



Basingstoke  
and Deane



working together

**DATED**

**2021**

**BASINGSTOKE AND DEANE BOROUGH COUNCIL (1)**

and

**HART DISTRICT COUNCIL (2)**

**INTER-AUTHORITY AGREEMENT**

relating to the Provision of Household  
Waste Collection and Recycling Services

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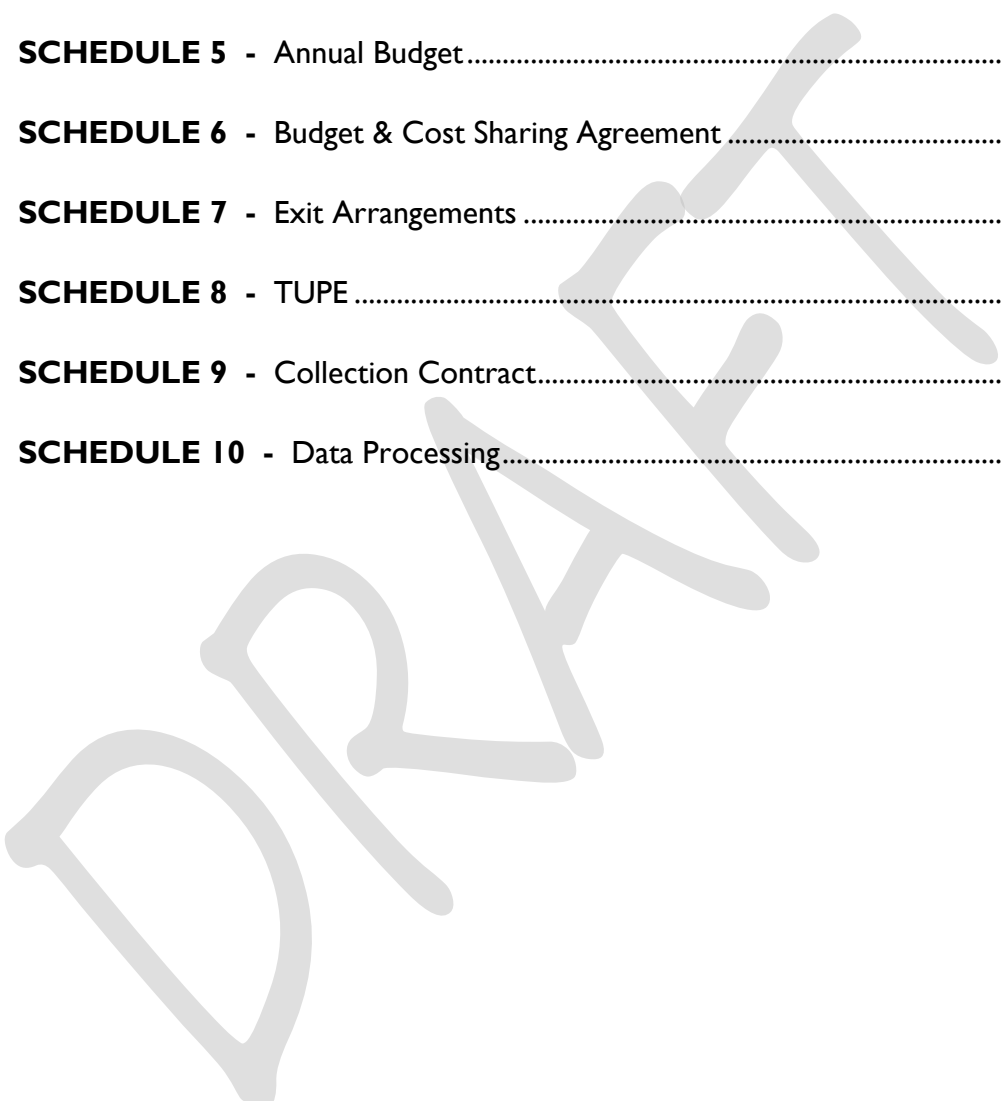
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## INTER-AUTHORITY AGREEMENT

**DATE** 2021

### **PARTIES**

- (1) **BASINGSTOKE AND DEANE BOROUGH COUNCIL** of Civic Offices, London Road, Basingstoke, Hampshire, RG21 4AH ("**BASINGSTOKE**"); and
- (2) **HART DISTRICT COUNCIL** of Civic Offices, Harlington Way, Fleet, Hampshire, GU51 4AE ("**HART**")

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

#### **RECITALS:**

- (A) BASINGSTOKE and HART (the 'Parties') are the waste collection authorities for their respective administrative area under section 30(3) of the Environmental Protection Act 1990.
- (B) The Parties entered into an Inter-Authority Agreement dated 15<sup>th</sup> February 2012 (the 'Previous Inter-Authority Agreement') for the purpose of providing joint arrangements for the management of an economic, efficient and effective joint household waste and recycling collection service.
- (C) The Parties have decided to continue their joint arrangements and, following a procurement process carried out in pursuance of contract notice 2017/S 017-027595 published on 25<sup>th</sup> January 2017 in the Official Journal of the European Union, have entered into the Collection Contract for the provision of a joint household waste and recycling service.
- (D) The Parties have further agreed:
  - (i) to provide an interest free finance facility to the Collection Contractor, via the Vehicle Loan Agreement, to cover its cost of purchasing new vehicles (to be used exclusively to operate the Services) prior to the Commencement Date. The proportions in which the Parties provided such finance are set out in **Schedule 2**;
  - (ii) to enter into this Agreement for the purpose of regulating their respective rights and obligations to each other as a consequence of the joint arrangements for the management of a joint household waste and recycling service; and
  - (iii) that BASINGSTOKE will replace HART as the Administering Authority for the purposes of this Agreement, the Principal Contracts and the Vehicle Loan Agreement.

- (E) HART has agreed to delegate to BASINGSTOKE its statutory functions in relation to the collection and recycling of waste.
- (F) The Joint Governance Group [and Partnership Board] shall oversee the strategic performance of this Agreement.

## I. DEFINITIONS AND INTERPRETATION

I.1 In this Agreement unless the context otherwise requires:

<b>"Administering Authority"</b>	means Basingstoke and Deane Borough Council;
<b>"Agreement"</b>	means this agreement (including its schedules);
<b>"Annual Budget"</b>	means the annual budget of the Joint Waste Client Team for a Financial Year, as set out in <b>Schedule 5</b> , as approved or amended by the Parties for each year in accordance with <b>clause 12</b> and <b>Schedule 5</b> ;
<b>"Business Day"</b>	means a day (other than a Saturday, Sunday or Bank Holiday) on which banks are open for domestic business in the City of London;
<b>"CEDR"</b>	means the Centre for Effective Dispute Resolution;
<b>"Chief Executive"</b>	means the Chief Executive or Joint Chief Executive or the head of paid service of either of the Parties;
<b>"Collection Contract"</b>	means the contract for the provision of household waste and recycling services for the local authority areas of Basingstoke & Deane and Hart in the County of Hampshire dated 26 <sup>th</sup> April 2018 between Hart (1) and the Collection Contractor (2), as novated by the Novation Agreement dated [date] 2021 between Hart (1); the Collection Contractor (2); and Basingstoke (3)
<b>"Collection Contractor"</b>	means Serco Limited (or such other contractor as may be appointed under the terms of the Collection Contract from time to time);
<b>"Commencement Date"</b>	means the date of this Agreement;
<b>"Confidential Information"</b>	means all know how and other information whether commercial, financial, technical or otherwise relating to the operations, affairs or methods of both or either party which is contained in or discernible in any form

	<p>whatsoever (including without limitation software, data, drawings, film, document, and computer readable material) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure;</p>
<p><b>“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures”</b></p>	<p>have the meaning assigned to them in the Data Protection Legislation;</p>
<p><b>“Data Protection Legislation”</b></p>	<p>means UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;.</p>
<p><b>“Domestic Law”</b></p>	<p>means the law of the United Kingdom or a part of the United Kingdom;</p>
<p><b>"EIR"</b></p>	<p>means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;</p>
<p><b>"EPA 1990"</b></p>	<p>means the Environmental Protection Act 1990;</p>
<p><b>"Financial Year"</b></p>	<p>means a calendar year commencing on 1st April in any year;</p>
<p><b>"FOI Act"</b></p>	<p>means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Act;</p>

<b>"[Relevant Senior Officer]"</b>	means [title of senior Basingstoke officer] – <i>role currently performed by Hart's Head of Technical Services &amp; Environmental Maintenance;</i>
<b>"Joint Waste Client Team" or "JWCT"</b>	means the group of officers employed by the Administering Authority appointed from time to time pursuant to <b>clause 8;</b>
<b>"Joint Governance Group" or "JGG"</b>	means the group formed in accordance with and having the roles and responsibilities set out in <b>clause 9;</b>
<b>"Law"</b>	the laws of England and Wales and (where applicable) the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Parties must comply;
<b>"LGA 1972"</b>	means the Local Government Act 1972;
<b>"Material Change"</b>	means a change proposed to this Agreement which either of the Parties (acting reasonably) considers to be a material change to the nature or operation of the rights and obligations of the Parties (including a change which has a material impact on the scope or the cost of the services provided under the Principal Contracts) and which it considers must be subject to approval by elected members of the Parties;
<b>"Materials Recovery Facility" (MRF)</b>	means the Materials Recovery Facility at Alton that separates all the dry mixed recyclables (newspapers, magazines, plastic bottles, tins and cans) that are collected from the kerbside, and which also provides specialist sorting processes to segregate the materials before they are baled up and sent to private companies for recycling.
<b>"Monitoring Officer"</b>	means the Monitoring Officer of the Administering Authority;
<b>"Parties"</b>	means together BASINGSTOKE and HART;
<b>"Payment Date"</b>	means the date upon which HART is required to make a payment to the Administering Authority in accordance with <b>clause 12.3</b> and <b>Schedule 5;</b>
<b>"Performance Board"</b>	means ...[details to be added]?
<b>"Previous Collection Contract"</b>	means the contract for the provision of household waste and recycling services covering the period 3 <sup>rd</sup> October 2011 to 30 <sup>th</sup> September 2018

	(as amended) entered into by the Administering Authority on behalf of the Parties and Veolia Environmental Services (UK) Plc;
<b>"Principal Contracts"</b>	means the Collection Contract and any contracts replacing such contracts and such other contracts as the Administering Authority may administer from time to time on behalf of the Parties;
<b>"Prohibited Act"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) offering, giving or agreeing to give to any servant of the Parties any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> <li>(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or the Principal Contracts; or</li> <li>(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or the Principal Contracts;</li> </ul> </li> <li>(b) entering into this Agreement or any other contract with either of the Parties or other public body relating to this Agreement in connection with which commission has been paid or has been agreed to be paid by either of the Parties or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the other party;</li> <li>(c) committing any offence relating to this Agreement or the Principal Contracts: <ul style="list-style-type: none"> <li>(i) under the LGA 1972;</li> <li>(ii) under the Bribery Act 2010;</li> <li>(iii) under legislation creating offences in respect of fraudulent acts; or</li> <li>(iv) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with HART; or</li> </ul> </li> </ul>



	(d) defrauding or attempting to defraud or conspiring to defraud the Parties in relation to this Agreement or the Principal Contracts;
<b>“Quarter Months”</b>	means the months of March, June, September and December;
<b>"Review Report"</b>	means a report of a review referred to in <b>clause 17.3</b> ;
<b>“Scrutiny Arrangements”</b>	means the arrangements set out in the constitutions of BASINGSTOKE and HART governing the roles and responsibilities of their respective Overview and Scrutiny Committees;
<b>“Service Credit”</b>	means the sums attributable to a Service Failure as specified in <b>Schedule 3, Part 3</b> , of the Collection Contract;
<b>“Service Failure</b>	means a failure by the Collection Contractor to provide services in accordance with the terms and conditions of the Collection Contract;
<b>“Service Level Agreement”</b>	means the service level agreement set out at <b>Schedule 1</b> (as amended by the Parties from time to time)
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time;
<b>“UK Data Protection Legislation”</b>	Means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>"VAT"</b>	means value added tax;
<b>“Vehicle Loan Agreement”</b>	means the Vehicle Loan Agreement dated 10th October 2018 made between HART and the Collection Contractor, a copy of which is annexed at <b>Schedule 4</b> ;
<b>[“Waste &amp; Recycling Manager”]</b>	[currently Hart’s Waste & Recycling Manager responsible for managing the Joint Waste Client Team];

## 1.2 Interpretation

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

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

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

## 2. POWERS AND DELEGATION

2.1 The Parties have entered into this Agreement pursuant to the provisions of sections 101, 102 and 113 of the Local Government Act 1972 and sections 9EA and 9EB of the Local Government Act 2000, together with Section 1 of the Localism Act 2011, the supporting provisions within section 111 of the Local Government Act 1972 and all other relevant enabling powers.

- 2.2 The Parties recognise that nothing in this Agreement shall prejudice or prevent them carrying out their individual statutory duties and responsibilities as waste collection authorities or restrict the decisions to be made with regard to such duties and responsibilities.

### **3. COMMENCEMENT AND DURATION**

- 3.1 This Agreement and the rights and obligations of the Parties under this Agreement shall take effect on the Commencement Date.
- 3.2 The Agreement shall terminate on the earlier of:
- 3.2.1 the termination or expiry of the Principal Contracts (subject to the option of the Parties to extend the Collection Contract in accordance with **clause 4.1 of Schedule 9**);
  - 3.2.2 a notice of termination being served in accordance with **clause 28.2.4 (c)**;  
or
  - 3.2.2 the agreement of both Parties in writing at any time.
- 3.3 This Agreement is intended to supersede and replace the Previous Inter-Authority Agreement and shall, save to the extent the Parties have undischarged obligations in relation to the Previous Inter-Authority Agreement (in which case they will continue to assist and co-operate with each other as appropriate in order to discharge such obligations), cease to have effect and the rights and obligations under this Agreement shall be deemed to take effect from the Commencement Date.

### **4. GUIDING PRINCIPLES AND OBJECTIVES**

- 4.1 The Parties will work together in a spirit of partnering in connection with their dealings with each other in respect of the subject matter of this Agreement so that wherever possible the activities of one complement and enhance the activities of the other for the benefit of all residents, businesses and visitors to their respective administrative areas.
- 4.2 The Parties recognise the importance of consultation and liaison on issues concerning waste services to include, without limitation, planning and (where possible) harmonising the implementation of future proposals for the management and collection of waste and in particular the reduction, reuse, recycling, composting and recovery of waste.
- 4.3 The Parties agree to commit themselves to the principle of consultation with each other and, where appropriate, with the community, on any issue which the Parties agree to be significant and which will impact upon those receiving waste related services within their respective administrative areas.
- 4.4 For the purposes of this Agreement, the spirit of partnering referred to in clause 4.1 above means that the Parties:

- 4.4.1 work in good faith with each other in pursuit of overall benefits to the community, resolve problems together rather than taking an adversarial stance, act reasonably and in so far as is reasonably possible share information that could reasonably be expected to impact upon this Agreement or the other party;
- 4.4.2 take all reasonable steps (without incurring excessive expenditure) to mitigate any losses arising from a Parties' actions under this Agreement;
- 4.4.3 provide information to each other that will (or could) impact upon the obligations, rights and liabilities of either Party to this Agreement or to the Collection Contractor;
- 4.4.4 will not take a decision independently of the other Party which could have a detrimental and financial implication for one or both of the Parties without first providing relevant information in accordance with **clause 4.4.3**
- 4.4.5 work together to ameliorate any "detrimental impact" on the Collection Contract arising from their activities (and the term detrimental impact shall include the application of any relief or remedy available to the Collection Contractor);
- 4.4.6 work together to achieve statutory targets and as far as is reasonable or practicable work to ameliorate the detrimental impact on the Parties and the public in the event that one of the Parties fails to carry out its obligations under this Agreement;
- 4.4.7 use reasonable endeavours working with the other party to minimise waste and to increase the amount recycled, composted and recovered from wastes collected in line with UK Government targets, Legislation and in particular the Landfill Directive (1999/31/EC);
- 4.4.8 work together to:
  - 4.4.8.1 continue to promote and raise awareness of waste issues and to give people the knowledge and resources to take action at school, at work and in the community through waste related education, awareness raising and behavioural change programmes where possible;
  - 4.4.8.2 make the strategic planning and development of each of the Parties' waste services as transparent as possible to each other and to the public as a whole;
  - 4.4.8.3 research, develop and implement detailed proposals to achieve the purposes referred to in **clause 4.4.6** above and this **clause 4.4.8**;

4.4.8.4 explore other appropriate partnering opportunities with both the private and public sectors in the pursuit of the aims and objectives of this Agreement.

4.5 The Parties will discuss and agree ways in which they may respond to local needs, achieve value for money and, in particular, efficiencies and economies of scale through this partnering arrangement including where appropriate by sharing resources that achieve the best 'whole service cost' for tax payers with cost being defined as both financial and environmental.

4.6 The Parties acknowledge that any decisions made pursuant to this Agreement are subject to appropriate delegations and the decision making procedures of each Party. Any decisions are not intended to fetter the constitution of either of the Parties.

## 5. **VEHICLE LOAN AGREEMENT**

In respect of the Vehicle Loan Agreement, whereby the parties agreed to provide interest free finance to the Collection Contractor to cover its cost of purchasing new vehicles (to be used exclusively to operate the Services) prior to the Commencement Date, the Parties wish to record that they provided such monies in the proportions set out in **Schedule 4, Part 2**.

## 6. **ADMINISTERING AUTHORITY**

6.1 The Parties agree that BASINGSTOKE shall replace HART as the Administering Authority for the purposes of this Agreement.

6.2 The Administering Authority shall:

- 6.2.1 arrange for the Joint Waste Client Team to discharge its roles, functions and responsibilities as set out in the Service Level Agreement;
- 6.2.2 manage HART's share of the Annual Budget calculated in accordance with the principles set out in **Schedule 6 (Budget and Cost Sharing Agreement)**;
- 6.2.3 make the payments due under the Collection Contract;
- 6.2.3 ensure that the terms and conditions of the Vehicle Loan Agreement are complied with at all times, including the repayment by the Collection Contractor of all monies due thereunder and apportionment of such repayments between the Parties in accordance with **Schedule 4, Part 2**;
- 6.2.5 arrange for the Monitoring Officer to promptly and diligently notify the monitoring officer of HART should it appear to him at any time that any proposal decision or omission of the Administering Authority constitutes or may give rise to a contravention of any enactment or rule of law or maladministration under Part III of the Local Government Act 1974;
- 6.2.6 provide or arrange promptly and diligently such legal advice, via the shared service arrangements between the Parties for the provision of legal

services, as may be required in connection with any aspect of this Agreement from time to time;

- 6.2.7 provide or arrange promptly and diligently such human resources advice, health & safety, staff well-being and any other related services as may be required in connection with any aspect of this Agreement from time to time;
  - 6.2.8 provide or arrange promptly and diligently such additional administrative services, resources and office facilities that may be reasonably necessary to discharge the duties and obligations of the Administering Authority and/or the Joint Waste Client Team under the provisions of this Agreement;
  - 6.2.9 where agreed, to hold any capital assets in respect of the Principal Contracts and the Joint Waste Client Team on behalf of the Parties;
  - 6.2.10 to carry out any functions delegated to it by HART; and
  - 6.2.11 instigate and defend legal proceedings on behalf of the Parties (subject to obtaining the prior written consent of HART and itself as appropriate).
- 6.3 Following the transfer of staff of the Joint Waste Client Team pursuant to **Schedule 8**, the Administering Authority shall be responsible for the appointment, employment and management of all staff of the Joint Waste Client Team and for the payment of the salaries, wages, income tax, national insurance contributions, and all other payments and emoluments of such staff provided that such payments shall not, without the approval of HART exceed the amount specified within the Annual Budget for such expenditure.
- 6.4 The Administering Authority shall provide such administrative services, resources and arrange or provide such office facilities that may be reasonably necessary to enable the Joint Waste Client Team to carry out its functions and activities.
- 6.6 The Administering Authority shall not assign in whole or part or delegate or sub-contract any of its responsibilities under this Agreement to any other authority, company, persons or individuals without the prior written consent of HART.

## **7. HART'S RESPONSIBILITIES**

- 7.1 HART acknowledges the role and responsibilities of the Administering Authority and its obligations to share in good faith the costs of the Administering Authority in accordance with this Agreement.
- 7.2 Any provision in HART's constitution, standing orders and scheme of delegation which requires that an action can only be taken with the consent of the relevant officer of HART shall, except where such a construction is abhorrent, contrary to law or otherwise contrary to the requirements of HART, be taken and construed as a reference to the consent of the [Relevant Senior Officer - currently Hart's Head of Technical Services and Environmental Maintenance].

- 7.3 HART acknowledges and agrees that it shall promptly pay any money properly due in accordance with this Agreement (including but not limited to its contribution to the Annual Budget) to the Administering Authority.
- 7.4 Where HART (acting in good faith) disputes all or any part of any sum due the undisputed amount of such sum shall be paid to the Administering Authority in accordance with **clause 12** and the principles set out in **Schedule 6** (Budget and Cost Sharing Agreement) and the provisions of **clause 28** shall apply in respect of the disputed amount.
- 7.5 Following resolution of the dispute in question any amount agreed or determined to have been payable shall be paid forthwith to the Administering Authority together with any additional amount calculated in accordance with **clause 12.6**.
- 7.6 HART shall use all reasonable endeavours to make any decisions or ratify any decisions of the Administering Authority as required by this Agreement as soon as reasonably practicable.
- 7.7 HART shall consider any proposed amendments to the Annual Budget in good faith and act reasonably in considering whether or not to approve any proposed amendments.
- 8. JOINT WASTE CLIENT TEAM**
- 8.1 The Administering Authority shall maintain the Joint Waste Client Team in accordance with the organisational structure set out in **Schedule 2**, save that the Parties agree and acknowledge that the structure may, from time to time, be subject to review and amendment in accordance with **clause 8.5**.
- 8.2 The parties agree that the provisions of **Schedule 8** shall apply to any Relevant Transfer of staff under this Agreement.
- 8.3 The Administering Authority shall, following a Relevant Transfer of Hart Transferring Staff be the employer of the staff who work in the Joint Waste Client Team.
- 8.4 The Administering Authority shall determine the staff training, development and continuing professional development needs of the Joint Waste Client Team through annual Performance Development Reviews and One to One Meetings held regularly.
- 8.5 Any recruitment to Joint Waste Client Team shall be in accordance with the Administering Authority's normal staff recruitment policies.
- 8.6 The Administering Authority shall be entitled to change the structure of the Joint Waste Client Team subject to prior consultation with HART. Where any such change results in any savings or increase in costs, the Annual Budget shall be adjusted in accordance with **Schedule 6** (Budget and Cost Sharing Agreement).
- 8.7 The Joint Waste Client team shall carry out its roles, functions and responsibilities as set out in the Service Level Agreement.

## 9. JOINT GOVERNANCE GROUP

**[does provision also need to be made for role of Performance Board?]**

- 9.1 The Joint Governance Group, which is responsible for overseeing the strategic performance of this Agreement, shall comprise the following persons:
- (a) relevant Portfolio Holder (or their nominated deputy) from each of the Parties;
  - (b) corporate director (for BASINGSTOKE) or joint chief executive (for HART) or their nominated deputy;
  - (c) [Relevant Senior Officer];
  - (d) [Waste & Recycling Manager]; and
  - (e) other invited officers as may be required.
- 9.2 The JGG shall meet as and when required and the Parties shall share (in accordance with the principles set out in **Schedule 6 (Budget and Cost Sharing Agreement)**) any administrative costs and arrangements required for the JGG.
- 9.3 The Parties agree that the JGG shall have the following roles and responsibilities:
- 9.3.1 to ensure that the legal duties and statutory functions of HART delegated to the Administering Authority in accordance with this Agreement are being discharged effectively in accordance with relevant legislation and with due economy, efficiency and effectiveness;
  - 9.3.2 monitoring the performance of the Joint Waste Client Team in accordance with the Service Level Agreement;
  - 9.3.3 to review and comment on the performance monitoring reports submitted by the Joint Waste Client Team and make recommendations for any actions it deems necessary (acting reasonably) in accordance with Principal Contracts;
  - 9.3.4 to review the Annual Budget prepared by the Administering Authority and where relevant make recommendations for any changes it deems necessary (acting reasonably) before submission to HART for approval;
  - 9.3.5 to review the Health & Safety reports from the contractor as well as the Joint Waste Client Team and take responsibility for the management of this area.
  - 9.3.6 to consider such other reports submitted by the Joint Waste Client Team, including the Services risk register, regarding the performance of the Principal Contracts;
  - 9.3.7 to consider any other information provided in accordance with **clause 9.3.6** which may have a detrimental and financial implication for one or both of the Parties and, as far as possible, agree and recommend action(s) to the relevant internal decisions-maker of the Party concerned; and



- 9.3.8 to review the effectiveness of the JGG in:
- (a) helping the Parties to meet its statutory and local targets; and
  - (b) achieving efficiency savings on behalf of the Parties,
- following which it shall report and, where appropriate, make recommendations to the Parties on the effectiveness of the JGG and any changes or amendments necessary to improve the effectiveness of the JGG.

9.3.9 act in dispute resolution in accordance with **clause 29.1**;

9.3.10 review and set a standard agenda for all meetings including the following:

- (a) Client Team Monthly Report;
- (b) Budget position;
- (c) Contract Update:
  - (i) Current work
  - (ii) Any issues or problems
  - (iii) Defaults
  - (iv) Innovation
  - (v) IT development
- (d) Health & Safety
- (e) Complaints

9.4 Where the Parties decide to continue with the joint arrangements set out in this Agreement the JGG shall:

9.4.1 consider, review and give direction on any process for the re-tendering of the Collection Contract, which shall include (but not exclusively) such matters as:

- (a) exploring opportunities and benefits that might be delivered by extending the current joint working arrangements to include other local authorities;
- (b) exploring alternative opportunities for procurement of the waste service, including in house provision, and joint venture;
- (c) reviewing current service provision across both councils and identify opportunities for service improvement;
- (d) considering the value of extending the waste contract to incorporate other service areas, i.e. Streets/Grounds, Bulky and Clinical Waste;

- (e) reviewing the results of any re-tendering process and to make appropriate recommendations to each Parties' cabinet for the award (or otherwise) of a contract to the preferred tenderer.

9.4.2 consider and recommend terms and conditions to their respective councils for extending this Agreement or entering into a replacement Agreement, as appropriate, for the purpose of regulating the rights and obligations of the Parties relating to the future management arrangements for the joint household waste and recycling service (and any additional service areas) following completion of a re-tendering process of the existing Collection Contract.

9.5 The JGG may prepare, and amend from time to time, such terms of reference as it deems appropriate to record its administrative arrangements and to facilitate the performance of its roles and responsibilities set out in this **clause 9**.

## **10. SCRUTINY ARRANGEMENTS**

10.1 The decisions, actions and activities of the Administering Authority shall be subject to the Scrutiny Arrangements of each of the Parties.

10.2 The Administering Authority and the Joint Waste Client Team and its officers shall fully co-operate with the Scrutiny Committees of each of the Parties and shall ensure that any reports to be considered by a Scrutiny Committee are prepared and submitted to the most appropriate meeting, and in a timely fashion, in order not to cause any undue delays to the planned work of the Administering Authority.

10.3 Any decision of the Administering Authority called in for Scrutiny before it is implemented shall not be implemented until the Scrutiny procedures of either the Parties whose membership has called in the decision has been completed.

10.4 A call in of such a decision can only be made if the decision concerned affects either of the Parties whose membership wishes to call in the decision.

## **11. ANNUAL BUDGET**

11.1 HART acknowledges the requirements of **Schedule 6** (Budget and Cost Sharing Agreement) in respect of the preparation and agreement of the Annual Budget.

11.2 HART shall provide such reasonable assistance as is necessary to the Administering Authority to assist in preparing the Annual Budget.

## **12. PAYMENTS BY THE HART**

### **12.1 HART shall:**

12.1.1 contribute to the Annual Budget in accordance with the principles set out in **Schedule 6** (Budget and Cost Sharing Agreement); and

12.1.2 pay an appropriate proportion of all sums that become payable by the Administering Authority to the Collection Contractor in accordance the Collection Contract, such payments to be calculated and made in accordance with the principles set out in **Schedule 6** (Budget and Cost Sharing Agreement).

12.3 The amount of HART's annual contribution towards the costs arising out of its obligations under this Agreement in any Financial Year shall be such amounts as shall be specified for HART in the schedule of payments attached to the Annual Budget for that Financial Year.

12.4 HART shall pay to the Administering Authority monthly instalments each equal to one twelfth of the sums payable by it in accordance with this **clause 12** and **Schedule 6** (Budget and Cost Sharing Agreement), such payment to be made within 5 working days of receipt of a statement detailing the sums due.

12.5 The sums payable in accordance with **clause 12.3** shall be reconciled and adjusted, as necessary, at the end of each Quarter Month to take account of any additions or variations to the actual costs incurred under the Collection Contract or otherwise. HART shall pay to the Administering Authority any additional sums that become due as a consequence of such reconciliation and adjustment, such payment to be made in the calendar month following completion of the reconciliation and adjustment and in accordance with this **clause 12** and **Schedule 6** (Budget and Cost Sharing Agreement).

12.6 Where HART (acting in good faith) disputes all or any part of any sum due the undisputed amount of such sum shall be paid to the Administering Authority forthwith and the provisions of **clause 29** shall apply in respect of the disputed amount.

12.7 Following resolution of the dispute in question any amount agreed or determined to have been payable shall be paid forthwith to the Administering Authority together with the reasonable costs and compensation for any losses incurred by the Administering Authority calculated in accordance with **clause 12.8**.

12.8 In the event of HART failing to make a payment under **clauses 12.4** and **12.5** on the relevant Payment Date, the Administering Authority may, in respect of any losses incurred relating to the outstanding instalments, require HART to pay interest on any amount not paid on the Payment Date from that date to the date of payment at a rate equal to two (2) % above the Bank of England base rate.

- 12.9 Before the start of each Financial Year, the Administering Authority shall issue to HART an annual payment and invoicing schedule for the forthcoming Financial Year, identifying the twelve monthly payments due on the Payment Date.
- 12.10 The Administering Authority and HART agree to keep under review the structure of the payment of contributions under this Agreement to minimise any adverse VAT implications for HART.

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

- 13.1 The Administering Authority shall maintain accounts relating to all financial matters and payments arising under this Agreement for in accordance with the requirements of the Local Authorities (Accounts and Audit) Regulations 2015 and the Audit Commission Act 1998 and with the requirements of relevant central government departments, H.M. Revenue and Customs and all other applicable requirements.
- 13.2 The Administering Authority shall procure that such accounts shall be audited annually by a properly appointed external auditor.
- 13.3 The Administering Authority shall ensure that all financial statements are submitted to the Joint Governance Group for approval and copies shall be provided to the section 151 officer of HART by no later than 30<sup>th</sup> April in each Financial Year in respect of the un-audited accounts and by no later than 30<sup>th</sup> June in each Financial Year in respect of the audited accounts.
- 13.4 The Administering Authority shall provide sufficient financial information to the section 151 officer of HART to enable HART to report on the financial status of the joint working arrangements against the relevant Annual Budget.

### **14. ARRANGEMENTS FOR INSURANCE, INDEMNITIES AND CONDUCT OF CLAIMS**

#### **Indemnities**

- 14.1 Excluding any liabilities in respect of the Collection Contract (which shall be subject to **clause 15.5**) insofar as the Administering Authority shall perform its obligations and functions as Administering Authority in accordance with the provisions of this Agreement, HART hereby agrees to be bound by and comply with any or all outcomes of the exercise of such obligations and functions and HART hereby undertakes to pay to the Administering Authority its appropriate share of any additional costs, contributions to claims or liabilities which may arise as a result of the performance by the Administering Authority of its obligations under this Agreement in accordance with the principles set out in **Schedule 6** (Budget and Cost Sharing Agreement).
- 14.2 HART shall indemnify the Administering Authority from and against any damages or awards (including legal expenses on an indemnity basis) paid by it to their employees or their personal representatives or to third parties in settlement of any

claims arising from a breach by HART of this Agreement, negligence of HART or its employees or agents acting in the course of their employment, damage to real and personal property or injury to persons including injury resulting in death.

- 14.3 Neither of the Parties shall be responsible or obliged to indemnify the other for:
- 14.3.1 any liability which arises as a direct result of either of the Parties acting on the instructions of the other Party claiming under any indemnity in this Agreement (to the extent that the party is entitled to give such instructions); or
  - 14.3.2 any injury, loss, damage, cost and expense caused by the negligence, wilful misconduct or a breach of this Agreement by one of the Parties claiming under any indemnity in this Agreement or an agent, contractor or employee of that party.
- 14.4 Neither of the Parties shall be liable in tort to the other for any negligent act or omission of that other party relating to this Agreement and the only remedy of such other party is under this Agreement. The Parties shall use reasonable endeavours to procure that no agent, contractor or employee of it brings a claim in tort or otherwise against either of them.
- 14.5 Any indemnity under this **clause** 14 shall be without prejudice to any indemnity by the Parties under any other provision of this Agreement.
- 14.6 None of the indemnities under this Agreement shall apply, and there shall be no right to claim damages for breach of this Agreement whatsoever to the extent that any loss claimed is for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential or for indirect loss of any nature allegedly suffered by the Parties.

## **Insurance**

- 14.7 The Administering Authority shall take out and maintain the following insurances in respect of the employees, premises (except the Springwell Lane Depot, which shall be insured by HART) and equipment allocated to the Joint Waste Client Team:
- 14.7.1 public liability insurance;
  - 14.7.2 employees liability insurance;
  - 14.7.3 buildings and/or contents insurance; and
  - 14.7.4 any other insurances required by law or agreed by the Joint Governance Group to be appropriate.
- 14.8 In relation to the insurances referred to in **clause** 14.7:
- 14.8.1 HART shall neither take any action or fail to take any action nor allow anything to occur which would entitle an insurer to refuse a claim under any of the insurance policies or which may render such a claim wholly or partially repayable; and

- 14.8.2 the Administering Authority shall provide on request to HART copies of insurance policies referred to in this **clause 14.8** and evidence of the payment of the premiums and that the insurances are in full force and effect at all material times.
- 14.9 HART shall assist the Administering Authority in respect of the insurance requirements and obligations in this Agreement.

### **Conduct of claims**

- 14.10 This **clause 14.10** shall apply to the conduct, by either the Parties from either of whom an indemnity is sought under this Agreement, of claims made by a third person against either of the Parties having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the party giving the indemnity is referred to as the "**Indemnifier**". Accordingly:
- 14.10.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Agreement, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable having regard to any timescale imposed by a notice, demand, letter or any other form of document received by the Beneficiary;
- 14.10.2 subject to **clauses 14.10.3, 14.10.4 and 14.10.5** below, on the giving of a notice by the Beneficiary pursuant to **clause 14.10.1** above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of at least half of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with an indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action (over and above those which the Beneficiary would otherwise have borne if the Indemnifier had no entitlement to conduct the relevant claim) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- 14.10.3 with respect to any claim conducted by the Indemnifier pursuant to **clause 14.10.2** above:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
  - (c) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

- 14.10.4 the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
- (a) the Indemnifier is not entitled to take conduct of the claim in accordance with **clause 14.10.2** above; or
  - (b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 20 Business Days of the notice from the Beneficiary under **clause 14.10.2** above or notifies the Beneficiary that it does not intend to take conduct of the claim; or
  - (c) the Indemnifier fails to comply in any material respect with the provisions of **clause 14.10.3** above;
- 14.10.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which **clause 14.10.2** above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this **clause 14.10.5** then the Indemnifier shall be released from any liability under its indemnity under **clause 14** (as the case may be) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to **clause 14.10.2** in respect of such claim;
- 14.10.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity; and
- 14.10.7 any body taking any of the steps contemplated by **clauses 14.10.2** to **14.10.5** shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

## 15. COLLECTION CONTRACT

- 15.1 The Parties accept the terms of and agree to be bound by the Collection Contract.
- 15.2 HART agrees that the provisions of this **clause 15** and **Schedule 9** (Collection Contract) shall apply in respect of the administration of the Collection Contract.
- 15.3 The Administering Authority shall (acting as a reasonable local authority) administer the Collection Contract in accordance with its terms.
- 15.4 The Administering Authority shall indemnify HART in respect of any claims, losses or liabilities incurred by HART as a result of the Administering Authority:
- 15.5.1 wilfully breaching the terms of the Collection Contract;
  - 15.5.2 negligently administering the Collection Contract; and/or
  - 15.5.3 failing to act as a reasonable local authority in administering the Collection Contract;
- 15.5 HART hereby undertakes to pay to the Administering Authority its appropriate share of any additional costs, contributions to claims or liabilities which may arise as a result of the performance by the Administering Authority of its obligations under the Collection Contract in accordance with **clause 12** and the principles set out in **Schedule 6** (Budget and Cost Sharing Agreement).
- 15.6 The Parties agree that any decision taken by the Joint Governance Group which puts the Administering Authority in breach of the Collection Contract shall not be implemented and that in the event that any costs or losses are incurred by the Administering Authority (arising from any decision of the Joint Governance Group which puts the Administering Authority in breach of the Collection Contract) each of the Parties shall bear an appropriate share of such any additional costs or losses.
- 15.7 Switch to Alternate Weekly Collection
- 15.7.1 The Parties recognise and acknowledge that BASINGSTOKE may, at some stage during the term of the Collection Contract, wish to switch to fortnightly, rather than weekly, collection of all residual household across the BASINGSTOKE district ("Alternate Weekly Collection") (to align the collection frequency to that carried out across the HART district) or the Parties may require to otherwise vary the frequency of such collection across both or either of their districts.
  - 15.7.2 In the event that BASINGSTOKE requires to switch to Alternate Weekly Collection, the provisions of **Schedule 3** shall apply.
  - 15.7.3 In the event of the Parties requiring to otherwise vary the frequency of any collection services provided under the Collection Contract, the provisions of **clause 16** shall be followed.



## 15.8 Optional Services

15.8.1 Where a Party wishes to introduce any of the optional services listed below (**Optional Services**) (which were specified in the Invitation to Tender, but not included in the scope of services to be provided under the Collection Contract from the Commencement Date), the Party concerned shall follow the procedure set out in **Schedule 9**, paragraph 2:

- (a) Textiles in Basingstoke and Deane
- (b) Glass moving to four Weekly – Hart DC and Basingstoke and Deane BC
- (c) Glass Kerbside moving to Bring Banks/sites – Hart DC and Basingstoke and Deane BC
- (d) Bulky Waste – Hart DC and Basingstoke and Deane BC
- (e) Healthcare (Clinical) Waste– Hart DC and Basingstoke and Deane BC

## 16 **CHANGES**

16.1 Where a Party wishes to propose a change to this Agreement, other than a change to the Collection Contract (which shall be dealt with in accordance with **Schedule 9**, paragraph 2), it shall arrange for the proposed terms of the change to be discussed at a meeting of the Joint Governance Group.

16.2 The Party seeking a change shall provide a report setting out:

- 16.2.1 the terms of the proposed change;
- 16.2.2 its likely impact on the requesting Party;
- 16.2.3 the likely impact on the other Party;
- 16.2.4 the likely cost of the change and/or savings resulting from the change;
- 16.2.5 how the proposed change should be implemented; and
- 16.2.6 any other relevant implications.

16.3 The Relevant Senior Officer shall arrange for the terms of all proposed changes to be considered at a meeting of the Joint Governance Group as soon as practical.

16.4 The Relevant Senior Officer shall provide a report setting out the terms of the proposed change and its likely impact on the Parties, the likely cost implications of the change and/or any savings resulting from it, how it would be implemented along with any other relevant implications of the change.

16.5 Any change that only has impact for the Party requesting the change and has no impact on the other Party is likely to be agreed and implemented with effect from a mutually acceptable date.

16.6 The Joint Governance Group shall determine whether or not any other change shall be accepted. The Relevant Senior Officer shall effect the change if approved by the Joint Governance Group, or, if the change is not agreed then the Relevant Senior Officer shall notify the Parties that such change was not approved.

## 17. REVIEW OF AGREEMENT

17.1 The Parties shall review this Agreement, including the structure and functions of the Joint Waste Client Team, 12 months after the Commencement Date and every two (2) years thereafter (the total number of such reviews being subject to whether the Parties extend the Collection Contract in accordance with **Schedule 9**, paragraph 4).

17.2 The Joint Governance Group shall determine the terms of reference of the review and the person or persons (which may include members of the Joint Governance Group or one or more of the Chief Executives) by whom it is to be conducted and the timescale for its completion.

17.3 On production of the Review Report copies thereof shall be supplied to the Joint Governance Group and the Parties for them to comment thereon in accordance with such reasonable timescale as the Joint Governance Group shall decide.

17.4 On receipt of comments from the Parties within the timescale referred to in **clause 17.3** (or any extension thereof agreed by or on behalf of the Joint Governance Group), the Joint Governance Group shall meet to consider the content and recommendations of the Review Report in the light of the comments received from the Parties and determine the amendments (if any) it recommends should be made to this Agreement or to the operation of the Joint Governance Group and report to the Parties with its recommendations.

17.5 Where the Joint Governance Group proposes any amendments in accordance with **clause 17.4** above, it shall forthwith notify the Chief Executive of each of the Parties of such proposal. The Parties shall have an initial period of 25 Business Days from receipt of the proposal in which to consider it and where either/both of the Parties (acting reasonably) considers the proposed amendment is a Material Change. Such initial period shall exclude any subsequent period that may be required to obtain a formal member approval.

17.6 Where neither of the Parties considers the proposal to be a Material Change (in accordance with **clause 17.5**), any proposed amendment shall be implemented as soon as is practical. Provided that where the proposed amendment involves a variation to this Agreement it shall require the written approval of both Parties in accordance with **clause 27**.

17.7 Where either of the Parties considers the proposed amendment is a Material Change under **clause 17.5**, and has notified the other party of its view in writing, such proposed amendment shall not be implemented unless and until the party which has given the notice has approved the proposed amendment.

## 18. CONFIDENTIALITY

### Confidentiality

- 18.1 Without prejudice to **clause** 18.2 and subject to **clauses** 18.4 to 18.8, the Parties shall during the currency of this Agreement and at all times following termination keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) save as provided by this Agreement any confidential information about the business of or belonging to the Parties or any party to the Principal Contracts or other contract entered into which has come to its attention as a result of or in connection with this Agreement provided always that this obligation shall not relate to any such information which:
- 18.1.1 comes into the public domain or is subsequently disclosed to the public (other than through default on the part of the Parties or any other person to whom the Parties are permitted to disclose such information under this Agreement); or
  - 18.1.2 is required to be disclosed by law (including, but not limited to, any request of or inquiry by the Information Commissioner); or
  - 18.1.3 was already in the possession of the Parties (without restrictions as to its use) on the date of receipt.
- 18.2 The Parties shall be entitled to use or disclose any confidential information about the content or operation of this Agreement insofar as this is reasonably necessary for the discharge of its functions.
- 18.3 The Parties acknowledge that the other party may be obliged to disclose information relating to this Agreement pursuant to a request for such information made by a third party under the FOI Act or the EIR as the case may be (a "**Request**").
- 18.4 Where either of the Parties (the "**Requesting Party**") receives a Request in relation to information in the other party's possession, the Requesting Party shall notify the other party (the "**Receiving Party**") in writing of the Request and the Receiving Party shall provide that Requesting Party at no charge (save where a payment can be recovered from the person submitting the Request, in which case a charge may be imposed not exceeding the amount of such payment recovered) with any information which is in the Receiving Party's possession and such other assistance as the Requesting Party may reasonably require which is needed from the Receiving Party to enable it to respond to the Request.
- 18.5 Where a Requesting Party requires information from a Receiving Party as envisaged by **clause** 18.4, the Requesting Party shall notify the Receiving Party in writing as soon as possible, after receiving the Request, of the information and/or assistance required, the form in which it should be provided and the date by which it is needed. The Receiving Party shall provide the information to the Requesting Party in accordance with the Requesting Party's notice. The Receiving Party shall notify the Requesting Party forthwith if it does not hold the requested information.

- 18.6 The Parties shall not disclose any information relating to this Agreement or the Principal Contracts that they consider in their unfettered discretion, is exempt as described in Part II of the FOI Act or Part II of the EIR (as the case may be).
- 18.7 A Receiving Party shall not respond directly to any Request notified to it pursuant to **clause 18.4** unless expressly authorised to do so by the Requesting Partner.
- 18.8 A Requesting Party shall notify the Receiving Party as soon as practicable but in any event within five Business Days of receiving the Request.
- 18.9 The Parties shall inform the other party in writing as soon as reasonably practicable (and in any event within five Business Days) whenever it receives a Request relating to this Agreement setting out:
- 18.9.1 the nature of the Request;
  - 18.9.2 where possible, the identity of the person making the Request;
  - 18.9.3 what information relating to this Agreement is covered by the Request;
  - 18.9.4 whether and to what extent either of the Parties intends to disclose the information requested (including the intention to disclose any information relating to this Agreement); and
  - 18.9.5 a reasonable timescale in which either of the Parties may make any representations to the party receiving the Request.
- 18.10 Notwithstanding the provisions of this **clause 18** any other term of this Agreement, HART hereby gives his consent for the Administering Authority to publish the Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the contract, to the general public.
- 18.11 Subject to **clause 15.6**, the Parties shall not be responsible to the other party for any loss, damage, harm or detriment howsoever caused, arising from or in connection with the disclosure of any information in respect of any Request.

### **Announcements**

- 18.12 Subject to the terms of this Agreement, the Parties shall not make any public statement or issue any press release or publish any other public document relating to, connected with or arising out of this Agreement or the matters contained therein without obtaining the other Party's prior approval as to the contents thereof and the manner of its presentation and publication.
- 18.13 The provisions of this **clause 18** shall survive termination or expiry of this Agreement.

## 19. DATA PROTECTION

- 19.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This **clause 19** is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 19.2 In relation to Personal Data, both Parties shall at all times comply with the Data Protection Legislation as a data controller if necessary. **Schedule 10** sets out the scope, nature and purpose of processing by the Parties, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 19.3 The Parties shall only undertake processing of Personal Data reasonably required in connection with this Agreement and shall not transfer any Personal Data to any country or territory outside the EEA.
- 19.4 Without prejudice to the generality of clause 19.1, the Parties will ensure that they have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the other Party for the duration and purposes of this Agreement.
- 19.5 Without prejudice to the generality of clause 19.1, the Parties shall, in relation to any Personal Data processed in connection with the performance of their obligations under this Agreement:
- (a) process that Personal Data only on the documented written instructions of the other Party, unless required by Domestic Law to otherwise process that Personal Data. Where a Party is relying on Domestic Law as the basis for processing Personal Data, that Party shall promptly notify the other Party of this before performing the processing required by Domestic Law unless the Domestic Law prohibits such notification;
  - (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation) to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (d) notify the other Party immediately if it receives:
    - (i) a request from a Data Subject to have access to that person's Personal Data;
    - (ii) a request to rectify, block or erase any Personal Data;

- (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the other Party in responding to any request from a Data Subject and in ensuring compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other Party without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;
- (g) at the written direction of the other Party, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Law to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and allow for audits by the other Party or the Party's designated auditor and immediately inform the Customer if, in the opinion of that Party, an instruction infringes the Data Protection Legislation.

19.6 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

#### 19.7 **Indemnity**

The Parties shall indemnify and keep indemnified the other party against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by them in respect of any breach of this **clause 19** by any act or omission of that party.

### 20. **EQUAL OPPORTUNITIES**

20.1 The Parties shall adopt a policy to comply with its statutory obligations under the Race Relations Act 1976 (as amended), the Sex Discrimination Act 1975 (as amended), the Disability Discrimination Act 1995 (as amended), the Equality Act 2006, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Sex Discrimination) Regulations 2005, the Employment Equality (Age) Regulations 2006, Equality Act 2010 ('Equality Act') and Codes of Practice issued in pursuant of the Equality Act or any other relevant legislation relating to discrimination in the employment of employees and accordingly will not unlawfully treat one group of people less favourably than others because of their colour, race, disability, sex, sexual orientation, nationality, ethnic origin or age in relation to decisions to recruit, train, promote, discipline or dismiss its personnel.

- 20.2 In the event of any finding of unlawful discrimination being made against the Administering Authority or a contractor of the Administering Authority in respect of any matter relating to this Agreement by any court or industrial tribunal, or of any adverse finding in any formal investigation by the Commission for Equality and Human Rights the Administering Authority shall inform HART of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 20.3 The Administering Authority shall, on request, provide HART with details of any steps taken under **clause 20.2**.
- 20.4 The Administering Authority shall set out its policy on the prevention of unlawful discrimination:
- 20.4.1 in instructions to those concerned with recruitment, training and promotion;
  - 20.4.2 in documents available to its personnel, recognised trade unions or other representative groups of its personnel; and
  - 19.4.3 in recruitment advertisements and other literature.
- 20.5 The Administering Authority shall provide such information as HART may reasonably request for the purpose of assessing the compliance of the Administering Authority with this **clause 20**.
- 20.6 The Administering Authority shall procure that any contractors or sub-contractors (including the contractors and sub-contractors under the Principal Contracts) providing services to HART comply with the obligations set out in **clauses 20.1 and 20.3 to 20.4 (inclusive)**.

## **21. LOCAL COMMISSIONER**

- 21.1 Where any investigation by the Commission for Local Administration in England takes place the Parties shall:
- 21.1.1 provide any information requested in the timescale allotted;
  - 21.1.2 attend any meetings as required and permit their personnel so to attend;
  - 21.1.3 promptly allow access to and investigation of any documents deemed to be relevant;
  - 21.1.4 allow themselves and any employee deemed to be relevant to be interviewed;
  - 21.1.5 allow themselves and any employee to appear as witnesses in any ensuing proceedings; and
  - 21.1.6 co-operate fully and promptly in every way required by the Commission during the course of that investigation.

## **22. WAIVER AND SEVERABILITY**

### **22.1 Waiver**

22.1.1 No term or provision of this Agreement shall be considered as waived by the Parties unless a written waiver is given by that authority.

22.1.2 No waiver under **clause 22.1.1** shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

### **22.2 Severability**

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

## **23. NO PARTNERSHIP**

23.1 Nothing in this Agreement is to constitute or be deemed a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other legislation concerning partnerships or limited liability partnerships.

23.2 Neither of the Parties shall hold itself out as the agent of the other party or to have any authority to bind the other party except to the extent that this Agreement expressly provides otherwise.

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

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

## **25. ENTIRE AGREEMENT**

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

## **26. EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE**

26.1 Nothing in this Agreement is to require the parties to act in any way that is inconsistent with its obligations or duties as a local authority.

26.2 The Parties undertake (subject to **clause 26.1**) to do all things and execute all further documents that may reasonably be required by either of them to give effect to this Agreement.



## 27. VARIATIONS

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

## 28. CORRUPTION

### 28.1 Corrupt gifts and fraud

The Parties warrant that in entering into this Agreement they have not committed any Prohibited Act.

### 28.2 Termination for corrupt gifts and fraud

28.2.1 If either of the Parties (or anyone employed by or acting on behalf of either of them) or any of their agents commits any Prohibited Act, then either Party shall be entitled to act in accordance with the provisions of this **clause 28**.

28.2.2 Upon discovering that a Prohibited Act has occurred the relevant party may serve notice on the other party of the Prohibited Act that has occurred (a “**Notice of a Prohibited Act**”), such notice to specify the nature of the Prohibited Act and the employee or agent who they believe has committed the Prohibited Act.

28.2.3 Upon receipt of a Notice of a Prohibited Act the party subject to the Prohibited Act shall have 3 months to take such steps and actions as are reasonable and are agreed by the Joint Governance Group taking account of the nature of the Prohibited Act which may include suspending the relevant employee and taking action under the relevant party’s disciplinary procedure.

28.2.4 Where either of the Parties fails to take action in accordance with **clause 28.2.2** the other party may:

- (a) require the Party who the Notice of Prohibited Act was served to remove from performance of this Agreement the employee or agent who committed the Prohibited Act;
- (b) take such other action or steps as are reasonable taking into account the nature of the Prohibited Act and its effect on this Agreement and the Principal Contracts; or
- (c) terminate this Agreement on serving [3] months written notice to other Party, in which case the provisions of **Schedule 7** shall apply.

## 29. DISPUTE RESOLUTION

29.1 Any dispute arising from the interpretation and operation of this Agreement shall in the first instance be referred to the Joint Governance Group, which shall, acting in good faith, attempt to resolve such dispute.

29.2 Where either the Joint Governance Group is unable to resolve such dispute, or where in the opinion of the Joint Governance Group such dispute might be more effectively resolved in another forum, the Joint Governance Group may refer such dispute to the following bodies/forums (listed in order of referral) until such dispute is resolved:

28.2.1 a meeting of the Chief Executives and/or leaders of the Parties; then

28.2.2 a mediator appointed by the Parties in accordance with **clause 29.3**; then

28.2.3 an arbitrator appointed by the Parties in accordance with **clause 29.4**.

### 29.3 Mediation

29.3.1 A referral of a dispute to mediation shall be in accordance with the CEDR Model Mediation Procedure.

29.3.2 If the Parties cannot agree on a mediator, they shall appoint a mediator nominated by CEDR.

29.3.3 The Parties shall use their reasonable endeavours to conclude the mediation within 40 Business Days of referral of the dispute to mediation.

29.3.4 The Parties shall each bear their own costs incurred in relation to any mediation.

### 29.4 Arbitration

29.4.1 If the dispute is not resolved in accordance with **clause 29.3** within 40 Business Days of referral of the dispute to mediation, either of the Parties may (by service of a written notice on the other party within 10 Business Days of expiry of the period for mediation) refer the dispute to an arbitrator who shall be of not less than 10 years standing or qualification.

29.4.2 If the parties cannot agree on an arbitrator within 15 Business Days of service of the written notice referred to in **clause 29.4.1** above, they shall appoint an arbitrator nominated by the President for the time being of the Chartered Institute of Arbitrators.

29.4.3 Any reference to arbitration in accordance with this **clause 29.4** shall be conducted in accordance with the Rules of the London Court of International Arbitration and the arbitration shall be held at a venue agreed by the arbitrator.

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

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

### **30. GOVERNING LAW AND ENFORCEMENT**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to **clause 29**, the English courts shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.

### **31. NOTICES**

#### **31.1 Form and service of notices**

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

**Basingstoke and Deane Borough Council**

Civic Offices, London Road,  
Basingstoke, Hampshire, RG21 4AH

**Hart District Council**

Civic Offices, Harlington Way,  
Fleet, Hampshire, GU51 4AE

#### **31.2 Provision of information to representatives**

Where any information or documentation is to be provided or submitted to a Parties representative, it shall be provided or submitted by sending the same by first class post, facsimile or by hand, or leaving the same at the addresses set out in **clause 30.1** marked for the attention of the relevant Parties representative.

#### **31.3 Change of details**

The Parties shall notify any change of its nominated address or facsimile number by prior notice to the other party.

#### **31.4 Notices by post**

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

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

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

**32. COUNTERPARTS**

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

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

The Common Seal of )  
**BASINGSTOKE AND DEANE** )  
**BOROUGH COUNCIL** )  
was hereunto affixed and this document )  
thereby executed as a deed in the )  
presence of: )

Authorised Signatory

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

Authorised Signatory

**SCHEDULE I**

**Service Level Agreement**

**[to be inserted]**

DRAFT

**SCHEDULE 2**

**Joint Waste Client Team**

**(Structure)**

**[to be inserted]**

DRAFT

## SCHEDULE 3

### Switch to Alternate Weekly Collection

1. Where, in accordance with clause 15.6 of this Agreement and clause 5 of the Collection Contract, BASINGSTOKE requires Alternate Weekly Collection of household residual waste to be provided across the BASINGSTOKE district (to align the collection frequency to that carried out across the Hart district) the procedure set out below shall be followed.
2. The Administering Authority shall issue a Change Control Notice in accordance with Part 2 of Schedule 9 (Change Protocol) of the Collection Contract no later than nine months prior to the required date for implementation of Alternate Weekly Collection.
3. The Contractor will review the Change Control Notice and, within 15 Business Days, provide the Administering Authority with details of whether the implementation of Alternate Weekly Collection will require:
  - 3.3.1 the execution of any deed of amendment to this Contract by the Parties, and the Contractor's anticipated costs in respect of the same (to include any costs related to the disposal and/or acquisition of refuse collection vehicles);
  - 3.3.2 any other details of likely third party costs of the Contractor in implementing Alternate Weekly Collection;
  - 3.3.3 the disposal and /or acquisition of any waste collection vehicles, together with associated costs.

Any costs related to implementing Alternative Weekly Collections shall be determined by reference to the Indicative Financial Model set out at Annex B to Schedule 9 (Change Protocol) of the Collection Contract.
4. The Administering Authority will, within 10 Business Days of receipt of the Contractor's response pursuant to paragraph 2, provide a written report to the [Joint Governance Group] [corporate director of BASINGSTOKE] setting out full details of all costs associated with implementing Alternate Weekly Collection and any other service delivery implications.
5. Following consideration by [Joint Governance Group] [corporate director of BASINGSTOKE] of the written report provided pursuant to paragraph 4, [Joint Governance Group] [corporate director of BASINGSTOKE] may make such recommendations as it considers appropriate and the BASINGSTOKE shall then, at its discretion and pursuant to clause 4.6, seek such further internal decisions as are deemed appropriate prior to making any final decision on whether to proceed with implementation of Alternate Weekly Collection.

**SCHEDULE 4**

**Part I**

**Vehicle Loan Agreement**

**[to be inserted]**

DRAFT



**Part I**

**Basingstoke and Hart Contributions**

**[to be inserted]**

DRAFT

**SCHEDULE 5**

**Annual Budget**

**(Joint Waste Client Team)**

DRAFT

## SCHEDULE 6

### Budget & Cost Sharing Agreement

#### 1. Cost Sharing Principles

- 1.1 These cost sharing principles are intended to ensure that the costs of the Parties and the relevant services administered by the Administering Authority on behalf of the Parties are shared on a fair and equitable basis.
- 1.2 The general approach adopted is to identify each cost element and to apportion it in the most logical and transparent way possible, being mindful of the need to avoid any one of the Parties subsidising another.

#### 2. Collection Contract

- 2.1 The Collection Contract is a joint contract for the provision of household waste and recycling services for the local authority areas of Basingstoke and Deane and Hart.
- 2.2 The Collection Contractor has provided a completed pricing schedule for the Collection Contract and the split of costs has been agreed between BASINGSTOKE and HART [in appendix xx]. These figures will be used to recharge the contract costs to HART on a regular basis ideally monthly but to be agreed. The Serco submitted pricing schedule [will be split as detailed in appendix xx which] shows the cost attributable to each Party and which BASINGSTOKE should recover from HART.
- 2.3 The Collection Contractor (Serco) will issue a single VAT invoice to the Administering Authority in respect of services delivered in HART only. The Administering Authority will recover 100% of this sum from HART.
- 2.4 The Administering Authority shall be responsible for ensuring the accuracy of the invoices paid to the Collection Contractor.

#### 3. Joint Waste Client Team

- 3.1 The Administering Authority is responsible for paying all costs (the Annual Budget) associated with performance of the client role activities.
- 3.2 The initial division of costs of the Annual Budget between the Parties shall be:
  - 3.2.1 **BASINGSTOKE** - xx%; and
  - 3.2.2 **HART** - xx%such proportions being subject to review and amendment by the Parties at any time in accordance with **clause 16**.

This is based on xx% of the Head of Service's total time being allocated to this Agreement, the cost of all managerial roles (Waste and Recycling Manager and

others as detailed) being shared equally between the Parties and the costs associated with the waste and recycling officer roles being apportioned on property numbers as the Collection Contract is based (xx% HART and xx% to the Administering Authority), albeit that this resource will be used flexibly as required to ensure proper performance of this Agreement.

These costs are based on current property numbers and should be reviewed annually to ensure the correct split is maintained. Any change must be agreed and approved by the Joint Governance Group.

#### **4. Forecast of Annual Budget and Collection Contract Costs**

- 4.1 In each Financial Year the Administering Authority, and by no later than 31<sup>st</sup> October, shall provide HART with the projected Annual Budget and forecast costs for the Collection Contract for the following Financial Year in order that HART may include such sums in its annual budget process for approval.
- 4.2 The Annual Budget shall be a forecast of the costs and income, reflecting the actual costs and income of the previous Financial Year and forecast changes in the costs of the Joint Waste Client Team and the Administering Authority.
- 4.3 The forecast of costs for the Collection Contract shall take account of the price review mechanisms in the Collection Contract.
- 4.4 The Annual Budget and forecast setting process shall take account of any savings targets set by the Joint Governance Group in consultation with the Partner Authorities. In each Financial Year the Joint Governance Group shall be required to assess the Annual Budget forecast of costs for the Collection Contract and performance to drive out inefficiencies. The section 151 officers from each of the Parties shall meet with the Joint Governance Group annually to consider any proposals for savings targets and to share relevant financial information.
- 4.5 The Administering Authority shall follow normal local government conventions and shall ensure that the Annual Budget setting process is transparent and open to scrutiny by the Parties.

#### **5. Payment to Administering Authority**

- 5.1 The Administering Authority will request 12 equal monthly payments (including VAT where appropriate) from HART no later than the 5<sup>th</sup> of each month starting on 8th October 2018. The payments will, as necessary and by agreement of the Parties, be adjusted at the end of each Quarter Month to reflect the actual costs incurred.
- 5.2 The Administering Authority will notify HART of any amounts owed (creditors) by the Hart or owed to HART (debtors) at the end of each financial year (by second week in April). The relevant amounts will be shown in the balance sheets of each Party.

## **6. Service Credits**

Any Service Credits payable by the Collection Contractor to the Administering Authority pursuant to clause 20 and Schedule 3 of the Collection contract shall be apportioned to the Party in whose district the related Service Failure occurred, or if a Service failure relates to the Collection Contract as a whole then the Service Credit will be apportioned based on the actual authority area the credit is for.

## **7. Recycling Credits, Glass Income Share and Materials Recovery Facility (MRF) Recycling Income**

- 7.1 The Administering Authority will on HART's behalf make claims on a quarterly basis for recycling credits from Hampshire County Council in accordance with the procedures.
- 7.2 Details of all claims submitted to Hampshire County Council will be passed to HART's accountants for their records.
- 7.3 Hampshire County Council will make payments directly to the Administering Authority .
- 7.4 The Administering Authority will advise HART on all projected income for the glass income share and MRF recycling income on a monthly basis based on information received from HCC.

## SCHEDULE 7

### Exit Arrangements

#### PART I

##### I. INTRODUCTION

I.1 In the event of the termination of this Agreement in accordance with **clause 3.2**, this **Schedule 7** describes the duties and responsibilities of the Parties in order to ensure the smooth transition of provision of the Services by BASINGSTOKE to HART and/or Replacement Provider (Exit Arrangements).

I.2 Definitions used in this **Schedule 7** shall be the same as those set out in the Agreement, with the following additional definitions:

**"Administering Authority Obligations"**

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

**"Collection Contract Obligations"**

means the obligations of the Administering Authority as party to the Principal Contracts;

**"Exit Assistance"**

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

**"Exit Plan"**

means the agreed plan for the transfer and transition arrangements, setting out the timetable and scope of required activities as set out in this **Schedule 7**, for transferring all or part of the Administering Authority Obligations from the control and provision by BASINGSTOKE to the control and provision of HART and/or Replacement Provider;

## **PART 2**

### **2. EXIT PLANNING**

#### **2.1 Date for provision of Exit Plan**

- 2.1.1 BASINGSTOKE shall provide Hart with a draft Exit Plan by the [third] anniversary of the Commencement Date or no later than 20 Business Days from the date of the Parties becoming aware that this Agreement will terminate as a consequence of the operation of clause 3.2.
- 2.1.2 The draft Exit Plan shall specify in detail how and when (having regard to the timescales set out in this **Schedule 7**) Basingstoke will fulfil all the obligations of this **Schedule 7** and any other obligations relating to exit in the Collection Contract.
- 2.1.3 HART shall provide to BASINGSTOKE its reasonable comments on the draft Exit Plan within 20 Business Days of BASINGSTOKE's receipt of the draft Exit Plan. BASINGSTOKE shall incorporate HART's comments and suggestions and shall issue a revised version of the Exit Plan within 10 Business Days of receipt of HART's reasonable comments and suggestions.
- 2.1.4 The Exit Plan shall not be effective until approved by HART and the Joint Governance Group.
- 2.1.5 The Parties shall review and update the Exit Plan in consultation with the Joint Governance Group as appropriate up to and including the date of termination of this Agreement.

#### **2.2 Exit Management Roles**

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

## **PART 3**

### **3. EXIT ARRANGEMENTS**

#### **3.1 Exit Assistance**

- 3.1.1 The obligation to provide the Exit Assistance and fulfil all the obligations of this **Schedule 3** from the relevant date is independent of and not contingent upon the Parties having an agreed form of Exit Plan in place. Where there is an agreed Exit Plan in place, Basingstoke shall provide to HART and to the Joint Governance Group weekly reports of progress against the Exit Plan and of any problems, anticipated problems and delays and of any appropriate actions to be taken by BASINGSTOKE in response.
- 3.1.3 At HART's request, BASINGSTOKE shall continue to provide the Exit Assistance and continue with the implementation of the Exit Plan for a period of up to [three] months from the date of termination of this Agreement.

#### **3.2 Variation and/or Novation of the Collection Contract and any Third Party Contracts**

- 3.2.1 Where this Agreement is terminated pursuant to clause 3.2.2, the Collection Contract shall need to be either varied and/or novated, with respect to those parts of the services which the Parties wish the Collection Contractor to continue to provide in respect of their administrative areas, or else will need to be determined in accordance with the provisions of the Collection Contract.
- 3.2.2 BASINGSTOKE shall be required to use reasonable endeavours to vary and/or novate the Collection Contract in accordance with the agreement reached by HART.
- 3.2.3 In the event that HART wishes to continue to have services provided by the Collection Contractor following a variation and/or novation of the Collection Contract, it may be necessary to continue other third party contracts held by BASINGSTOKE, in which case these will also need to be varied and/or novated to HART.
- 3.2.4 Where a third party consent is required to any variation and/or novation, BASINGSTOKE shall use reasonable endeavours to procure such variation and/or novation to HART and do all other things reasonably necessary to obtain such third party consents.
- 3.2.5 Where a third party consents to the variation and/or novation of a third party contract, HART shall pay any fees charged by the third party in association with such variation and/or novation.
- 3.2.6 BASINGSTOKE shall provide HART and/or Replacement Provider with an up-to-date list of existing and/or threatened disputes relating to the



obligations under the Collection Contract, and use its best endeavours to resolve such disputes. Where the dispute affects the interests of HART, BASINGSTOKE shall not settle the dispute or accept any liability without consulting the Joint Governance Group and without the prior consent of HART, such consent not to be unreasonably withheld or delayed.

### 3.3 **Software**

BASINGSTOKE shall use all reasonable endeavours to procure the right or a licence to use any software required to carry out services substantially similar to the Services performed by BASINGSTOKE under this Agreement at no cost.

### 3.4 **Intellectual property rights**

3.4.1 BASINGSTOKE shall at the reasonable request of Hart promptly execute such documents and take or desist from such action as HART may reasonably require in order to assure to Hart the full benefit of any intellectual property created by BASINGSTOKE pertaining to HART's and/or Replacement Provider's future provision performance of services substantially similar to the Services performed by BASINGSTOKE under this Agreement and to confirm HART's title thereto.

3.4.2 To the extent that it is permitted to do so, BASINGSTOKE shall grant to HART a licence to use any third party intellectual property rights used in the performance of the Services and necessary for the provision of future services by HART and/or Replacement Provider. To the extent that BASINGSTOKE is not permitted to grant licences to HART of any third party intellectual property rights, it shall use its reasonable endeavours to assist HART and/or Replacement Provider to procure the necessary rights direct from the relevant third party(ies).

### 3.5 **Transfer of Joint Waste Client Team Staff**

In the event that any staff comprising the Joint Waste Client Team will transfer to HART following the termination of this Agreement, the Parties agree that the provisions of **Schedule 8 (TUPE)** paragraphs 6 and 7 shall apply.

### 3.6 **Apportionment of Costs**

Any costs, expenses, losses or liabilities of any nature which arise as a consequence of the termination of this Agreement shall be borne in such proportion as shall be agreed by the Parties and in the absence of such agreement the matter shall be determined in accordance with the provisions of paragraph 3.10 of this Schedule.

### 3.7 **Dispute Resolution**

In the event of the Parties failing to reach agreement on any part of the above Exit arrangements it shall be determined in accordance with **clause 28 (Dispute Resolution)**.

## SCHEDULE 8

### TUPE

#### I. Definitions

In this Schedule, the following definitions shall apply:

**Acquired Rights Directive:** the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11 pm on 31 January 2020.

**Employee Liabilities:** all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**Employment Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

**Replacement Services:** any services which are the same as or substantially similar to the Services following the expiry or termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;

**Replacement Provider:** any third party service provider of Replacement Services appointed by the Authority from time to time (or where HART is providing Replacement Services for its own account);

**Relevant Transfer:** a transfer of employment to which the Employment Regulations apply;

**Relevant Transfer Date:** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

**Services;** the services provided by Basingstoke in accordance with the terms and conditions of this Agreement, including the Service Level Agreement;

**Service Transfer:** any transfer of the Services (or any part of the Services), for whatever reason, from Basingstoke to a Replacement Provider;

**Service Transfer Date:** the date of a Service Transfer;

**Staffing Information:** in relation to all persons identified on Basingstoke's Provisional Staff List or Basingstoke's Final Staff List, as the case may be, such information as HART may reasonably request (subject to all applicable provisions of the Data Protection Legislation ), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**Basingstoke's Final Staff List:** a list provided by Basingstoke of all Basingstoke Staff who will transfer under the Employment Regulations on the Relevant Transfer Date;

**Basingstoke Staff:** all officers and employees of Basingstoke engaged in the performance of Basingstoke's obligations under this Agreement;

**Basingstoke's Provisional Staff List:** a list prepared and updated by Basingstoke of all Basingstoke Staff who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by Basingstoke;

**Transferring Hart Staff:** those employees of HART to whom the Employment Regulations will apply on the Relevant Transfer Date [as contained in Annex ANNEX A, and accurate as at the date on which this Agreement is signed by both Parties];

**Transferring Basingstoke Staff:** those employees of Basingstoke to whom the Employment Regulations will apply on the Service Transfer Date.

## **Transferring Hart Staff at commencement of Services**

### **2. Relevant Transfers**

#### **2.1 HART and BASINGSTOKE agree that:**

- (a) the commencement of the provision of the Services will be a Relevant Transfer in relation to the Transferring Hart Staff; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between HART and the Transferring Hart Staff (except in relation to any terms dis-applied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between Basingstoke and each such Transferring Hart Staff.

#### **2.2 HART shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Hart Staff in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant**

Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) HART; and (ii) BASINGSTOKE.

### 3. HART indemnities

3.1 Subject to **Error! Bookmark not defined.**3.2, HART shall indemnify BASINGSTOKE against any Employee Liabilities in respect of any Transferring Hart Staff (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by HART occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by HART before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Hart Staff; and/or
  - (ii) any custom or practice in respect of any Transferring Hart Staff which HART is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Hart Staff arising from or connected with any failure by HART to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Hart Staff, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not Transferring Hart Staff and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from HART to BASINGSTOKE as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of HART to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Hart Staff arising before the Relevant Transfer Date;

- (f) any claim made by or in respect of any person employed or formerly employed by HART other than Transferring Hart Staff for whom it is alleged Basingstoke may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of Transferring Hart Staff or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Hart Staff relating to any act or omission of HART in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by Basingstoke to comply with regulation 13(4) of the Employment Regulations.

3.2 If any person who is not identified by HART as being Transferring Hart Staff claims, or it is determined in relation to any person who is not identified by HART as being Transferring Hart Staff, that his/her contract of employment has been transferred from HART to BASINGSTOKE pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) BASINGSTOKE shall, within five Working Days of becoming aware of that fact, give notice in writing to HART; and
- (b) HART may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by BASINGSTOKE, or take such other reasonable steps as HART considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

3.3 If an offer referred to in paragraph 3.2(b) is accepted, or if the situation has otherwise been resolved by HART, BASINGSTOKE shall immediately release the person from his/her employment or alleged employment.

3.4 If by the end of the 15 Working Day period specified in paragraph 3.2(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

BASINGSTOKE may within five Working Days give notice to terminate the employment or alleged employment of such person.

3.5 Subject to BASINGSTOKE acting in accordance with the provisions of paragraph 3.2 to paragraph 3.4 and in accordance with all applicable proper employment procedures set out in applicable Law, HART shall indemnify BASINGSTOKE (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 3.4 provided that Basingstoke takes all reasonable steps to minimise any such Employee Liabilities.

3.6 If any such person as is referred to in paragraph 3.2 is neither re-employed by HART nor dismissed by BASINGSTOKE within the time scales set out in paragraph 3.4 such person shall be treated as having transferred to BASINGSTOKE and BASINGSTOKE shall comply with such obligations as may be imposed upon it under applicable Law.

#### **4. BASINGSTOKE indemnities and obligations**

4.1 Subject to paragraph 4.2, BASINGSTOKE shall indemnify HART against any Employee Liabilities in respect of any Transferring Hart Staff (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by BASINGSTOKE whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by BASINGSTOKE on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Hart Staff; and/or
  - (ii) any custom or practice in respect of any Transferring Hart Staff which HART is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Hart Staff arising from or connected with any failure by BASINGSTOKE to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by BASINGSTOKE made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Hart Staff to their material detriment on or after their transfer to BASINGSTOKE on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Hart Staff but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by BASINGSTOKE to, or in respect of, any Transferring Hart Staff before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with HART in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Hart Staff, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
    - (ii) in relation to any employee who is not Transferring Hart Staff, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from HART to BASINGSTOKE, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
  - (g) a failure of BASINGSTOKE to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Hart Staff in respect of the period from (and including) the Relevant Transfer Date; and
  - (h) any claim made by or in respect of any Transferring Hart Staff or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Hart Staff relating to any act or omission of the Administering Authority in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from HART's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 4.2 The indemnities in paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of HART whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from HART's failure to comply with its obligations under the Employment Regulations.
- 4.3 BASINGSTOKE shall comply with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge all its obligations in respect of the Transferring Hart Staff, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between HART and BASINGSTOKE.
- 4.4 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this paragraph 4, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, any Replacement Provider by BASINGSTOKE or HART in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.



4.5 Despite paragraph 4.4, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

## 5. Information

BASINGSTOKE shall promptly provide to HART in writing such information as is necessary to enable HART to carry out its duties under regulation 13 of the Employment Regulations. HART shall promptly provide to BASINGSTOKE in writing such information as is necessary to enable BASINGSTOKE to carry out their respective duties under regulation 13 of the Employment Regulations.

## Employment exit provisions

### 6. Pre-service transfer obligations

6.1 BASINGSTOKE agrees that within 20 Working Days of the earliest of:

- (a) 12 months before the expiry of this Agreement or any earlier termination date agreed between the Parties in accordance with clause xx; or
- (b) receipt of a written request of HART at any time (provided that HART shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, Basingstoke's Provisional Staff List, together with the Staffing Information in relation to Basingstoke's Provisional Staff List and it shall provide an updated Basingstoke's Provisional Staff List at such intervals as are reasonably requested by Hart.

6.2 At least 28 days prior to the Service Transfer Date, BASINGSTOKE shall provide to Hart:

- (a) Basingstoke's Final Staff List, which shall identify which of the Basingstoke Staff are Transferring Basingstoke Employees; and
- (b) the Staffing Information in relation to Basingstoke's Final Staff List (insofar as such information has not previously been provided).

6.3 Basingstoke warrants, for the benefit of HART, that all information provided pursuant to paragraph 6.1 and paragraph shall be true and accurate in all material respects at the time of providing the information.

6.4 From the date of the earliest event referred to in **Error! Bookmark not defined.6.1 (a), Error! Bookmark not defined.6.1(b)** and paragraph 6.1(c), BASINGSTOKE agrees that it shall not assign any person to the provision of the Services who is not listed on Basingstoke's Provisional Staff List and shall not without the approval of HART (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Basingstoke Staff listed on Basingstoke's Provisional Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of Basingstoke Staff (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Basingstoke Staff save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on Basingstoke's Provisional Staff List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on Basingstoke's Provisional Staff List save by due disciplinary process,

and shall promptly notify HART of any notice to terminate employment given by Basingstoke or received from any persons listed on Basingstoke's Provisional Staff List regardless of when such notice takes effect.

6.5 BASINGSTOKE shall provide all reasonable cooperation and assistance to HART to ensure the smooth transfer of the Transferring Basingstoke Staff on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Basingstoke Staff to be paid as appropriate. Without prejudice to the generality of the foregoing, within five Working Days following the Service Transfer Date, BASINGSTOKE shall provide to HART, in respect of each person on Basingstoke's Final Staff List who is a Transferring Basingstoke Staff:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **7. Employment regulations exit provisions**

- 7.1 HART and BASINGSTOKE acknowledge that the termination of this Agreement in accordance with clause 3 may result in a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. HART and BASINGSTOKE further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between Basingstoke and the Transferring Basingstoke Staff (except in relation to any contract terms dis-applied through operation of regulation 10(2) of the Employment Regulations) will have effect on the Transfer Date as if originally made between HART and each such Transferring Basingstoke Staff.
- 7.2 BASINGSTOKE shall comply with all its obligations in respect of the Transferring Basingstoke Staff arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge shall perform and discharge, all its obligations in respect of all the Transferring Basingstoke Staff arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) BASINGSTOKE; and (ii) HART and/or Replacement Provider.
- 7.3 Subject to paragraph 7.4, BASINGSTOKE shall indemnify HART against any Employee Liabilities in respect of any Transferring Basingstoke Staff (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of BASINGSTOKE whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by BASINGSTOKE occurring on or before the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Basingstoke Staff; and/or
    - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Basingstoke Staff which BASINGSTOKE is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Basingstoke Staff arising from or connected with any failure by BASINGSTOKE to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Basingstoke Staff, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Basingstoke Staff, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from BASINGSTOKE to HART and/or Replacement Provider, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of BASINGSTOKE to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Basingstoke Staff in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by BASINGSTOKE other than a Transferring Basingstoke Staff for whom it is alleged Hart may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of any Transferring Basingstoke Staff or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Basingstoke Staff relating to any act or omission of BASINGSTOKE in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by HART and/or Replacement Provider to comply with regulation 13(4) of the Employment Regulations.

7.4 The indemnities in paragraph shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of HART and/or Replacement Provider whether occurring or having its origin before, on or after the Service Transfer Date.

7.5 If any person who is not Transferring Basingstoke Staff, or it is determined in relation to any person who is not Transferring Basingstoke Staff, that his/her contract of employment has been transferred from BASINGSTOKE to HART pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) HART shall give notice in writing to BASINGSTOKE; and

- (b) BASINGSTOKE may offer employment to such person within 15 Working Days of the notification by HART or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

7.6 If such offer is accepted, or if the situation has otherwise been resolved by BASINGSTOKE, HART shall immediately release or procure the release of the person from his/her employment or alleged employment.

7.7 If after the 15 Working Day period specified in paragraph 7.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

BASINGSTOKE shall advise HART and/or Replacement Provider that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

7.8 Subject to HART and/or Replacement Provider acting in accordance with the provisions of paragraph 7.5 to paragraph , and in accordance with all applicable proper employment procedures set out in applicable Law, BASINGSTOKE shall indemnify the HART and/or Replacement provider against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 7.7 provided that HART takes, or shall procure that the Replacement Provider takes, all reasonable steps to minimise any such Employee Liabilities.

7.9 The indemnity in paragraph 7.8 shall apply only where the notification referred to in paragraph 7.5(a) is made by HART and/or Replacement Provider to BASINGSTOKE within six months of the Service Transfer Date.

7.10 If any such person as is described in paragraph 7.5 is neither re-employed by BASINGSTOKE nor dismissed by HART and/or Replacement Provider within the time scales set out in paragraph to paragraph , such person shall be treated as Transferring Basingstoke Staff and HART and/or Replacement Provider shall comply with such obligations as may be imposed upon it under applicable Law.

7.11 BASINGSTOKE shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Basingstoke Staff before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date).

- 7.12 BASINGSTOKE shall promptly provide to HART and/or Replacement Provider, in writing such information as is necessary to enable HART and/or Replacement Provider to carry out their respective duties under regulation 13 of the Employment Regulations. HART shall promptly provide to BASINGSTOKE in writing such information as is necessary to enable Basingstoke to carry out their duties under regulation 13 of the Employment Regulations.
- 7.13 Subject to paragraph 7.14, HART shall indemnify, and shall procure that and Replacement Provider indemnifies, Basingstoke any Employee Liabilities in respect of each Transferring Basingstoke Staff (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Basingstoke Staff) arising from or as a result of:
- (a) any act or omission of HART and/or Replacement Provider;
  - (b) the breach or non-observance by HART and/or Replacement Provider on or after the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Basingstoke Staff; and/or
    - (ii) any custom or practice in respect of any Transferring Basingstoke Staff which HART and/or Replacement Provider is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Basingstoke Staff arising from or connected with any failure by HART and/or Replacement Provider to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - (d) any proposal by HART and/or Replacement Provider to change the terms and conditions of employment or working conditions of any Transferring Basingstoke Staff on or after their transfer to Hart and/or Replacement Provider on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been Transferring Basingstoke Staff but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - (e) any statement communicated to or action undertaken by HART and/or Replacement Provider to, or in respect of, any Transferring Basingstoke Staff on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with BASINGSTOKE in writing;

- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Basingstoke Staff, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not Transferring Basingstoke Staff, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from Basingstoke to HART and/or Replacement Provider to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of HART and/or Replacement Provider to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Basingstoke Staff in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Basingstoke Staff or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Basingstoke Staff relating to any act or omission of HART and/or Replacement Provider in relation to obligations under regulation 13 of the Employment Regulations.

7.14 The indemnities in paragraph 7.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of BASINGSTOKE whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by BASINGSTOKE to comply with its obligations under the Employment Regulations.

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## SCHEDULE 9

### Collection Contract

#### I. ADMINISTRATION OF THE COLLECTION CONTRACT

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

#### 2. PARTNER NOTICE OF PROPOSED CHANGE

- 2.1 Either of the Parties may order a change to the Services (including the provision of the Optional Services or any new services) by serving a notice of change (a "**Partner Notice of Proposed Change**") on the other party setting out the required change in the Services in sufficient detail to enable the Collection Contractor to provide an Estimate.
- 2.2 The Parties shall not issue a Partner Notice of Proposed Change which:
  - 2.2.1 requires the Services to be performed in a way that infringes legislation;
  - 2.2.2 would cause any Planning Permission or Necessary Consent to be breached and/or revoked;
  - 2.2.3 would materially and adversely affect the health and safety of any person; and/or
  - 2.2.4 would substantially alter the scope of the Services.
- 2.3 Within 10 Business Days of receipt of the Partner Notice of Proposed Change, the Administering Authority shall invite a meeting of the Joint Governance Group to consider the implications of the Partner Notice of Proposed Change and to recommend any changes to the Partner Notice of Proposed Change.
- 2.4 On receipt of any comments from the Joint Governance Group the party issuing the Partner Notice of Proposed Change shall consider at its absolute discretion whether any amendment to the Partner Notice of Proposed Change is required.
- 2.5 The Administering Authority shall serve a Notice of Proposed Change setting out the change in Services requested by the party in the Partner Notice of Proposed Change on the Collection Contractor in accordance with clause 43.2 of the Collection Contract.
- 2.6 The Administering Authority shall within 10 Business Days of receipt of the Estimate given by the Collection Contractor pursuant to clause 43.4 of the

Collection Contract, forward such Estimate to the Joint Governance Group and to the party that requested the change.

- 2.7 Within 25 Business Days of receipt of the Estimate the party which requested the change may in consultation with the Joint Governance Group require the Administering Authority to:
  - 2.7.1 confirm in writing the Estimate;
  - 2.7.2 suggest reasonable amendments to the Estimate; or
  - 2.7.3 request the withdrawal of the Notice of Proposed Change.
- 2.8 If a party does not confirm its decision in writing to the Administering Authority in relation to the Estimate within 20 Business Days of the provision of the Estimate, its approval shall be deemed not to have been given and the Notice of Proposed Change will be withdrawn in accordance with clause 43.6 of the Collection Contract.
- 2.9 If the party confirms in writing to the Administering Authority the Estimate, the Administering Authority shall confirm such change to the Collection Contractor and the change in the Services shall be effected as an agreed variation to the Collection Contract.
- 2.10 The party requesting the change in the Services shall meet all additional costs of the Estimate through an adjustment to its contribution to the Annual Budget and in accordance with the principles set out in **Schedule 6** (Budget and Cost Sharing Agreement).
- 2.11 Where any such change in the Services results in any consequential additional costs or liabilities the party requesting the change in the Services shall meet all such additional costs or liabilities of the other party through an adjustment to its contribution to the Annual Budget and in accordance with the principles set out in **Schedule 6** (Budget and Cost Sharing Agreement).
- 2.12 Where any change in the Services results in a reduction in the Services Payment the party requesting the change in the Services shall receive a reduction in its contributions to the Annual Budget in accordance with the principles set out in **Schedule 6** (Budget and Cost Sharing Agreement), provided always that such change has not increased the costs or liabilities of the other party in which case these costs or liabilities shall be taken into account in calculating the reduction in the party's contributions.
- 2.13 Where the Collection Contractor requests that the Administering Authority issues a Notice of Proposed Change pursuant to clause 43.8 of the Collection Contract, the Administering Authority shall request that the Joint Governance Group decides whether or not to issue such a Notice of Proposed Change. A Notice of Proposed Change may only be issued if agreed by the Joint Governance Group.

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

- 3.1 In the event of this Agreement being terminated in accordance with **clause 7.3**, the Administering Authority shall obtain from the Collection Contractor an Estimate of the costs of novating the Collection Contract to the Parties for the remainder of the original contract term or the period any extension as may have been agreed at the point of service of the notice under **paragraph 3.1** of this **Schedule**.
- 3.2 If the Parties agree and accept the Estimate, the Administering Authority shall confirm such change to the Collection Contractor and arrange for the Collection Contract to be novated to the Parties on the basis of the same terms and conditions save only for any amendment to the prices and rates as set out in the Estimate.
- 3.3 The relevant party(ies) shall meet the additional costs of the Estimate in accordance with the principles set out in **Schedule 6** (Budget and Cost Sharing Agreement) and the provisions of **Schedule 7** (Exit arrangements).
- 3.6 The Partner Authorities agree that where this Agreement terminates the Parties agree that the provisions of **Schedule 3** shall apply to the transfer of staff to the HART or Replacement Provider.

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

- 4.1 No later than 18 months prior to the expiry of the Collection Contract the Parties shall meet and consider whether or not to extend the term of the Collection Contract (in accordance with clause 2.2 of the Collection Contract).
- 4.2 Where both Parties agree to extend the Collection Contract, the Administering Authority takes all reasonable steps necessary to extend the Collection Contract (in accordance with the terms of that contract).
- 4.3 Where only one party wishes to extend the Collection Contract, the Administering Authority shall not extend the Collection Contract and it shall come to an end in accordance with the terms of that contract.

### **5. DISPUTES**

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

Administering Authority shall promptly notify the Joint Governance Group and shall keep the Joint Governance Group regularly informed of the progress of the dispute referred to mediation or arbitration.

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## **SCHEDULE 10**

### **Data Processing**

**1.1 Scope**

**1.2 Nature**

**1.3 Purpose of processing**

**1.4 Duration of processing**

**2. Types of Personal Data**

**3. Categories of Data Subject**