders as defined in this Agreement.

“Officers” means the officers of the Authorities who are engaged on the PFI Project.

“Outline Business Case” means the outline business case dated on or about the date of this Agreement prepared by the Authorities for submission to DEFRA for PFI support for the PFI Project.

"PFI" means the Government's Private Finance Initiative or any similar or replacement initiative.

“PFI Project” comprises the procurement and subsequent management of a long term contract under which the Contractor will construct, provide and operate facilities for the treatment (and, should the Authorities agree, the disposal) of residual waste for the Authorities. Such facilities will be able to generate heat and power and help to recover value from waste and to secure the most effective discharge of the Authorities' functions in respect of the treatment and disposal of residual waste.

“Preferred Bidder” means any Bidder for the Contract who has been selected by the Joint Waste Management Committee as preferred bidder in respect of the PFI Project.

“Procurement” means the procurement of the Contract and **“the Procurement Stage”** means that part of the PFI Project which relates to the procurement of the Contract.

“Procurement Cost Sharing Scheme” means the principles and arrangements set out in Schedule A to this Agreement for determining the allocation of costs of the procurement of the PFI Project as between the three Authorities.

“Reserved Matters” means the decisions specified in Clause 8 of the Constitution of the Joint Waste Management Committee which are outside the powers delegated by each of the Authorities to the Joint Waste Management Committee.

“Scrutiny Committee” means the scrutiny committee established under Clause 5.4.

“Senior Responsible Officer” means the officer appointed by the Joint Waste Management Committee to be responsible to the Committee for the PFI Project

“Service Cost Allocation Scheme” means the principles for the allocation of costs during the Service Stage approved by the Authorities or determined in accordance with Clause 12.3 of this Agreement.

“Service Stage” means the duration of the Contract.

“Site” means the land located on the site known as the "Texaco Site" in Avonmouth, Bristol.

“Strategic Plan Framework” means in respect of an Authority the plans and policies approved by that Authority for the purpose of Regulation 4 and Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended or replaced from time to time.

"Waste Project Director" means [•]

West of England Partnership” shall mean such joint strategic organization of the Authorities as shall be operated by the Authorities from time to time

“Working Day” means any day other than weekends and Bank Holidays

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

2 Term

- 2.1 This Agreement shall come into effect on the Commencement Date and shall continue until the earlier of the following dates:-
- 2.1.1 all the Authorities agree in writing to its termination; or
- 2.1.2 there is only one remaining Authority who has not withdrawn from this Agreement in accordance with Clause 14.
- 2.2 Without prejudice to any other rights or remedies, this Agreement may be terminated in relation to any Authority ("Defaulter") by the other Authorities ("Non-Defaulting Authorities") acting unanimously in giving written notice to the Defaulter ("Termination Notice") effective on receipt where the Defaulter breaches any of the provisions of this Agreement and in the case of a breach capable of remedy fails to remedy the same within 5 Working Days of being notified of each breach in writing by the Non-Defaulting Authorities and being required to remedy the same.
- 2.3 If this Agreement is terminated in relation to any Authority under clause 2.2, the Defaulter shall be liable to the Non-Defaulting Authorities for all reasonable and proper costs and losses arising out of or in connection with such termination in accordance with the terms of Clause 14.

3 General Principles

This Agreement has been entered into by the Authorities to establish and effect provisions for the following and to clarify the Authorities' responsibilities in respect thereof and to each other in respect of the PFI Project:

- (a) the Authorities will work together in good faith and in an open, co-operative and collaborative manner. The Authorities' members and officers will work together in the spirit of mutual trust in order to ensure the successful implementation of the PFI Project and will respond in a timely manner to all relevant requests from each other;
- (b) the Authorities will work together to secure external funding from the Department for the Environment and Rural Affairs (DEFRA) and any other available source in respect of the PFI Project;
- (c) each of the Authorities hereby represents to the others that it has obtained all necessary consents sufficient to ensure the delegation of functions provided for by this Agreement;
- (d) the Authorities shall use all reasonable endeavours to procure that their respective members and officers who are involved in the PFI Project and shall at all times act in the best interests of the PFI Project;
- (e) the Authorities expressly acknowledge that their members and officers involved in carrying out activities under this Agreement will have regard to the benefits to all the Authorities and accordingly may be required to balance the wider interests of the sub-region with those of their Authority in reaching a consensus, and the Authorities hereby authorise them to act in such a manner;
- (f) the Authorities commit to share data and knowledge relevant to the PFI Project where appropriate; and

- (h) the Authorities commit themselves to work together to secure the continuous improvement of the discharge of their waste disposal functions within the scope of the PFI Project.

4 Status of this Agreement

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

4A Inter-Authority Agreement

4A.1 The Authorities will enter into the Inter-Authority Agreement on or before the date of the Contract.

4A.2 The Authorities shall individually and jointly use all reasonable endeavours to negotiate and to agree the Inter-Authority Agreement in conjunction with the negotiation and agreement of the Contract.

4A.3 The reference to "all reasonable endeavours" in Clause 4A.2 shall include a requirement on each Authority to:-

4A.3.1 (without prejudice to Clause 3) at all times act in good faith;

4A.3.2 ensure that sufficient time is set aside to conduct the negotiations on the terms of the Inter-Authority Agreement either through correspondence or by holding meetings or a combination of both to ensure that the terms of the Inter-Authority Agreement are agreed in accordance with the timetable envisaged in Clause 4A.1.

4A.4 If a dispute or difference arises between the Authorities in relation to a provision of the Inter-Authority Agreement and such dispute or difference cannot be settled by the Authorities within ten (10) Business Days of it first arising, any Authority may refer such dispute or difference for determination in accordance with Clause 18.

5 The Joint Waste Management Committee

5.1 In appointing members to the Joint Waste Management Committee, each Authority will include among its appointees the member of the Executive of that Authority who has portfolio responsibility for waste functions within that Authority.

5.2 Each Member of the Joint Waste Management Committee shall have responsibility for championing the PFI Project within their own Authority and for securing, as far as possible that any matter which is recommended to that Authority by the Joint Waste Management Committee for decision shall be considered and determined expeditiously and having due regard to the benefits to the Authorities.

5.3 The Reserved Matters shall not be matters within the powers of the Joint Waste Management Committee.

5.4 The Chief Executives of each of the Authorities shall seek to secure that the function of overview and scrutiny of the functions and actions of the Joint Waste Management Committee in respect of the PFI Project shall be delegated to a Scrutiny Committee of three Members, and that such Scrutiny Committees of each Authority shall meet together to discharge their functions in a co-ordinated manner.

6 Delegation of Powers to the Joint Waste Management Committee

- 6.1 The Executive of each Authority hereby delegates to the Joint Waste Management Committee the Delegated Powers, comprising all executive functions and powers of that Authority as may be necessary, calculated to facilitate, incidental or conducive to the discharge of the functions of the Joint Waste Management Committee in respect of the PFI Project, except as specified in Clause 6.3.
- 6.2 The following functions are matters reserved to the appointing Authorities and shall not be within the powers of the Joint Waste Management Committee:
- 6.2.1 all non-executive functions of each of the appointing Authorities;
 - 6.2.2 any decision which is contrary to or not wholly in accordance with the Budget approved by each Authority, or is contrary to the Strategic Plan Framework of the relevant Authority;
 - 6.2.3 any decision in respect of which the Chief Executive of either appointing Authority has notified the Secretary to the Joint Waste Management Committee in writing of the Authority's formal objection to the proposed decision;
 - 6.2.4 the approval of the Financial Model and costs for the reference project selected at this stage, which forms part of the Outline Business Case (Phase 3 of the Strategy); and
 - 6.2.5 the decision to award the Contract where that bid which is proposed to be accepted is contrary to or not wholly consistent with the financial and other parameters defined in the Outline Business Case (subject to delegation to officers within parameters agreed by the Authorities).
 - 6.2.6 approval of a Service Stage Cost Allocation Scheme under Clause 12.3 where such scheme is contrary to the principles set out in Schedule B to this Agreement.
- 6.3 The following decisions shall be reserved for the Joint Waste Management Committee and shall not be delegated to officers or to the Officer Project Board:
- 6.3.1 the decision to issue an OJEU Notice;
 - 6.3.2 the decision to approve the evaluation criteria for the Contract;
 - 6.3.3 the decision to approve the Invitation to Submit Outline Submissions, ISDS, ISRS and all related documentation;
 - 6.3.4 the decision to approve the evaluation of Bidders to go to each Procurement Stage;
 - 6.3.5 the decision to close the Competitive Dialogue Procedure and Call for Final Tenders (as such terms are defined in the EU Procurement Regime);
 - 6.3.6 the decision to approve the selection of short-listed Bidders following evaluation of responses to the Invitation to Submit Outline Submissions;
 - 6.3.7 the decision to approve the selection of the Preferred Bidder;
 - 6.3.8 the decision to approve the execution of the Contract.

- 6.4 The delegation of powers from each Authority to the Joint Waste Management Committee is subject to the limitation that all decisions taken by the Joint Waste Management Committee in accordance with delegations from each Authority shall only take effect 5 Working Days after the relevant meeting of the Joint Waste Management Committee, and shall be ineffective if the Chief Executive or Leader of any Authority has given notice in writing to the Chief Executives of the other Authorities and to the Secretary to the Joint Waste Management Committee within such period of 5 Working Days.
- 6.5 Such matters shall within a further 15 clear Working Days be referred to and considered by a meeting of the Leaders of the Authorities (or their deputies) (who may make such recommendations to the next meeting of the Joint Waste Management Committee, for recommendation by the Executive of each Authority to its Council for approval.

7 Authorities' Lead Officers and Senior Responsible Owners

- 7.1 Each Authority will nominate an Authority Lead Officer with senior management responsibilities for waste management functions in their area. The Authority's Lead Officer shall ensure that his / her Authority provides the support necessary to secure the effective achievement of the PFI Project. In this context, "support" shall include the involvement and time of capable officers, the provision of information and the prompt consideration of matters referred to his / her Authority for determination.
- 7.2 The Joint Waste Management Committee shall appoint a Waste Project Director and the Senior Responsible Officer for the PFI Project on the advice of the Authorities' Lead Officers.
- 7.3 The Waste Project Director at the West of England Partnership Office will lead the monitoring and any review of the PFI Project and recommend any appropriate revisions to the Joint Waste Management Committee.

8 Liabilities, Immunity and Indemnities

- 8.1 Member and Officer Liability
- 8.1.1. When working as a member of the Joint Waste Management Committee, the members shall be deemed to be working on behalf of their own Authority even where the particular matter under consideration relates to or also relates to the other Authorities.
- 8.1.2. When working on the delivery of the PFI Project, officers shall be deemed to be working on behalf of both their employing Authority, and made available and working on behalf of the other Authority under Section 113 of the Local Government Act 1972.
- 8.1.3. In consequence of the above, both members and officers shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875, as amended, in respect of their actions or omissions in respect of the PFI Project
- 8.2 Each Authority ("the Indemnifier") (acting severally) shall indemnify and keep indemnified each of the other Authorities to this Agreement ("the Beneficiary") against any losses, claims, expenses, actions, demands, costs and liability suffered by the Beneficiary arising from any breach by the Indemnifier of its obligations under

this Agreement or any negligent act or omission in relation to such obligations provided that no claim shall be made against the Lead Authority under this Clause 8.2 to recover any losses which may be incurred by reason of or arising out of the carrying out by the Lead Authority of its obligations under this Agreement.

- 8.3 The Authorities agree and acknowledge that the amount to be paid by the Indemnifier under Clause 8.2 shall be to the extent of its responsibility, however in the event that the responsibility is a shared one between the Authorities (so that it is not reasonably practicable to ascertain the exact responsibility between the Authorities) then the amount to be paid under Clause 8.2 shall be divided amongst the Authorities in the Agreed Proportions. In the event of a claim in which it is not reasonably practicable to determine the extent of responsibility as between the Authorities then the amount would be divided amongst the Authorities in the Agreed Proportions.
- 8.4 An Authority who receives a claim for losses, expenses, actions, demands, costs and liabilities shall notify and provide details of such claim as soon as is reasonably practicable to the other Authorities.
- 8.5 No Authority shall be indemnified in accordance with this Clause 8 unless it has given notice in accordance with Clause 8.5 to the other Authority against whom it will be enforcing its right to an indemnity under this Agreement.

9 Land and Property

The Lead Authority shall enter into a lease together with any associated wayleave agreement or other agreements with the Contractor in relation to the Site on terms to be negotiated with the Contractor during the Procurement which are reasonably acceptable to the Lead Authority, by no later than the date of the Contract.

10 Appointment of [Bristol City] Council as the Lead Authority

10.1 The Authorities (acting severally) appoint, with effect from the Commencement Date, [Bristol City] Council to be the Lead Authority for the carrying out of the Procurement which shall be carried out for and on behalf of the Authorities and [Bristol City] Council agrees to act in that capacity subject to and in accordance with the terms and conditions of this Agreement.

10.2 If:

- 10.2.1 the Lead Authority defaults pursuant to Clause 2.2;
- 10.2.2 the Lead Authority withdraws pursuant to Clause 14; or
- 10.2.3 the Authorities agree during the Procurement that the Facility will be located on land not forming part of the Site and not under the ownership of the Lead Authority,

then the replacement Lead Authority will be appointed by the Joint Waste Management Committee and, in the case of clause 10.2.1 or 10.2.2, the withdrawing or defaulting Lead Authority will not have the right to vote in regard to any such appointment.

10A Duties of the Lead Authority

10A.1 For the duration of this Agreement, the Lead Authority shall act diligently and in good faith in all its dealings with the other Authorities and it shall use its reasonable endeavours to carry out the Procurement in accordance with the EU Procurement Regime and any other applicable legislation.

- 10A.2 For the duration of this Agreement, the Lead Authority shall act as the primary interface with DEFRA and Partnerships UK on behalf of the other Authorities.
- 10A.3 The Lead Authority shall act under the direction of the Joint Waste Management Committee and the Officer Project Board.
- 10A.4 Where the Lead Authority incurs any costs or liability in discharging its duties under this Clause 10A, the Lead Authority shall from time to time inform the Officer Project Board promptly of that cost or liability and such cost or liability shall be apportioned between the Authorities pursuant to Clause 12.

10B Duties of the Other Councils

For the duration of this Agreement, the other Councils shall act diligently and in good faith in all their dealings with the Lead Authority and shall use their reasonable endeavours to assist the Lead Authority to carry out the Procurement in accordance with the EU Procurement Regime and any other applicable legislation.

11 Intellectual Property

- 11.1 All intellectual property in any material created by or on behalf of the Authorities or any of the Authorities in the course of the PFI Project shall be owned jointly by those Authorities which are participating in the PFI Project and shall be available equally to each such Authority.
- 11.2 Each Authority warrants that any intellectual property created by its officers for the purposes of the PFI Project does not infringe any third party's intellectual property rights.
- 11.3 Each Authority shall indemnify the other Authorities against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of the first Authority's intellectual property for the purpose of the PFI Project.
- 11.4 Where existing intellectual property of an Authority has been used for the purpose of the PFI Project, that Authority agrees to grant the other Authorities a non-exclusive perpetual non transferable and royalty free licence to use, modify, amend and develop the same for the purpose of the PFI Project.

12 Cost Allocation

- 12.1 The Authorities shall share the costs reasonably incurred by each Authority in respect of the Procurement in the Agreed Proportions.
- 12.2 For this purpose, the Joint Waste Management Committee after considering the recommendations of the Officer Project Board may agree that specified costs incurred or to be incurred by an Authority in acquisition of land, in works for the preparation of that land for development and in obtaining any consents (including planning permission) necessary for the use of that land for the PFI Project shall be treated as costs reasonably incurred for the PFI Project.
- 12.3 The Officer Project Board shall recommend to the Joint Waste Management Committee, and the Joint Waste Management Committee shall agree, a scheme for the allocation of the costs reasonably incurred by any Authority in respect of the Service Stage of the PFI Project, incorporating the principles set out in Schedule B to this Agreement and applying them to the terms of the Contract. Where the

proposed Service Cost Allocation Scheme would be contrary to the principles set out in Schedule B to this Agreement, the approval of such Service Cost Allocation Scheme shall be reserved to each of the Authorities and shall not be within the powers of the Joint Waste Management Committee. For the avoidance of doubt, such Service Cost Allocation Scheme (once agreed) shall be included within the terms of the Inter-Authority Agreement.

13 Remediation and Dispute Resolution

- 13.1 Where an Authority is of the opinion that one or more of the other Authorities is failing to comply with the provisions of this Agreement in respect of any matter, including the provisions of Clause 3.3 to work together in good faith and in an open, co-operative and collaborative manner, the Authorities shall use their reasonable endeavours to resolve any such matter amicably without resort to the formal remediation and dispute resolution procedures set out below.
- 13.2 Notwithstanding Clause 13.1, at any time the Chief Executive of any Authority ("**the first Authority**") may serve on the Chief Executive of any one of the other Authorities ("**the second Authority**") a "**Default Notice**", alleging that the second Authority has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the first Authority has or is likely to suffer as a result of the alleged failure.
- 13.3 The second Authority on receipt of a Default Notice shall have 14 days within which to serve on the Chief Executive or Lender of the first Authority (as the case may be) a "**Counternotice**", setting out in respect of every matter contained in the Default Notice, proposals for the remediation of the alleged failure and making good any loss which the first Authority may have suffered or may suffer as a result of the failure, or the reasons why that alleged failure is disputed.
- 13.4 Within 14 days of receipt of a Counternotice, the Chief Executive or Lender (as the case may be) of the first Authority shall send to the Chief Executive or Lender (as the case may be) of the second Authority a "**Notice of Acceptance**" of any proposals contained in the Counternotice in so far as those proposals are accepted by the first Authority, and may send a "**Notice of Dispute**" in so far as no proposal satisfactory to the first Authority is contained in the Counternotice, setting out in respect of each proposal which is not accepted by the first Authority why it is considered to be unacceptable.
- 13.5 Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the second Authority shall implement that proposal.
- 13.6 Where any matter is contained in a Notice of Dispute, it shall fall to be dealt with under the Disputes Procedure set out in Clause 18.
- 13.7 Copies of all notices issued under this clause 13 shall be sent to all other Authorities' proper officers and/or lead officer (as the case may be).

14 Withdrawal

- 14.1 Any Authority (including the Lead Authority) may at any time during the Procurement withdraw from this Agreement in accordance with this Clause 14.
- 14.2 If an Authority wishes to withdraw from the PFI Project it shall provide written notice to all the other Authorities as soon as reasonably practicable ("Withdrawal Notice"). The Lead Authority shall within 14 days of receipt of the Withdrawal Notice provide to all the Authorities a Liability Report which shall be discussed by the Joint Waste

Management Committee at its next meeting or a specially convened meeting if the next meeting falls more than 2 weeks after the issue of the Liability Report.

14.3 Within the Decision Period the Authority who indicated is wish to withdraw shall confirm either:-

14.3.1 that it withdraws from the PFI Project and this Agreement; or

14.3.2 that it wishes to continue with the PFI Project and this Agreement.

14.4 Where the Authority who indicated its wish to withdraw does not indicate its intentions as required by Clause 14.3 then it shall at the expiry of the Decision Period be taken to have indicated that they wish to continue with the PFI Project and this Agreement.

14.5 Where the Authority indicates that it wishes to withdraw from the PFI Project under Clause 14.3.1, then the Authorities acknowledge and agree that:-

14.5.1 the Authority who shall have indicated its wish to withdraw shall pay all amounts due to be paid by it in accordance with the Liability Report (to include all costs reasonably incurred by the Lead Authority in the preparation of such Liability Report) and shall comply with its obligations to contribute to the PFI Project up to the date of its withdrawal in accordance with Clause 12 within 14 days of the date of the Liability Report; and

14.5.2 where the withdrawal is at any stage prior to the decision to execute the Contract under Clause 6.3.8 the Authority who shall have indicated its wish to withdraw shall be responsible for any Bidders' claimed abortive costs (which have been substantiated by the Joint Waste Management Committee) which may include Bidders' costs of commissioning alternative provision for the PFI Project which may be payable as a result of such withdrawal; and

14.5.3 if in the event of such withdrawal the PFI Project is delayed in terms of the Procurement then the Authority who shall have indicated its wish to withdraw shall be responsible for the costs of delay to the other Authorities or any costs or fines which may directly result in relation to any LATS liability.

14.6 The Authority who shall have indicated its wish to withdraw from the PFI Project shall not remove its appointees to the Joint Waste Management Committee for a period of not less than one (1) month commencing on the date of such Authority's withdrawal, provided that the costs associated with those appointees to the Joint Waste Management Committee shall be borne by the remaining Authorities to the PFI Project and this Agreement in equal shares.

14A CONSEQUENCES OF TERMINATION

14A.1 If this Agreement is terminated in accordance with Clause 2, save for the obligations set out in Clause 8, Clause 12 and Clause 15, the Authorities shall be released from their respective obligations to the Defaulter and the Defaulter shall be released from its obligations to the other Authorities described in this Agreement.

14A.2 Where an Authority withdraws from the PFI Project and this Agreement in accordance with Clause 14 or is a Defaulter and this Agreement is terminated in respect of that Authority in accordance with Clause 2.2 any property acquired and/or secured and/or owned and provided by such withdrawing Authority or

Defaulter for the purposes of the PFI Project will remain in the ownership of the withdrawing Authority or Defaulter and the withdrawing Authority or Defaulter will reimburse the remaining Authorities their respective contributions (if any) together with any reasonable costs incurred as a result of the withdrawal or default.

14A.3 The Lead Authority shall within 14 days of receipt of the Termination Notice served under Clause 2.2 provide to the Defaulter and to the other Authorities a Liability Report.

14A.4 The Defaulter shall pay all amounts due to be paid by it in accordance with the Liability Report (to include all costs reasonably incurred in the preparation of such Liability Report) within 14 days of the date of the Liability Report.

14A.5 The Authorities acknowledge and agree that:-

14A.5.1 the PFI Project has been modelled on the basis of participation by the Authorities and that there are considerable economic benefits to be achieved as a result of such joint working; and

14A.5.2 accordingly, save for the circumstances described in Clause 2.1, in the event that this Agreement is terminated in relation to any Authority pursuant to Clause 2.2 or where an Authority withdraws in accordance with Clause 14 such Defaulter and withdrawing Authority shall, without prejudice to Clause 14.5 and Clause 14A.4, be liable to the Non-Defaulting Authority or other Authorities for their reasonable and properly incurred costs in the PFI Project relating to any delay and arising from the withdrawal or early termination (including but not necessarily limited to the costs of legal, financial and technical advice) and any costs, claims and damages payable by the Non-Defaulting Authority or other Authorities arising from claims from Bidders in respect of any costs relating to any delay and arising from any withdrawal or early termination as determined by the Joint Waste Management Committee and such costs shall be included in the Liability Report prepared under Clause 14 and Clause 14A.3.

14A.6 Notwithstanding the provisions of Clause 14A.3 the Authorities shall not agree or enter into discussions with a view to agreeing with any Bidder (including any Bidder appointed as Preferred Bidder preferred or reserved for the PFI Project) that any of them is or will become liable to that Bidder at the time in question or in the future for any abortive or similar costs or damages of that Bidder or its advisers.

14A.7 If the Lead Authority is the Defaulter under Clause 2.2 or the Authority indicating its wish to withdraw under Clause 14, the Joint Waste Management Committee shall nominate another Authority to prepare the Liability Report for the purposes of Clause 14.2 or Clause 14A.3 (as the case may be).

15 Confidential Information

15.1 Subject to Clause 18, the Authorities shall at all times use their reasonable endeavours to keep confidential and ensure that such information is used only for the purpose of the PFI Project (and to procure that their respective employees agents consultants contractors and sub-contractors shall keep confidential and shall use such information only for the purpose of the PFI Project) all Confidential Information concerning the PFI Project or the business and affairs of the other Authority which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Authority, such consent not to be unreasonably withheld.

- 15.2 For the purpose of this Agreement “Confidential Information” means any information imparted to any of the Authorities or their employees agents consultants contractors or sub-contractors (“the Receiving Party”) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Authorities on the basis that it was to be kept confidential or is of commercial value in relation to the PFI Project but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.

16 Compliance with Laws

- 16.1 The Authorities shall at all times comply with all laws including but not limited to the Data Protection Act 1998 and will, where appropriate maintain a valid and up to date registration or notification under such laws.
- 16.2 Each Authority shall indemnify and keep indemnified the other Authorities against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the other Authorities in respect of any breach of this Clause by the Authority and/or any act or omission of any employee, agent, consultant, contractor or sub-contractor.
- 16.3 Each Authority shall grant to the other Authorities the right of reasonable access to all records of Personal Data relevant to the PFI Project, as defined in the Data Protection Act 1998, and shall provide reasonable assistance at all times during the currency of this Agreement to ensure the quality and security of data collected.

17 Freedom of Information Act 2000 and Environmental Information Regulations 2004

- 17.1 Each Authority acknowledges that the other Authorities are subject to the requirements of the Freedom of Information Act 2000 (“FoIA”) and the Environmental Information Regulations 2004 (“EIR”) and each Authority shall where reasonable assist and co-operate with the other Authorities (at their own expense) to enable the other Authorities to comply with these information disclosure obligations.
- 17.2 Where an Authority receives a request for information under either the FoIA or the EIR in relation to information which it is holding on behalf of any of the other Authorities in relation to the PFI Project, it shall (and shall procure that its sub-contractors shall):
- 17.2.1 transfer the request for information to the other Authorities as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
- 17.2.2 provide the other Authorities with a copy of all information in its possession or power in the form that the Authorities require within ten Working Days (or such longer period as the Authorities may specify) of the Authority requesting that information; and
- 17.2.3 provide all necessary assistance as reasonably requested by the other Authorities to enable the Authority to respond to a request for information within the time for compliance set out in the FoIA or the EIR.

- 17.3 Where an Authority receives a request for information under the FoIA or the EIR which relates to this Agreement or the PFI Project, it shall inform the other Authorities of the request for information as soon as practicable after receipt and in any event at least two Working Days before disclosure and shall use all reasonable endeavours to consult with the other Authorities prior to disclosure and shall consider all representations made by the other Authorities in relation to the decision whether or not to disclose the information requested.
- 17.4 The Authorities shall be responsible for determining in their absolute discretion whether any information requested under the FoIA or the EIR:
- 17.5 is exempt from disclosure under the FoIA or the EIR;
- 17.6 is to be disclosed in response to a request for information.
- 17.7 Each Authority acknowledges that the other Authorities may be obliged under the FoIA or the EIR to disclose information:
- 17.7.1 without consulting with the other Authorities where it has not been practicable to achieve such consultation; or
- 17.7.2 following consultation with the other Authorities and having taken their views into account.

18 Dispute Resolution

- 18.1 In the event of any dispute arising between the Authorities (including the service of a Notice of Dispute), as a matter of urgency, the Authorities will first attempt to settle the issue in dispute by referring the matter as follows:
- (a) Initially to a meeting of the Lead Officers
 - (b) In the event of failure of Lead Officers to agree a resolution, to the Joint Executive Committee
 - (c) In the event of the Joint Executive Committee failing to resolve the matter to a meeting of the Leaders of the Authorities participating in the PFI Project.
- 18.2 If the dispute is not resolved by such means within 14 days of such reference, the Authorities will attempt to settle the issue in dispute ("Dispute") by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Authorities. To initiate a mediation, any Authority may give notice in writing (a "Mediation Notice") to any one or more of the others requesting mediation of the Dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Authorities, asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. If there is any point in respect of the conduct of the mediation upon which the Authorities are unable to agree within ten (10) Working Days from the date of the Mediation Notice, CEDR will, at the request of one of the Authorities, decide that point for the Authorities, having consulted with them. The Authorities will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or, in the absence of such determination, such costs will be shared equally.
- 18.3 None of the Authorities may commence any court proceedings in relation to any Dispute until they have attempted to settle it by mediation under Clause 20.2

and/or such mediation has terminated. The Authorities will take no further steps in the court proceedings until any such mediation commenced under Clause 20.2 has terminated. Nothing in this Clause shall prevent an Authority from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

18.4 If the Dispute has not been resolved by the mediation procedure detailed in Clause 18.2 within one (1) month of the initiation of such procedure, the Dispute may be referred to the courts for resolution.

19 Severance

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

20 Entire Agreement

This Agreement constitutes the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Agreement.

21 Waiver

21.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.

21.2 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

21.3 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

22 Variation of this Agreement

Any Authority may propose to the Joint Waste Committee a variation of this Agreement. Where such variation is proposed, the Joint Waste Management Committee shall consider whether to recommend such variation for the approval of the Authorities.

23 General

23.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers duties and obligations in the exercise of their functions as local authorities and/or in any other capacity and all rights powers discretions duties and obligations of the Authorities under all laws may at all times be fully and effectually exercised as if the Authorities were not party to this Agreement and as if this Agreement had not been made.

23.2 The Authorities shall only represent themselves as being an agent partner or employee of any of the other Authorities to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or authority to

incur any obligation of any nature express or implied on behalf of any of the other Authorities except to the extent specified in this Agreement.

- 23.3 This Agreement shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.
- 23.4 This Agreement is personal to the Authorities and no Authority shall assign transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.
- 23.5 No person other than the Authorities shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 23.6 Any notice required or permitted to be given by an Authority to the other Authorities under this Agreement shall be in writing and addressed to the Chief Executive of the other Authorities at their principal office.

The Common Seal of **Bristol City Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **Bristol City Council**

.....Authorised Signatory

The Common Seal of **North Somerset Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **North Somerset Council**

.....Authorised Signatory

The Common Seal of **South Gloucestershire Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **South Gloucestershire Council**

.....Authorised Signatory

Schedule A

Procurement Cost Allocation (Clause 12.1)

- 1 The costs of undertaking the Procurement Stage shall be pooled and shared in the following Agreed Proportions:
 - 1.1 Bristol City Council – 43%;
 - 1.2 North Somerset Council – 27%;
 - 1.3 South Gloucestershire Council – 30%,provided that such Agreed Proportions shall be subject to annual review by the Joint Waste Management Committee following publication of the annual audited accounts for each Authority.
- 2 The Authorities agree and acknowledge that [Bristol City] Council has invested [£25,000] per annum ("**Investment Sum**") into the PFI Project by making the Site available to the PFI Project and in consideration for discharging its obligations under Clause 9 of this Agreement and that such Investment Sum will be reallocated amongst the other Authorities as an adjustment to their respective Agreed Proportion.
- 3 For this purpose the costs of undertaking the Procurement Stage ("**Procurement Costs**") shall comprise:
 - 3.1 The salary and on-costs reasonably incurred by the Lead Authority in employing any officers specified for this purpose by the Programme Board.
 - 3.2 The salary and on-costs reasonably incurred by the Authorities in employing and supporting any officers specified for this purpose by the Programme Board calculated pro rata in respect of the time which they actually spend working on the Phase Three Project on behalf of the Joint Waste Management Committee.
 - 3.3 "On costs" shall be determined in accordance with CIPFA Accounting principles and practice, and shall include, but not be limited to, National Insurance, employers' pension contributions, costs of providing working tools, telephones, computers and ICT services and facilities, costs of providing office accommodation, and travel and subsistence costs.
 - 3.4 Costs incurred for the purposes of the PFI Project on the instruction of the Joint Waste Management Committee or the Project Board, including, but not limited to -
 - 3.4.1 consultant's fees;
 - 3.4.2 advertising costs;
 - 3.4.3 costs of holding meetings of the Joint Waste Management Committee and Programme Board; and
 - 3.4.4 members' allowances in respect of attendance at meetings of the Joint Waste Management Committee by members of the Joint Waste Management Committee.

- 3.5 Redundancy costs reasonably incurred by any Authority as a result of the transition to the Contract and the new arrangements for managing the Contract (Subject to that Authority properly implementing its redundancy procedures).
- 4 For this purpose, the Procurement Costs shall not include:
 - 4.1 The salary and on-costs incurred by the Authorities in employing any officer in so far as that officer actually spend time working on the PFI Project on behalf of their employing Authority.
 - 4.2 The salary and on-costs incurred by any officer of any Authority when not working on the PFI Project.
 - 4.3 Costs incurred by the Authorities in preparing the schedule of the Authority's property and securing valuations thereof for the purpose of the PFI Project, or in making such property or information in respect of such property available to prospective Bidders, Bidders or the Contractor.
- 5 Each Authority shall be responsible for securing that any Procurement Costs incurred by that Authority are notified to the Programme Board.
- 6 The Project Board shall arrange for –
 - 6.1 Receipt of all notifications of claimed Procurement Costs and confirming that such Costs have been properly incurred for the purpose of this Schedule.
 - 6.2 Maintaining a record of all such accepted claims for Procurement Costs and calculating on a quarterly basis any payment required from one Authority to the other to achieve the principle set out in Paragraph 1 above.
 - 6.3 Providing the Programme Board and each Authority with a [quarterly] monthly statement of Procurement Cost expenditure against the Budget approved for the Procurement Stage of the PFI Project by the Joint Waste Management Committee, including a statement of the payment ("Equalisation Payment") required to be made by the Authorities to achieve the Principle set out in Paragraph 1 above.
- 7 Within 30 days of receipt of a [quarterly] monthly statement from the Programme Board to the Joint Waste Management Committee, each Authority shall make any Equalisation Payments to the other Authorities as set out in that statement.

Schedule B

Service Cost Allocation (Clause 12.3)

- 1 This Schedule sets out the principles upon which the Officer Project Board will develop and recommend to the Joint Waste Management Committee for approval a scheme of allocation of the costs incurred or to be incurred by the Authorities in the course of the Service Stage of the PFI Project.
- 2 The principles shall apply to the Contract entered by the Lead Authority and shall be reflected in the terms of the Inter-Authority Agreement.
- 3 The costs incurred or to be incurred by the Authorities in the course of the Service Stage of the PFI Project shall (unless otherwise agreed by the Authorities during the Procurement) be allocated in the following Agreed Proportions:
 - 3.1 Bristol City Council – 43%;
 - 3.2 North Somerset Council – 27%;
 - 3.3 South Gloucestershire Council – 30%,provided that such Agreed Proportions shall be subject to annual review by the Joint Waste Management Committee following publication of the annual audited accounts for each Authority.
- 4 The Authorities agree and acknowledge that [Bristol City] Council has invested [£25,000] per annum ("**Investment Sum**") into the PFI Project by making the Site available to the PFI Project and in consideration for discharging its obligations under Clause 9 of this Agreement and that such Investment Sum will be reallocated amongst the other Authorities as an adjustment to their respective Agreed Proportion.
5. Any liability arising from a breach by an Authority of the Contract or the Inter-Authority Agreement (as the case may be) or any negligent act or omission in relation to such obligation shall be the responsibility of the defaulting Authority to the extent of such breach, however in the event that the responsibility is a shared one between the Authorities (so that it is not reasonably practicable to ascertain the exact responsibility between the Authorities) or the responsibility arises on a no fault basis then the responsibility shall be divided amongst the Authorities in the Agreed Proportions.
6. LATS Allowances are allocated by DEFRA to individual Authorities. Where an Authority has surplus LATS Allowances in any year, this Phase Three Agreement shall not restrict the right of that Authority to transfer those surplus allowances for value, but that Authority shall first offer to transfer such surplus LATS Allowances to each of the other Authorities on commercial terms.

Schedule C

Liability Report

The Liability Report shall include (but shall not be limited to) irrecoverable expenditure incurred and committed in relation to the following:

	<u>Amount</u> (all figures in round pounds)
Procurement Costs	
Costs associated with from delays and having to revisit procurement such as :- Landfill cost LATS fines	
Land costs – costs associated with identifying and procuring land	
Staff costs (and associated overheads) in progressing the scheme:- a) Consultancy / Advisors fees b) Internal Project Management and monitoring c) Internal Professional advice	
All other reasonable and properly incurred costs and losses	

Certified Correct _____
(Signed)

(Date)

Draft Joint Working Agreement (Version 3) 13/07/2008
Amended 1/10/8

Bath and North East Somerset Council

And

Bristol City Council

And

North East Somerset Council

And

South Gloucestershire Council

Joint Working Agreement

For the Development, Procurement and Management of

Local Transport Improvements

THIS AGREEMENT is made the _____ day of _____ 2008

BETWEEN

BATH AND NORTH EAST SOMERSET COUNCIL of

AND

BRISTOL CITY COUNCIL of

AND

NORTH SOMERSET DISTRICT COUNCIL of

AND

SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL of

WHEREAS

- 5 The four authorities are all local transport and highways authorities under the Local Government Acts 1972 and 1985 and the Highways Act 1990
- 6 The four authorities are concerned to develop and implement a Strategy to alleviate traffic congestion, cope with anticipated population and traffic growth and to meet local transport and development needs and to promote the economic, social and environmental improvement of their areas
- 7 The Strategy is proposed to comprise a major programme of local transport improvements
- 8 The implementation of the Strategy will extend to the areas of all four authorities and will require the active participation of all four authorities to achieve
- 9 The four authorities intend to apply to the Department for Transport, other agencies of central government and the European Union for funding for the development and implementation of the Strategy, including Transport Innovation Fund funding.
- 10 The four authorities have therefore agreed to work together to develop and implement the Strategy, including the production of a shared Local Transport Plan and Local Transport Improvement Programme, to secure external funding for the introduction of such schemes and for the definition and implementation of the programme of local transport improvements

IT IS HEREBY agreed as follows –

1 Interpretation

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

“**The Agreement**” means this Agreement comprising the terms and conditions together with the Schedules hereto.

An “**Approved Project**” means a proposed local transport improvement which is included within the Local Transport Improvement Programme and for which an

allocation of funding has been made to the relevant local authority by the Joint Transportation Executive Committee

References to “**the Authorities**” shall be taken as references to Bath and North East Somerset Council, Bristol City Council, North Somerset Council and South Gloucestershire Council, and “the Authority” shall mean one of the Authorities.

“**The Authority Lead Officer**” shall mean the officer of each Authority appointed by that Authority in accordance with Clause 8 of this Agreement to ensure that that Authority provide sufficient support to secure the effective delivery of the Strategy.

“**The Chair**” means the person elected as Chairman of the Joint Transportation Executive Committee for the purpose of the Local Government Act 1972.

“**The Charging Schemes**” means such road pricing schemes and/or schemes of workplace parking levies as shall have been approved or implemented by the Joint Transportation Executive Committee

“**The Commencement Date**” means the date on which this Agreement is executed by the Authorities.

“**The Constitution**” means the constitution of the Joint Transportation Executive Committee as set out in Schedule C to this Agreement.

“**The Delegated Powers**” means the powers delegated by each Authority to the Joint Transportation Executive Committee in accordance with this Agreement

“**The Head of Joint Transport**” means the officer appointed by such appropriate collective arrangement between the Authorities as may exist from time to time to act as the co-ordinating officer in respect of the Strategy

“**An Independent Decision**” is a decision taken by an Authority which is within the Delegated Powers which that Authority has delegated to the Joint Transportation Executive Committee

“**The Joint Delivery Organisation**” is an organization which the Authorities propose to establish as a centre of excellence for the commissioning, design and delivery of major infrastructure projects

“**The Joint Transportation Executive Committee**” means the Joint Transportation Executive Committee established by the Authorities in accordance with the Constitution as set out in Schedule [C].

“**Joint Local Transport Plan**” means such plans and programmes as may from time to time be approved by the Authorities for the purpose of defining their intended local transport improvements as part of the Authority’s strategic plan framework under the Local Government Act 2000, and which may in turn be reflected in Major Scheme Bids, the Joint Strategy for Transport Innovation Fund, a Multi-Area Agreement for Transport, a Joint Public Transport Strategy and other policy documents and bid documents including the Transport Investment Policy and Programmes as may from time to time be approved or adopted by the Authorities

“**The Lead Authority**” means the Authority which, in accordance with this Agreement, the Joint Transportation Executive Committee has appointed to

carry out a particular function on behalf of the Joint Transportation Executive Committee.

“Local Determination Matters” means any matter relating to the implementation of an approved local transport improvement

“The Local Executive Member” means the member of the executive of the authority in whose area the particular Approved Local Transport Improvement is to be implemented and to whom responsibility for the executive decisions in relation to that matter has been delegated by that executive or, where an Approved Local Transport Improvement lies within more than one authority’s area, the executive member for each such authority.

“The Local Transport Improvement Programme” means the programme of local transport improvement projects as may from time to time be recommended by the Joint Transportation Executive Committee to and approved by each of the Authorities for the purpose of the Project in the Joint Local Transport Plan.

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

“The Members” means the members of the Joint Transportation Executive Committee, and “Member” shall mean a member of the Joint Transportation Executive Committee.

“The Officers” means the officers of the Authorities who are engaged upon the Strategy, and “Officer” shall mean an officer of an Authority who is engaged on the Strategy.

“Policy and Budget Framework” for an Authority comprises the plans and policies approved by the Council of that Authority for the purpose of Regulation 4 and Schedule 3 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended or replaced

“The Programme Board” shall mean the Board comprising the officers set out in Clause 8.

“Project” means any project comprised in the Local Transport Improvement Programme

“Project Initiation Document” means a document approved by the Joint Transportation Executive Committee in accordance with Clause 8 of this Agreement which brings together the key information required to start the Strategy [or required in respect of each Project within the Local Transport Improvement Programme]

“The Reserved Matters” means the decisions so specified in paragraph 3.7 of the Constitution

“The Strategy” means the shared object of the Authorities to develop, secure agreement of and implement the Local Transport Improvement Programme to secure funding for the introduction of such schemes and to make such funding available to enable the Authorities to implement individual local transport improvements comprised within the Local Transport Improvement Programme.

“The Strategy Costs” shall mean the costs incurred by the Joint Transportation Executive Committee, the Programme Board and the Authorities at the instruction of the Joint Transportation Executive Committee in pursuance of the Strategy, in accordance with the definition set out in Schedule A to this Agreement

“The Strategy Expiry Date” means the date 25 years after the date of this Agreement.

“Strategy Funds” mean any funding secured by the Authorities from the Department of Transport, other government departments or agencies and the European Union for the purpose of the development and/or implementation of the Strategy or any part of the Strategy.

“Strategy Initiation Document” means the document described in Clause 6 that brings together the key information required to start the Strategy.

“TIF Bid” means an application by the Authorities to the Department for Transport for Transport Innovation Fund funding for the Strategy.

“West of England Partnership” means such joint strategic organisation of the Authorities as shall be operated by the Authorities from time to time

“Working Day” in respect to an Authority, means any day other than weekends and Bank Holidays.

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

2 Term

- 2.1 This Agreement shall come into effect on the Commencement Date and shall continue in force in respect of the Authorities until the Strategy Expiry Date, unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
- 2.2 The Authorities agree that, five years before the Strategy Expiry Date, the Joint Transportation Executive Committee will consider and recommend to the Authorities whether the Agreement should be extended or arrangements agreed between the Authorities to deal with the continued funding of Approved Projects undertaken by the individual Authorities in accordance with this Agreement.

3 General Principles

- 3.1 This Agreement has been entered into by the Authorities to establish and effect provisions for the preparation and delivery of the Strategy and to clarify the Authorities' responsibilities in respect thereof and to each other.
- 3.2 The Authorities will work together in good faith and in an open, co-operative and collaborative manner for the duration of this Agreement. The Authorities' members and officers will use all reasonable endeavours to work together in the spirit of mutual trust in order to endeavour to procure the successful implementation of the Strategy and will respond in a timely manner to all relevant requests from the other Authorities and from the Joint Transportation Executive Committee.
- 3.3 Each of the Authorities will work together to secure the implementation of the Local Transport Improvement Programme in broad order of priority, notwithstanding that such local transport needs may arise or such local transport projects may fall outside the areas of the particular authority or authorities and to secure that the Strategy Funds are devoted to the implementation of the Local Transport Improvement Programme.
- 3.4 Each of the Authorities hereby represents to the other that it has obtained all necessary consents sufficient to ensure the delegation of functions provided for by this Agreement for the purposes of the Strategy
- 3.5 The Authorities shall use all reasonable endeavours to procure that their respective members and officers who are involved in the Strategy shall at all times act in the best interests of the Strategy and in accordance the Authorities' Policy and Budget Frameworks. The Authorities expressly acknowledge that their members and officers involved in carrying out activities under this Agreement or otherwise in connection with the Strategy will have regard to the benefits to all the Authorities and accordingly may be required to act in conflict with their duty to their own Authority, and the Authorities hereby authorise them to act in such a manner.
- 3.6 The Authorities commit to share data and knowledge relevant to the Strategy where appropriate.
- 3.7 Whilst this Agreement details the arrangements between the Authorities for the management of the Strategy, the Authorities agree to work together in good faith to agree such further inter-authority arrangements as may be required to secure the effective implementation of any particular local transport scheme which requires the joint participation of two or more of the Authorities for its implementation. In this context it is noted that the Authorities are considering the establishment of a Joint Delivery Organisation to provide the resource and expertise required for the effective implementation of the Local Transport Improvement Programme
- 3.8 The Authorities acknowledge that the Local Transport Improvement Programme is merely one area where joint working between some or all of the Authorities may be beneficial, and that the Authorities may from time to time wish to extend the scope of joint working and the functions of the Joint Transportation Executive Committee to encompass additional areas of joint working

4 Status of this Agreement

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

5 The Joint Transportation Executive Committee

- 5.1 The Authorities agree to constitute the Joint Transportation Executive Committee on the terms set out in the Constitution.
- 5.2 In appointing members to the Joint Transportation Executive Committee, each Authority will, unless there are over-riding reasons to the contrary, appoint as its representative the member of the Executive of that Authority who has portfolio responsibility for local transport functions within that Authority.
- 5.3 Each Member of the Joint Transportation Executive Committee shall have responsibility for championing the Strategy within their own Authority and for securing, as far as possible that any matter which is recommended to that Authority by the Joint Transportation Executive Committee for decision shall be considered and determined expeditiously and having due regard to the benefits to both Authorities of the joint procurement and implementation of the Strategy.
- 5.4 The Reserved Matters shall not be matters within the powers of the Joint Transportation Executive Committee.
- 5.5 The Executives of each of the Authorities shall seek to secure that the function of Overview and Scrutiny of the functions and actions of the Joint Transportation Executive Committee shall be co-ordinated between the Authorities, such that scrutiny can take place for each of the Authorities on one occasion, rather than being undertaken separately by each Authority.

6 Functions of the Joint Transportation Executive Committee

The functions of the Joint Transportation Executive Committee shall be as set out in the Constitution together with such other functions as may from time to time be delegated to the Joint Transportation Executive Committee by some or all of the Authorities.

7 Powers delegated to and reserved from the Joint Transportation Executive Committee

- 7.1 The Executive of each Authority hereby delegates to the Joint Transportation Executive Committee the Delegated Powers set out in Clause 6.2
- 7.2 The Delegated Powers shall comprise the executive functions and powers of that Authority as may be necessary, calculated to facilitate, incidental or conducive to the discharge of the functions of the Joint Transportation Executive Committee as detailed in, and subject to such limitations and conditions set out in, the Constitution annexed to this Agreement (Annex A).
- 7.3 The powers delegated to the Joint Transportation Executive Committee are delegated from the Executives of each Authority, and must therefore not be exercised in a manner which is contrary to the Policy and Budget Framework of the relevant Authority (which includes the Joint Local Plan) or contrary to or not wholly in accordance with the approved Budget of the relevant Authority

- 7.4 The powers delegated to the Joint Transportation Executive Committee must be exercised in accordance with any conditions imposed by any body providing funding for that element of the Strategy
- 7.5 The Joint Transportation Executive Committee shall not include within the Local Transport Improvement Programme any local transport project which has not been proposed by the Executive of the Authority or the Authorities within whose area or areas the project would be implemented.
- 7.6 Whilst the Joint Transportation Executive Committee has the power to determine the Local Transport Improvement Programme and to make funding available to an Authority for the implementation of a Approved Project, the implementation of any Approved Project remains the responsibility of the Authority within whose area the particular Local Transport Scheme lies, and no power is delegated to the Joint Transportation Executive Committee to implement any Approved Project.
- 7.7 The Executive of an Authority may at any time delegate additional powers to the Joint Transportation Executive Committee.

8 Programme Officers

- 8.1 The Authorities shall appoint one officer from each of the Authorities who shall work together with the Head of Joint Transport to prepare a Project Initiation Document in respect of each Project for approval by the Joint Transportation Executive Committee.
- 8.2 The Project Initiation Document shall make provision for the management of the Project or Strategy [as the case may be] at officer level, under the direction of the Joint Transportation Executive Committee, including –
 - 8.2.1 the appointment of one or more officers to be engaged full-time on the Strategy and/or Project;
 - 8.2.2 the secondment of officers from each of the Authorities, full or part-time, to be engaged on the Strategy and/or Project;
 - 8.2.3 the establishment of a Programme Board of such officers and the Head of Joint Transport, with the power to invite other officers, consultants and representatives of partner organisation to attend, for the purpose of managing the Strategy and or Project, together with the terms of reference and powers delegated from the Joint Transportation Executive Committee to that body;
 - 8.2.4 the terms of references and powers to be delegated to individual officers by the Joint Transportation Executive Committee and/or the Programme Board;
 - 8.2.5 the identification of the Strategy Costs and their allocation between the Authorities in accordance with the principles set out in Schedule A to this Agreement
 - 8.2.6 allocation of functions including legal, financial and technical advisers to the Joint Transportation Executive Committee;
 - 8.2.7 definition of which officers may enter contracts on behalf of the Authorities on instruction of the Joint Transportation Executive Committee.
 - 8.2.8 the appointment of an Authority as Lead Authority for various functions in connection with the Strategy and /or Project.

- 8.2.9 For the Head of Joint Transport to:
- a. lead the development of the Strategy in conjunction with the Authority Lead Officers and the Programme Board for recommendation to the Joint Transportation Executive Committee
 - b. co-ordinate the preparation and submission of bids for external funding for the Strategy and/or Project

9 Authority Lead Officers

- 9.1 Each Authority shall appoint one of its officers to be the Authority Lead Officer.
- 9.2 Each Authority Lead Officer shall be responsible to the Joint Transportation Executive Committee for ensuring that his/her Authority provides the support necessary to secure the effective achievement of the Strategy [and/or the delivery of any Project]. In this context, "support" shall include the involvement and time of capable officers, the provision of information and the prompt consideration of matters referred to his/her Authority for determination
- 9.3 An Authority shall, unless there are over-riding reasons to the contrary, appoint as its Authority Lead Officer the officer who has responsibility for local transport functions within that Authority.

10 Liabilities, Immunity and Indemnities

- 10.1 Compliance with grant conditions
- 10.1.1 Where any Authority receives Strategy Funds that Authority shall be responsible for ensuring that it complies strictly with any conditions or requirements which the funding agency has attached to such funding and shall be liable to the other Authorities for any losses resulting to those other Authorities as a result of any failure to comply with such conditions.
- 10.1.2 Where such funding agency requires some or all of the Authorities to be jointly and severally liable for repayment of such funding (in the event of a failure to comply with such funding conditions or requirements) the Authorities shall provide the necessary assurances.
- 10.2 Member and Officer Liability
- 10.2.1 When working as a member of the Joint Transportation Executive Committee, the members shall be deemed to be working on behalf of their own Authority even where the particular matter under consideration relates to or also relates to one or more of the other Authorities.
- 10.2.2 When working on the Strategy, officers shall be deemed to be working on behalf of both their employing Authority, and made available and working on behalf of one or more of the other Authorities under Section 113 of the Local Government Act 1972.
- 10.2.3 In consequence of the above, both members and officers shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875, as amended, in respect of their actions or omissions in respect of the Strategy.

10.3 Losses to each Authority

10.3.1 An Authority shall have not any liability to any other Authority in respect of any loss which that other Authority may suffer as a consequence of any action or omission by any Officer, whilst working on the Strategy on behalf of the Joint Transportation Executive Committee.

10.4 General Indemnity

Each authority shall indemnify each other Authority in respect of, and pay to each other Authority upon demand, any loss suffered by that other Authority as a consequence of the first Authority failing to comply with the terms of this Agreement

11 Lead Authority

11.1 The Lead Authority for any function shall act on behalf of the Authorities in respect of that function.

11.2 The Lead Authority shall act under the direction of the Joint Transportation Executive Committee and the Programme Board.

11.3 Where the Lead Authority for any function reasonably incurs any costs or liability in discharging its functions as Lead Authority, the officer of the Lead Authority discharging that function shall inform the Programme Board promptly of that cost or liability and such cost or liability shall be apportioned between the Authorities pursuant to Clause 13.

11.4 Authority to Enter Contracts, etc.

11.4.1 The Programme Initiation Document shall provide which officers and/ or Authority shall be authorised to enter any contracts in respect of the Strategy

11.4.2 Where any person enters any contract or communicates with any prospective Bidder, Bidder or contractor on behalf of the Strategy, he/she shall make it clear in any such contract or communication that he/she does so on behalf of the relevant Authorities.

12 Intellectual Property

12.1 All intellectual property in any material created by or on behalf of the Strategy shall be owned jointly by the Authorities and shall be available equally to each Authority.

12.2 Each Authority warrants that any intellectual property created by its officers for the purposes of the Strategy will not infringe any third party's intellectual property rights.

12.3 Each Authority shall indemnify the other Authority against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of the first Authority's intellectual property for the purpose of the Strategy.

- 12.4 Where existing intellectual property of an Authority has been used for the purpose of the Strategy, that Authority agrees that, if the Strategy does not proceed, it will if requested licence the other Authority on Commercial Terms to use that intellectual property for the purpose of its waste disposal functions.

13 Application of Strategy Funding

- 13.1 The Authorities agree that all Strategy Funds received by an Authority shall be held on trust for the Authorities and shall be expended by each Authority only in accordance with the instructions of the Joint Transportation Executive Committee.
- 13.2 The Joint Transportation Executive Committee shall apply the funding only for the purpose of the expenses of the Joint Transportation Executive Committee and the Programme Board, and for the furtherance of the Strategy

14 Cost Allocation

- 14.1 Whereas it is the intention of the Authorities that the costs incurred by the Authorities in respect of the Strategy shall be met from the Strategy Funds, there will be an initial period when the Strategy costs exceed the Strategy Funds received. During this period, the Authorities shall share the costs reasonably incurred by any Authority in furtherance of the Strategy in accordance with the Strategy Costs Allocation Scheme set out in Schedule A.

15 Remediation and Dispute Resolution

- 15.1 Where an Authority is of the opinion that the other authority is failing to comply with the provisions of this Agreement in respect of any matter, including the provisions of Clause 3.2 to work together in good faith and in an open, co-operative and collaborative manner, the Authorities shall use their best endeavours to resolve any such matter amicably without resort to the formal remediation and dispute resolution procedures set out below.
- 15.2 Notwithstanding Clause 15.1, above, at any time the Chief Executive of either Authority (“the first Authority”) may serve on the Chief Executive of the other Authority (“the second Authority”) a “Default Notice”, alleging that that Authority has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the first Authority has or is likely to suffer as a result of the alleged failure.
- 15.3 An Authority in receipt of a Default Notice shall have 14 days within which to serve on the Chief Executive of the first Authority who served the Default Notice a “Counternotice”, setting out in respect of every matter contained in the Default Notice proposals for the remediation of the alleged failure and making good any loss which the first Authority may have suffered or may suffer as a result of the failure or the reasons why that alleged failure is disputed.
- 15.4 Within 14 days of receipt of a Counternotice, the Chief Executive of the first Authority shall send to the Chief Executive of the second Authority a “Notice of Acceptance” of any proposals contained in the Counternotice in so far as those proposals are accepted by the first Authority, and may send a “Notice of Dispute” in so far as the matter set out in the Default Notice is not addressed to the satisfaction of the first Authority in the Counternotice, setting out in respect of each proposal in the Counternotice which is not accepted by the first Authority why it is considered to be unacceptable.

- 15.5 Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the second Authority shall implement that proposal.
- 15.6 Where any matter is contained in a Notice of Dispute, it shall fall to be dealt with under the Disputes Procedure set out in Clause 20.
- 15.7 Copies of all notices issued under this Clause 15 shall be sent to all other Authorities' Proper Officers.

16 Withdrawal, Independent Decision-Making and Indemnity for Consequences thereof

- 16.1 Each Authority acknowledges that, if it withdraws from this Agreement or from any Project within the Local Transport Improvements Programme that withdrawal is likely to cause loss of income and additional cost to the other Authorities including, but not limited to, the loss of funding from the Department for Transport and the loss of any economies resulting from the joint working between the Authorities in the implementation of Local Transport Improvements.
- 16.2 Any Authority may withdraw from this Agreement by giving notice in writing of its intention to withdraw to each of the other Authorities. Such notice shall be no less than [twelve] months' notice expiring at any time.
- 16.3 Similarly, each Authority acknowledges that if it takes any decision within the powers delegated to the Joint Transportation Executive Committee (an "Independent Decision"), such decision may cause loss to one or more of the other Authorities
- 16.4 Subject to Clause 16.6, each Authority agrees that in the event that it gives notice of withdrawal to the other Authorities, or takes an Independent Decision, it will use its reasonable endeavours to minimise, and will indemnify the other Authorities against any loss or additional expense which such other Authorities may suffer as a result of its Independent Decision or withdrawal from this Agreement or Project.
- 16.5 Where an Authority takes an Independent Decision, it shall be liable to each of the other Authorities for any loss suffered by the other Authorities as a consequence of the Independent Decision
- 16.6 Where any Authority withdraws from this Agreement or from any Project –
 - 16.6.1 The withdrawing Authority shall remain liable to the other Authorities for any proportion of any Strategy Funds received by the withdrawing Authority after the date of withdrawal as set out in Schedule B hereto.
 - 16.6.2 The withdrawing Authority shall remain liable to the other Authorities to indemnify them against any loss of income (including the repayment of any Strategy Funds) or increased or additional costs and expense in accordance with the provisions set out in Schedule B hereto.
 - 16.6.3 Any obligations which the withdrawing Authority has entered into to the other Authorities in pursuance of any funding provided or to be provided by the Joint Transportation Executive Committee for any Local Transport Improvement shall remain in force

- 16.6.4 The obligations of each remaining Authority to each other in respect of the furtherance of the Strategy shall continue notwithstanding the withdrawal from the Agreement by any Authority;
- 16.6.5 The Agreement shall remain in force in respect of any liability of the withdrawing Authority to indemnify the other Authorities under this Clause of the Agreement;
- 16.6.6 The Disputes Procedure set out in Clause 20 of this Agreement shall remain in force in respect of any of the matters arising from the performance of or withdrawal of either Authority under this Agreement.
- 16.6.7 Clause 17 of this Agreement (confidential information) shall continue without limit of time and shall survive the termination of this Phase Two Agreement;
- 16.6.8 All parties will seek to minimise costs arising from one withdrawing

17 Confidential Information

- 17.1 Subject to Clauses 19 and 20, the Authorities shall at all times use their reasonable endeavours to keep confidential and ensure that such information is used only for the purpose of the Strategy (and to procure that their respective employees agents consultants contractors and sub-contractors shall keep confidential and shall use such information only for the purpose of the Strategy) all Confidential Information concerning the Strategy or the business and affairs of the other Authority which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Authority, such consent not to be unreasonably withheld.
- 17.2 For the purpose of this Agreement “Confidential Information” means any information imparted to either Authority or their employees agents consultants contractors or sub-contractors (“the Receiving Party”) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Authority on the basis that it was to be kept confidential or is of commercial value in relation to the Strategy but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.
- 17.3 This Clause shall not prevent the disclosure of any Confidential Information relating to the Strategy which is reasonably disclosed for the furtherance of the Strategy or the promotion of the Strategy provided that the Authority or person disclosing the information takes all steps that are commercially practicable to preserve the confidentiality of the information and shall not prevent the disclosure of any Confidential Information where required by law.

18 Compliance with Laws

- 18.1 The Authorities shall at all times comply with all laws including but not limited to the Data Protection Act 1998 and will, where appropriate maintain a valid and up to date registration or notification under such laws.

- 18.2 Each Authority shall indemnify and keep indemnified the other Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the other Authority in respect of any breach of this Clause by the Authority and/or any act or omission of any employee, agent, consultant, contractor or sub-contractor.
- 18.3 Each Authority shall grant to the other Authority the right of reasonable access to all records of Personal Data relevant to the Strategy, as defined in the Data Protection Act 1998, and shall provide reasonable assistance at all times during the currency of this Agreement to ensure the quality and security of data collected.

19 Freedom of Information Act 2000 and Environmental Information Regulations 2004

- 19.1 Each Authority acknowledges that the other Authority is subject to the requirements of the Freedom of Information Act 2000 ("FoIA") and the Environmental Information Regulations 2004 ("EIR") and each Authority shall where reasonable assist and co-operate with the other Authority (at their own expense) to enable the other Authority to comply with these information disclosure obligations.
- 19.2 Where an Authority receives a request for information under either the Freedom of information Act 2000 or the Environmental Information Regulations 2004 in relation to information which it is holding on behalf of any of the other Authority in relation to the Strategy, it shall (and shall procure that its sub-contractors shall):
- 19.2.1 transfer the request for information to the other Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
 - 19.2.2 provide the other Authority with a copy of all information in its possession or power in the form that the Authority requires within ten Working Days (or such longer period as the Authority may specify) of the Authority requesting that information; and
 - 19.2.3 provide all necessary assistance as reasonably requested by the other Authority to enable the Authority to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 19.3 Where an Authority receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 which relates to the Agreement or the Strategy, it shall inform the other Authority of the request for information as soon as practicable after receipt and in any event at least two Working Days before disclosure and shall use all reasonable endeavours to consult with the other Authority prior to disclosure and shall consider all representations made by the other Authority in relation to the decision whether or not to disclose the information requested.
- 19.4 The Authorities shall be responsible for determining in their absolute discretion whether any information requested under the Freedom of Information Act 2004 or the Environmental Information Regulations 2004:
- 19.4.1 is exempt from disclosure under the FOIA or the EIR;
 - 19.4.2 is to be disclosed in response to a request for information.

19.5 Each Authority acknowledges that the other Authority may be obliged under the FOIA or the EIR to disclose information:

19.5.1 without consulting with the other Authority where it has not been practicable to achieve such consultation; or

19.5.2 following consultation with the other Authority and having taken their views into account.

20 Dispute Resolution

20.1 In the event of any dispute arising between the Authorities (including the service of a Notice of Dispute), as a matter of urgency, the Authorities will first attempt to settle the issue in dispute by referring the matter as follows;

(a) Initially to a meeting of the Lead Officers

(b) In the event of a failure of the Lead Officers to agree a resolution to the Joint Committee

(c) In the event of the Joint Committee failure to resolve the matter to a meeting of the Leaders of the Authorities still participating in Strategy or relevant Project

20.2 In the event that such meeting of Leaders shall not have recommended a resolution of the dispute within 14 days of service of the original Notice of Dispute, the Authorities will attempt to settle the issue in dispute ("Dispute") by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Authorities. To initiate a mediation, either Authority may give notice in writing (a "Mediation Notice") to the other requesting mediation of the Dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Authorities, asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. If there is any point in respect of the conduct of the mediation upon which the Authorities are unable to agree within ten (10) Working Days from the date of the Mediation Notice, CEDR will, at the request of either Authority, decide that point for the Authorities, having consulted with them. The Authorities will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or, in the absence of such determination, such costs will be shared equally.

20.3 Neither Authority may commence any court proceedings in relation to any Dispute until they have attempted to settle it by mediation under Clause 21.1 and/or such mediation has terminated. The Authorities will take no further steps in the court proceedings until any such mediation commenced under Clause 21.1 has terminated. Nothing in this Clause shall prevent an Authority from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

20.4 If the Dispute has not been resolved by the mediation procedure detailed in Clause 21.1 within one (1) month of the initiation of such procedure, the Dispute shall be referred to the courts for resolution.

21 Severance

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

22 Entire Agreement

22.1 This Agreement constitutes the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Agreement.

23 Waiver

23.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.

23.2 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

23.3 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

24 General

24.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers duties and obligations in the exercise of their functions as local authorities and/or in any other capacity and all rights powers discretions duties and obligations of the Authorities under all laws may at all times be fully and effectually exercised as if the Authorities were not party to this Agreement and as if this Agreement had not been made.

24.2 The Authorities shall only represent themselves as being an agent partner or employee of the other Authority to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of the other Authority except to the extent specified in this Agreement.

24.3 This Agreement shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

24.4 This Agreement is personal to the Authorities and no authority shall assign transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.

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

24.6 Any notice required or permitted to be given by an Authority to the other Authority under this Agreement shall be in writing and addressed to the Chief Executive of the other Authority at its principal office.

IN WITNESS hereof the parties hereto have executed this Agreement as a Deed the day and year first written

The Common Seal of **Bath and North East Somerset Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **Bath and North East Somerset Council**

.....Authorised Signatory

The Common Seal of **Bristol City Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **Bristol City Council**

.....Authorised Signatory

The Common Seal of **North Somerset Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **North Somerset Council**

.....Authorised Signatory

The Common Seal of **South Gloucestershire Council** was affixed hereto in the presence of the undersigned authorised signatory for and on behalf of **South Gloucestershire Council**

.....Authorised Signatory

Schedule A

Strategy Cost Allocation

(Clause 14)

- 25 Until such time as the Strategy Costs can be met from the Strategy Funds, the Strategy Costs shall be shared equally between the Authorities.
- 26 For this purpose the Strategy Costs shall comprise:
- 2.1 The salary and on-costs reasonably incurred by the Lead Authority in employing any officers specified for this purpose by the Programme Board.
 - 2.2 The salary and on-costs reasonably incurred by the Authorities in employing and supporting any officers specified for this purpose by the Programme Board calculated pro rata in respect of the time which they actually spend working on the Strategy on behalf of the Joint Transportation Executive Committee.
 - 2.3 "On costs" shall be calculated in accordance with standard CIPFA best value accounting practice
 - 2.4 Costs incurred for the purposes of the Strategy on the instruction of the Joint Transportation Executive Committee or the Programme Board, including, but not limited to -
 - 2.4.1 consultant's fees;
 - 2.4.2 advertising costs;
 - 2.4.3 costs of holding meetings of the Joint Transportation Executive Committee and Programme Board; and
 - 2.4.4 members' allowances in respect of attendance at meetings of the Joint Transportation Executive Committee by members of the Joint Transportation Executive Committee.
- 27 For this purpose, the Strategy Costs shall not include:
- 3.1 The salary and on-costs incurred by the Authorities in employing any officer in so far as that officer actually spend time working on the Strategy on behalf of their employing Authority.
 - 3.2 The salary and on-costs incurred by any officer of either Authority when not working on the Strategy.
 - 3.3 Costs incurred by either Authority in undertaking any remedial action arising under Clause 16 of the Agreement.
- 28 Each Authority shall be responsible for securing that any Strategy Costs incurred by that Authority are notified to the Programme Board.

- 29 The Programme Board shall arrange for –
- 5.3 Receipt of all notifications of claimed Strategy Costs and confirming that such Costs have been properly incurred for the purpose of this Schedule.
 - 5.4 Maintaining a record of all such accepted claims for Strategy Costs and calculating on a quarterly basis any payment required from one Authority to the other to achieve the principle set out in Paragraph 1 above.
 - 5.5 Providing the Programme Board and each Authority with a monthly statement of Procurement Cost expenditure against the Budget approved for the Procurement Phase of the Strategy by the Joint Transportation Executive Committee, including a statement of the payment (“Equalisation Payment”) required to be made by either Authority to achieve the Principle set out in Paragraph 1 above.
- 30 Within 30 days of receipt of a statement from the Programme Board to the Joint Transportation Executive Committee, each Authority shall make any Equalisation Payment to the other Authority as set out in that statement. Such statements shall be sent monthly, or at such other intervals as may be agreed by the Programme Board

Schedule B

Liability on Early Termination

(Clause 16)

- 1 In the event that any Authority give notice to the other Authorities under Clause 16 of this Agreement, the withdrawing Authority shall indemnify the other Authorities in accordance with the provisions of this Schedule.
- 2 The withdrawing Authority shall forthwith pay over to one of the other Authorities any monies which it holds in trust for the Strategy and/or Project(s).
- 3 Future Charging Scheme Income
 - 3.1 The withdrawing Authority shall remain liable to each of the other Authorities for the relevant proportion of any Strategy Funds which it receives after the date of its withdrawal.
 - 3.2 In the event that the withdrawing Authority at any time before the Strategy Expiry Date alter or terminate any Charging Scheme, the withdrawing Authority shall remain liable to each of the remaining Authorities under Paragraph 3.1 hereof up to the Strategy Expiry Date as if the Charging Scheme had continued without such alteration or termination.
- 4 Where the withdrawal of the withdrawing Authority causes any loss of income from the Department for Transport, (or triggers the requirement to repay any Strategy Funds) the withdrawing Authority shall be liable to each of the remaining authorities for the relevant proportion of any such lost income or repayment.
- 5 Where the withdrawal of the withdrawing Authority causes the termination of any joint arrangements for the provision of expertise in the implementation of Local Transport Improvements, the withdrawing Authority shall remain liable to each of the remaining authorities for any additional costs incurred by that remaining Authority as a consequence of that termination
- 6 The relevant proportion for the purpose of Paragraphs 3 and 4 above shall be the proportion which the population of that remaining authority bears to the aggregate of the populations of all the Authorities at the date of the notice of withdrawal
- 7 For the avoidance of doubt, the indemnity shall include :
 - a) a reasonable contribution towards development and project costs (including fees and charges) incurred in the preparation of the Strategy and the Local Transport Improvements Programme (and in individual Projects),
 - b) lost opportunity costs,
 - c) the financial implications of withdrawal of any Strategy Funds (in whole or in part) and
 - d) abortive internal costs of the remaining Authorities (including any special Lead Authority costs and expenses) and
 - e) abortive costs and expenses of the West of England Partnership.

Schedule C

The Constitution