

DATED . Do not date 2017

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## **INITIAL PROMOTION AGREEMENT**

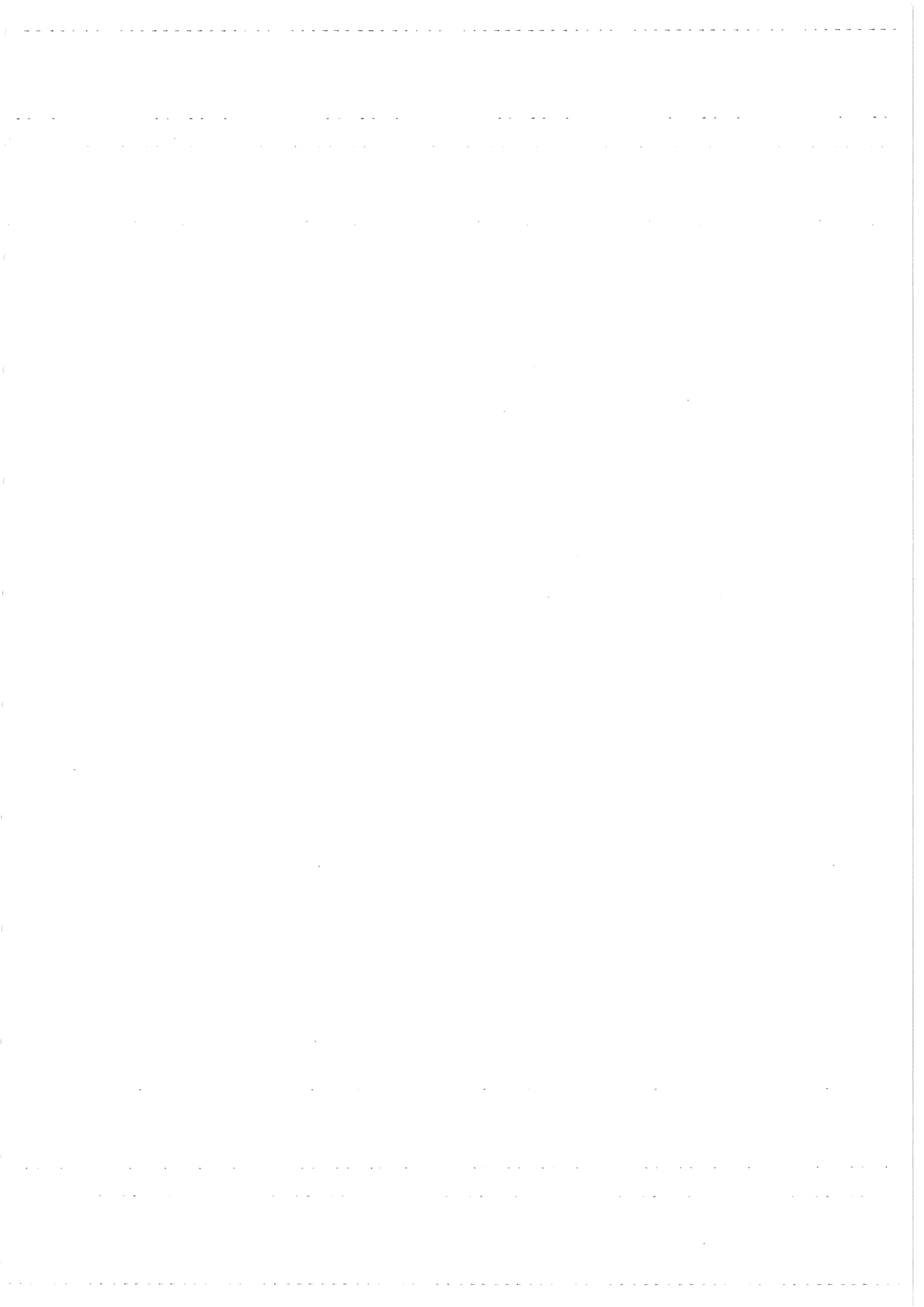
Relating to MetroWest  
(Phase 2)

between

**SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL (1)**

and

**BRISTOL CITY COUNCIL (2)**



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Annex .....	JWA
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THIS AGREEMENT is dated

Do not date

2017

## **AUTHORITIES**

The Authorities to this Initial Promotion Agreement ("IPA") are:

- (1) **SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL** of Council Offices, Badminton Road, Nibley, South Gloucestershire ("SGDC")
- (2) **BRISTOL CITY COUNCIL** of City Hall, College Green, Bristol, BS1 5TR ("BCC").

Together referred to as "The Authorities".

## **1. BACKGROUND**

- 1.1 The Authorities have entered into a Joint Working Agreement ("the JWA") dated 12 March 2013 for the creation of a Local Transport Body ("LTB") to oversee the delivery of a programme of major transport schemes in the region.

The authorities are jointly promoting a programme of rail enhancement projects, known as the MetroWest Programme. The MetroWest Programme aims to uplift the local rail network in terms of service provision and access to the network, through the delivery of specific projects. The MetroWest Programme includes:

- MetroWest Phase 1 – involving the re-opening of the Portishead rail line and stations and re-introduction of passenger train services, together with other infrastructure enhancements to provide enhanced half-hourly passenger train services for the Severn Beach line and the Bath line.
- MetroWest Phase 2 – involving re-opening the Henbury rail line and stations and re-introduction of passenger train services, together with other infrastructure enhancements to provide enhanced passenger train services for Yate line.

- 1.2 In accordance with the stated aims of the JWA, the Authorities have agreed to work together on the project ("the **Project**") as outlined in this paragraph:

- (a) MetroWest Phase 2 Project is a joint cross boundary project to re-commence passenger train services on the Henbury Line with up to two new stations, together with a new station on Filton Bank and to provide enhanced half-hourly passenger train services at Yate.
- (b) The Project will be second major project of a long term programme under the MetroWest name, to deliver enhancements to local passenger train network across the West of England.
- (c) Upon the completion of construction and commencement of passenger train services, all assets delivered by the project excluding new car parks and footpath / highway links will be transferred to Network Rail and will be accepted into the national rail network. Network Rail is a state owned not for profit company, which owns and operates the UK rail network. Network Rail will be responsible for all operational liabilities for the maintenance and repair of all infrastructure delivered by the Project, from commencement of passenger train services.
- (d) The passenger train services will be procured by the Authorities in association with the Department for Transport (DfT). Under the current DfT rules the Authorities will need to meet the revenue liability (subsidy) for the first three years of the operation of passenger train services, after which the liability transfer to the DfT in perpetuity subject to meeting value for money tests. All aspects of the Project value for money will be laid out in the Project business case and this will be scrutinised by the WoE Local Transport Body Board, prior to final sign off of funding.

1.3 The purpose of this Initial Working Agreement is to set out the working arrangements between the Authorities for the initial stage of the Project from inception up to the approval of the outline business case by the LTB ("Initial Stage").

1.4 The Authorities wish to record the basis on which they will collaborate with each other on the Initial Stage. This Agreement sets out:

- (a) the key objectives of the Initial Stage and the Project as a whole;

- (b) the principles of collaboration;
- (c) the governance structures the Authorities will put in place; and
- (d) the respective roles and responsibilities the Authorities will have during the Initial Stage.

1.5 On or before the completion of the Initial Stage the Authorities intend to replace this Agreement with a Joint Promotion Agreement.

## 2. DEFINITIONS

2.1 In this Agreement the following words and phrases have the following meanings:

Word or Phrase	Meaning
“Accountable Body”	That Authority appointed to act as such in accordance with <b>Clause 7 of the JWA</b> being initially South Gloucestershire District Council or such other of the Authorities as appointed from time to time in accordance with <b>Clause 10</b>
“Agreement”	This agreement
“Commencement Date”	The date of this Agreement
“Constitution”	The Constitution of the JTEC
“DfT”	Department for Transport
“Expiry Date”	90 days from and including the date of issue of the outline business case report unless earlier terminated by the Parties in accordance with <b>Clause 3</b>

“The JWA”	Means the Joint Working Agreement for the creation of the LTB dated 12 March 2013 made between BANES, BCC, NSDC and SGDC and included with this Agreement at Appendix 1.
The JTEC	The Joint Transport Executive Committee of BANES, BCC, NSDC and SGDC established under the Constitution
“The Initial Stage”	The Initial Stage of the <b>Project</b> shall mean for the purposes of this Agreement, GRIP3, the full business case and related activities from inception to the approval of the full business case by the LTB
“Laws”	Means:- <ul style="list-style-type: none"> <li>• Any applicable statute or proclamation or any delegated or sub-ordinate law;</li> <li>• Any enforceable community right within the meaning of Section 2(1) of the European Communities Act 1972; and</li> <li>• Any applicable judgment of a relevant court of law which is a binding precedent in England and Wales</li> </ul>
“Lead Authority”	South Gloucestershire District Council or such other of the Authorities as appointed from time to time in accordance with <b>Clause 9</b>
“LTB”	The Local Transport Body as more particularly described in the JWA
“LTB Board”	The Board of the LTB

“MetroWest Programme”	MetroWest Phase 1, MetroWest Phase 2 and a range of new station/station re-opening projects.
“Order”	An order or order(s) necessary to implement the Project including Transport and Works Act Order(s), Development Consent Order(s), Compulsory Purchase Order(s) as appropriate
“Project”	is defined in <b>clause 1.2</b> .
“Programme Section 151 Officer”	shall mean for the purposes of this Agreement the officer with responsibility for the financial affairs of the MetroWest Programme from time to time appointed by the Rail Programme Board in accordance with <b>clause 8.2</b> and Section 151 of the Local Government Act 1972 as it may be amended from time to time.
“Project Section 151 Officer”	shall mean for the purposes of this Agreement the officer with responsibility for the Project’s financial affairs from time to time appointed by the Lead Authority and Section 151 of the Local Government Act 1972 as it may be amended from time to time.
“Project Team”	The project team established for this Project in accordance with <b>clause 11</b>
“Project Manager”	Means Alistair Rice or such other senior officer of the Lead Authority from time to time engaged in the management of the Project as the Authorities shall agree to appoint from time to time to the role



“Rail Programme Board”	The Rail Programme Board established for this and other projects in accordance with <b>clause 8</b>
“Senior Responsible Officer”	Janet Kings or such other senior officer of the Lead Authority from time to time engaged in the management of the Project as the Authorities shall agree to appoint from time to time to the role.
“Standard Proportions”	The proportions, contributions and liability splits agreed and set out in <b>Clause 14.2</b>
“The Train Services”	The provision of a functioning passenger train services along the MetroWest Programme Phase 2 routes.

- 2.2 Anything defined in the JWA or the Constitution shall have the same meaning in this Agreement unless the context clearly indicates otherwise.
- 2.3 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 2.4 Words importing the singular include the plural, words importing any gender include every gender, the words importing persons include bodies corporate and unincorporated; and (in each case) vice versa.
- 2.5 Reference to Clauses and Schedules are references to clauses and schedules of this Agreement and any reference to a sub provision is unless otherwise stated a reference to a sub provision of the provision in which the reference appears.
- 2.6 The Clause and paragraph headings and titles appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

2.7 No Party shall be required to do anything in the promotion or implementation of the Project that breaches its statutory duties or unlawfully fetters its discretion.

2.8 References to the Authorities save where otherwise stated (as for example in respect of Planning provisions) shall mean the Authorities in their capacity as joint promoters of the Project and shall not refer to their other statutory functions, responsibilities or duties in any other capacity.

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

3.1 This Agreement shall come into force on the Commencement Date and shall continue in force until:

- (a) It is terminated in accordance with the termination provisions; or
- (b) The Authorities enter into an agreement that extends or replaces this Agreement, or
- (c) The Authorities agree and confirm in writing that the Project is abandoned or terminated; or
- (d) The Expiry Date.

3.2 If the JWA expires or is terminated before this Agreement it shall nevertheless continue to be used so far as may be necessary or convenient to determine the rights and obligations of the Authorities under this Agreement to extent that they are not determined by this Agreement.

### **4. KEY OBJECTIVES FOR THE INITIAL STAGE OF THE PROJECT**

4.1 The Authorities shall undertake the Initial Stage of the Project to achieve the key objectives up to the end of the Initial Stage.

### **5. PRINCIPLES OF COLLABORATION**

In addition to the General Principles as defined in **clause 3 of the JWA**, the Authorities agree to adopt the following principles when carrying out the Initial Stage (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this Agreement to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Project and commit to sharing data and knowledge relevant to the Project where appropriate;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation;
- (g) act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;
- (h) manage stakeholders effectively;
- (i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement. In particular the Authorities agree to make the contributions in the Standard Proportions;
- (j) work together to secure external funding from the Local Transport Body and any other available source in respect of the Project; and
- (k) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

## **6. PROJECT GOVERNANCE**

### **6.1 Overview**

The governance structure defined below provides a structure for the development and delivery of the Initial Stage of the Project.

### **6.2 Guiding principles**

The following guiding principles are agreed. The Initial Stage of the Project's governance will:

- (a) provide strategic oversight and direction;
- (b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- (c) align decision-making authority with the criticality of the decisions required;
- (d) be aligned with Project scope and each Project stage (and may therefore require changes over time);
- (e) leverage existing organisational, group and user interfaces;
- (f) provide coherent, timely and efficient decision-making; and
- (g) correspond with the key features of the Project governance arrangements set out in this Agreement.

## **7. LTB BOARD AND THE JTEC**

7.1 The LTB Board provides overall strategic oversight and direction to the Project. The LTB Board shall decide of the allocation of devolved DfT capital funding. However, for the avoidance of doubt, the LTB Board shall not decide revenue liabilities arising from the Project, this shall remain the responsibility of the JTEC.

7.2 The JTEC shall review and approve the revenue liabilities of transport projects across the Authorities' sub-region, and in relation to this Project shall review and approve the revenue liabilities of the Train Service.

- 7.3 The LTB Board shall be managed in accordance with the terms of reference set out in the JWA (a copy of which is attached to this Agreement). The JTEC shall be managed in accordance with the terms of reference set out in the Constitution.

## **8. RAIL PROGRAMME BOARD**

- 8.1 The LTB has appointed a Rail Programme Board to manage inter alia the Project and to provide strategic management at Project and work stream level. It will provide report to and provide assurance to the LTB Board that the Key Objectives are being met and that the Project is performing within the boundaries set by the LTB Board.
- 8.2 The Rail Programme Board consists of board members and representatives from each of the Authorities and a representative from WEPO and the Programme Section 151 Officer augmented by specialists from related areas. Key decision making will be made by Rail Programme Board members only each of whom has voting rights. The Rail Programme Board shall have responsibility for:
- (a) Appointments such as the appointment of the SRO, the Lead Authority, and the Programme Section 151 Officer,
  - (b) the creation and execution of the project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Rail Programme Board.

## **9. LEAD AUTHORITY**

- 9.1 The Authorities (acting jointly) appoint, with effect from the Commencement Date, SGDC to be the Lead Authority for the carrying out of the Project which shall be carried out for and on behalf of the Authorities and SGDC agrees to act in that capacity subject to and in accordance with the terms and conditions of this Agreement.

9.2 The scope of the Lead Authority is on the basis that it is only authorised to act as lead authority so far as it is clearly authorised to do so and the Lead Authority shall act under the direction of the Rail Programme Board.

9.3 Where the Lead Authority incurs any costs or liability in discharging its duties under this **Clause 9**, the Lead Authority shall from time to time inform the Rail Programme Board promptly of that cost or liability and such cost or liability shall be apportioned between the Authorities pursuant to the **Standard Proportions**.

## **10. ACCOUNTABLE BODY**

10.1 SGDC has been appointed by the Authorities and has agreed with the Department for Transport to act as the Accountable Body for the purposes of devolved major scheme funding in accordance with **clause 7 of the JWA** and it will provide the Programme Section 151 Officer.

## **11. PROJECT TEAM**

11.1 The Project Team will provide day to day management of the Initial Stage of the Project and work streams. It will provide assurance to the Rail Programme Board that the Project is being delivered within the boundaries set by the Rail Programme Board.

11.2 The Project Team shall have responsibility for the creation and execution of the project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Project Team. The Authorities may recharge the cost of employee time to the Project where the employee has been tasked with delivering specific outputs for the Project, subject to the prior written approval of the Project Manager or SRO. The Authorities will provide sufficient staff and resources at their own cost to enable the Project Team and any working Authorities and groups established under them to function adequately and effectively. The Authorities may not recharge the cost of employee time to attend meetings or to fulfil in-house (i.e. for their employer Authority) functions, for example

writing Council committee reports. The costs of any external consultants or significant internal staff costs shall only be chargeable to the Project if previously approved in writing by the Project Manager or Senior Responsible Officer in accordance with **clause 11.6**.

11.3 For the avoidance of doubt, among the matters for which the Project Team shall be responsible are the following:-

- (a) What authority it reserves to itself and what authority it delegates to the Project Team or the Senior Responsible Officer and the Project Section 151 Officer;
- (b) The appointment and instruction of consultants and other advisors and delegation of authority in respect of this;
- (c) The management of its own roles and the roles of those that report to it;
- (d) Approval of agreements with third parties in respect of the Project carried out by the Project Team in accordance with **clause 15**; and
- (e) Day to day financial and risk management of the Project.

11.4 The Project Team shall not have authority to do or agree anything or go beyond the budgeted expenditure as approved by the Programme Section 151 Officer in writing in accordance with this clause and:

- (a) The Project Section 151 Officer in consultation with the Project Manager shall prepare detailed annual budget which shall be approved with the Rail Programme Board (“the Approved Budget”);
- (b) The Project Section 151 Officer shall with the approval of the Rail Programme Board submit all financial claims to the Local Transport Body and any other funders on behalf of both Authorities;

11.5 All commitments, orders and payments under the Approved Budget shall be submitted to the SRO for approval. Agreement to any change that would be outside the scope of the Project, the JWA or the budgeted expenditure for the

Project as confirmed by the Programme Section 151 Officer shall be referred to the LTB.

- 11.6 The Project Section 151 Officer shall prepare and submit to the Authorities an invoice of each of the relevant Authority's costs incurred for the Project, including a detailed breakdown of such costs. If the Project Team agrees to allow the recharge of internal staff costs to the Project (in accordance with **clause 11.2**) the recharge rate inclusive of any overheads must be agreed in advance by the Rail Programme Board.

#### **Powers Outside the Scope of the Project Team**

- 11.7 Neither the Rail Programme Board, the Project Team nor the LTB Board shall have power to commit an Authority to expenditure or any other commitment that is outside the scope of the Project, the Joint Transport Strategy or beyond its own budgeted expenditure on the Project without the agreement of that Authority.
- 11.8 The Project Team will endeavour to make decisions by consensus. Where this is not possible if the representatives of the two Authorities are in agreement with each other they may decide matters on their own.
- 11.9 The Project Team shall ultimately report to LTB Board (in respect of devolved DfT capital funding) and in the event that the representatives of the Project Team do not agree with each other they will refer it to Rail Programme Board for decision and if the Authorities are not satisfied with such decision any Authority may refer the matter to the LTB Board and if the Authorities are still not satisfied with such decision any Authority may refer the matter for Dispute Resolution in accordance with **clause 19**.
- 11.10 Unless or until the Project Team decides otherwise, the Project shall use the Managing Successful Program (MSP) system of project management.



## **12. ROLES AND RESPONSIBILITIES**

12.1 The Authorities shall undertake the following roles and responsibilities to deliver the Project:

- (a) Each Authority will nominate a Lead Officer with senior management responsibilities for transport functions in their area. The Lead Officer shall ensure that his / her Council provides the support necessary to secure the effective achievement of the Project. In this context, "support" shall include the involvement and time of capable officers, the provision of information and the prompt consideration of matters referred to his / her Authority for determination.
- (b) Each Authority shall ensure that whenever its Lead Officer is on leave or otherwise unavailable, it appoints an alternative person to act in his or her place with full power to do anything he or she would be able to do, and who will be their Lead Officer.
- (c) Each Authority will authorise its Lead Officer and the Senior Responsible Officer will authorise the Project Team to take any steps necessary to ensure the efficient promotion of the Project whether in response to any objection or requests by the Inspector at any Public Inquiry or for any other reason relating to the effective promotion of the Project provided the within the scope of Project or the JWA.

## **13. PROMOTING THE PROJECT**

13.1 The Authorities will jointly to promote the Project in accordance with their respective Council resolutions and the terms of this agreement.

13.2 Each Authority will keep the other fully informed in relation to matters that relate to the progress of any Order and the Project so as to promote timely and well-informed decision-making.

## **14. FINANCIAL ARRANGEMENTS**

14.1 The Authorities will assume joint and several liability to perform their obligations under any Order and any agreements that may be reached with

third parties, including any agreements or concessions to implement the Initial Stage of the Project.

14.2 Notwithstanding **clause 14.1** above, the Authorities' financial liabilities under the Initial Stage of the Project agreements during the term of this Agreement will be apportioned between the Councils as follows:

- (a) 22% of all such liabilities shall be borne by BCC; and
- (b) 78% shall be borne by SDGC.

14.3 The Authorities agree that 1<sup>st</sup> April 2013 shall be known as "the Project Cost Baseline Date" and in relation to Project expenditure:-

- (a) each Party shall bear its own costs incurred by them up to but not including the Project Cost Baseline Date and such costs shall not be treated as Project costs;
- (b) From and including the Project Cost Baseline Date the costs shall be shared as defined in **clause 14.2**

14.4 The Authorities shall indemnify each other in respect of all costs, expenses, actions, proceedings or other expenditure arising under or in connection with a project agreement to the extent that either of them bears, has borne or is exposed to the risk of bearing more than their share of such based on the Standard Proportions.

14.5 Each Authority will make available the necessary funds to ensure that the Authorities and the Project Team can satisfy all liabilities falling due for payment, without one Authority having to make a payment on behalf of the other.

## **15. THIRD PARTY LIAISON**

15.1 The Project Team shall be responsible for all negotiations with third parties including objectors and potential objectors to the Order(s).

- 15.2 No Authority shall meet, correspond or negotiate with such third parties without the consent of the Project Team.
- 15.3 In accordance with **clause 11.3(d)** any agreement which the Project Team makes with any third party must either be within the scope of an express authority delegated to it by the Authorities in writing or subject to ratification by the Rail Programme Board and not binding until so ratified.
- 15.4 Subject to any authorisation required from the Authorities the Rail Programme Board is authorised to and may settle the terms of any agreement with an objector, undertaking or revision to the Orders.
- 15.5 The Project Team shall where appropriate and reasonably practicable invite an officer from the Authority whose area any objection or third party issue concerns to attend any meeting with that objector or third party.
- 15.6 The representative of an Authority at such meeting shall not publicly disagree with the Project Team's position in respect of the negotiations with the objector or third party and all Authorities shall observe the requirements of **clause 22 (Publicity)**

## **16. LIABILITIES & INDEMNITIES**

- 16.1 Notwithstanding the cost allocation provisions, where a liability under the Project arises out of either where one Authority ("the Indemnifying Party"):
- (a) fails to comply with the terms of this agreement; or
  - (b) acts deliberately or negligently or commits an omission; or
  - (c) makes a decision which leads to an increase in the costs of the Project;

the Indemnifying Party will bear the whole cost of the resulting costs and indemnify the other Authorities accordingly.

- 16.2 Each Authority shall ensure that it has on its own account, or co-operates with the other Authority to ensure that the Authorities jointly or the Project Team

has appropriate insurance policies in force at all times to cover all risks the Project is reasonably able to insure against.

- 16.3 For the avoidance of doubt, any disputes as to valuation or the amounts of any claims by one Authority against the Project or the other are within the scope of the provisions on Remediation and Dispute Resolution referred to below.

## **17. WITHDRAWAL**

- 17.1 Each Authority acknowledges that, if it withdraws from the Project that withdrawal is likely to cause loss of income and additional cost to the other Authorities, including but not limited to, the loss of funding from the Department for Transport and the loss of any economies resulting from the joint working between the Authorities in the implementation of local transport improvements. Similarly, each Authority acknowledges that if it takes any decision within the powers delegated to the LTB (“an Independent Decision”) such decision may cause loss to the other Authorities.
- 17.2 An Authority may withdraw from this Agreement by giving notice in writing of its intention to withdraw to the other Authorities. Such notice shall be no less than 3 months’ notice expiring at any time.
- 17.3 Subject **clauses 17.4 and 17.5** each Authority agrees that in the event that it gives notice of withdrawal to the other Authorities under **clause 17.1** or takes an Independent Decision, it will use its reasonable endeavours to minimise and will indemnify the remaining Authorities against, any loss or additional expense which the other Authorities may suffer as a result of its Independent Decision or withdrawal from this Agreement and the Project.
- 17.4 Where an Authority takes an Independent Decision, it shall be liable to the other Authorities for any loss suffered by the remaining Party or Parties as a consequence of the Independent Decision.
- 17.5 Where any Authority withdraws from the Project:-

- (a) Any obligations which the withdrawing Authority has entered into with the other Authorities in pursuance of any funding provided or to be provided by the JTEC or any Local Transport Improvement shall remain in force;
- (b) The Disputes Procedure set out in **clause 18** shall remain in force in respect of any matters arising from the performance of or withdrawal of either Party under this Agreement;
- (c) **Clause 21 (Confidential Information)** of this Agreement shall continue without limit and shall survive the termination of this Agreement; and
- (d) All Authorities will seek to minimise costs arising from the other Authority's withdrawing.

## 18. DISPUTES

- 18.1 Where an Authority is of the opinion that another Authority is failing to comply with the provisions of this Agreement in respect of any matter, including the provisions of **Clause 5** to work together in good faith and in an open, co-operative and collaborative manner, the Authorities shall use their reasonable endeavours to resolve any such matter amicably without resort to the formal remediation and dispute resolution procedures set out below.
- 18.2 Notwithstanding **Clause 19**, at any time the Chief Executive of any Authority ("**the first Party**") may serve on the Chief Executive of the other Authority ("**the second Party**") a "**Default Notice**", alleging that the second Authority has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the first Authority has or is likely to suffer as a result of the alleged failure.
- 18.3 The second Authority on receipt of a Default Notice shall have 14 days within which to serve on the Chief Executive of the first Party a "**Counter notice**", setting out in respect of every matter contained in the Default Notice, proposals for the remediation of the alleged failure and making good any loss

which the first Authority may have suffered or may suffer as a result of the failure, or the reasons why that alleged failure is disputed.

- 18.4 Within 14 days of receipt of a Counter notice, the Chief Executive of the first Authority shall send to the Chief Executive of the second Authority a “**Notice of Acceptance**” of any proposals contained in the Counter notice in so far as those proposals are accepted by the first Authority, and may send a “**Notice of Dispute**” in so far as no proposal satisfactory to the first Authority is contained in the Counter notice, setting out in respect of each proposal which is not accepted by the first Authority why it is considered to be unacceptable.
- 18.5 Where any proposal in a Counter notice is accepted in a Notice of Acceptance, the second Party shall implement that proposal.
- 18.6 Where any matter is contained in a Notice of Dispute, cannot be resolved by the procedure in **clauses 18.1 to 18.4** it shall fall to be dealt with under the Disputes Procedure set out in **Clause 19**.

## **19. DISPUTE RESOLUTION**

- 19.1 In the event of any dispute arising between the Authorities (including the service of a Notice of Dispute), as a matter of urgency, the Authorities will first attempt to settle the issue in dispute by referring the matter as follows:
- (a) Initially to a meeting of the Lead Officers;
  - (b) in the event of failure of Lead Officers to agree a resolution, to the LTB Board save in relation to disputes relating to revenue matters which shall be referred to JTEC)
  - (c) In the event of the LTB Board (or as appropriate, JTEC) failing to resolve the matter to a meeting of the Leaders of the four Authorities participating in the LTB.
- 19.2 If the dispute is not resolved by such means within 14 days of such reference, the Authorities will attempt to settle the issue in dispute ("Dispute") by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed

by the Authorities. To initiate a mediation, any Party may give notice in writing (a "Mediation Notice") to any one or more of the others requesting mediation of the Dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Authorities, asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. If there is any point in respect of the conduct of the mediation upon which the Authorities are unable to agree within ten (10) Working Days from the date of the Mediation Notice, CEDR will, at the request of one of the Authorities, decide that point for the Authorities, having consulted with them. The Authorities will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or, in the absence of such determination, such costs will be shared equally.

19.3 None of the Authorities may commence any court proceedings in relation to any Dispute until they have attempted to settle it by mediation under **Clause 19.1(c)** and/or such mediation has terminated. The Authorities will take no further steps in the court proceedings until any such mediation commenced under **Clause 19.1(c)** has terminated. Nothing in this **Clause** shall prevent an Authority from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

19.4 If the Dispute has not been resolved by the mediation procedure detailed in **Clause 19.1(c)** within one (1) month of the initiation of such procedure, the Dispute may be referred to the courts for resolution.

19.5 Copies of all notices issued under **clause 18** shall be sent to the other Party's proper officers and/or lead officer (as the case may be).

## **20. INTELLECTUAL PROPERTY**

20.1 All intellectual property in any material created by or on behalf of the Authorities or any of the Authorities in the course of the Project shall be

owned jointly by those Authorities which are participating in the Project and shall be available equally to each such Party.

- 20.2 Each Party warrants that any intellectual property created by its officers for the purposes of the Project does not infringe any third party's intellectual property rights.
- 20.3 Each Party shall indemnify the other Authorities against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of the first Party's intellectual property for the purpose of the Project.
- 20.4 Where existing intellectual property of an Authority has been used for the purpose of the Project that Authority agrees to grant the other Party a non-exclusive perpetual non-transferable and royalty free licence to use, modify, amend and develop the same for the purpose of the Project.
- 20.5 Where the Authorities generate any receipts from the licensing or sale of any intellectual property generated by this Project the net surplus shall be divided between them in the Standard Proportion.

## **21. CONFIDENTIAL INFORMATION**

- 21.1 Subject to **Clause 23.3** and where disclosure of any Confidential Information is required by Laws, the Authorities shall at all times use their reasonable endeavours to keep confidential and ensure that such information is used only for the purpose of the Project (and to procure that their respective employees agents consultants contractors and sub-contractors shall keep confidential and shall use such information only for the purpose of the Project) all Confidential Information concerning the Project or the business and affairs of any other Authority which may now or at any time hereafter be in an Authority's possession and shall not disclose it except with the consent of that other Authority, such consent not to be unreasonably withheld.
- 21.2 For the purpose of this Agreement "Confidential Information" means any information imparted to any of the Authorities or their employees agents



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

## **22. PUBLICITY**

22.1 The Authorities will make such venues available for the provision of information about the Project and such other publicity as the Project Team may reasonably require.

22.2 The Project Team and the Senior Responsible Officer on its behalf shall: -

- (a) co-ordinate all press releases, advertisements and other publicity material in connection with the Project,
- (b) ensure that it keeps members of the LTB and of the Authorities up to date and briefed on the progress of the Project and establish a protocol for doing so.
- (c) Each Party will refrain from making statements about the application for the Orders and Project other than statements that have been authorised by the Project Team

## **23. COMPLIANCE WITH LAWS & DATA PROTECTION**

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

23.2 Each Authority shall indemnify and keep indemnified the other Authorities against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the other Authorities in respect of any

breach of this Clause by the Authority and/or any act or omission of any employee, agent, consultant, contractor or sub-contractor.

- 23.3 Each Authority shall grant to the other Authorities the right of reasonable access to all records of Personal Data relevant to the Project, as defined in the Data Protection Act 1998, and shall provide reasonable assistance at all times during the currency of this Agreement to ensure the quality and security of data collected.

## **24. FOI & EIR**

- 24.1 Each Authority acknowledges that the other Authorities are subject to the requirements of the Freedom of Information Act 2000 ("FoIA") and the Environmental Information Regulations 2004 ("EIR") and each Authority shall where reasonable assist and co-operate with the other Authority (at their own expense) to enable the other Authorities to comply with these information disclosure obligations.

- 24.2 Where an Authority receives a request for information under either the FoIA or the EIR in relation to information which it is holding on behalf of any of the other Authorities in relation to the Project, it shall (and shall procure that its sub-contractors shall):

- (a) transfer the request for information to the other Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
- (b) provide the other Authority with a copy of all information in its possession or power in the form that the Authority requires within ten Working Days (or such longer period as the Authority may specify) of the Authority requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the other Authority to enable the Authority to respond to a request for information within the time for compliance set out in the FoIA or the EIR.

- 24.3 Where an Authority receives a request for information under the FoIA or the EIR which relates to this Agreement or the Project, it shall inform the other Authorities of the request for information as soon as practicable after receipt and in any event at least two Working Days before disclosure and shall use all reasonable endeavours to consult with the other Authorities prior to disclosure and shall consider all representations made by the other Authorities in relation to the decision whether or not to disclose the information requested.
- 24.4 The Authorities shall be responsible for determining in their absolute discretion whether any information requested under the FoIA or the EIR:
- (a) is exempt from disclosure under the FoIA or the EIR;
  - (b) is to be disclosed in response to a request for information.
- 24.5 Subject to **Clause 24.3** above each Authority acknowledges that the other Authorities may be obliged under the FoIA or the EIR to disclose information:
- (a) without consulting with the other Authority where it has not been practicable to achieve such consultation; or
  - (b) following consultation with the other Authority and having taken its views into account.

## **25. ASSIGNMENT**

- 25.1 Save as may be imposed as part of any re-organisation of local government neither Authority may assign, subcontract or transfer its rights or obligations under this Agreement

## **26. VARIATION**

- 26.1 This Agreement, including the Annexes, may only be varied by written agreement of the Parties

**27. CHARGES AND LIABILITIES**

- 27.1 Except as otherwise provided, the Authorities shall each bear their own costs and expenses incurred in complying with their obligations under this Agreement.
- 27.2 For the avoidance of doubt, in accordance with **Clause 14** the Authorities agree to share the costs and expenses arising in respect of the Initial Stage of the Project between them in accordance with the Standard Proportions.
- 27.3 Each Authority shall remain liable for any losses or liabilities incurred due to its own or its employee's actions and no Authority intends that the others shall be liable for any loss it suffers as a result of this Agreement.

**28. STATUS**

- 28.1 This Agreement is intended to be legally binding, and legal obligations or legal rights arising between the Authorities from this Agreement shall from the date of this Agreement be construed accordingly.

**29. WAIVER**

- 29.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

**30. SEVERANCE**

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

**31. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English law and, without affecting the Dispute Procedure set out in **clause 19**, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

**32. GENERAL**

- 32.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers duties and obligations in the exercise of their functions as local authorities and/or in any other capacity and all rights powers discretions duties and obligations of the Authorities under all laws may at all times be fully and effectually exercised as if the Authorities were not party to this Agreement and as if this Agreement had not been made.
- 32.2 The Authorities shall only represent themselves as being an agent partner or employee of any of the other Authorities to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of any of the other Authorities except to the extent specified in this Agreement.
- 32.3 Save as may be imposed as part of any re-organisation of local government, this Agreement is personal to the Authorities and no Authority shall assign transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.
- 32.4 No person other than the Authorities shall be entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 32.5 Any notice required or permitted to be given by an Authority to the other Authorities under this Agreement shall be in writing and addressed to the Chief Executive of the other Authorities at their principal office.

- 32.6 Subject to **clause 3.2** above this Agreement constitutes the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Agreement

**33 Rights of Third Parties**

Nothing in this Agreement confers or is intended to confer any rights on any third parties or any benefit or right to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

Signed for and on behalf of **SOUTH  
GLOUCESTERSHIRE DISTRICT  
COUNCIL**

Signature:

Name:

Position:

Date:

*Chris Sane*

CHRIS SANE

HEAD OF TRANSPORT & STRATEGIC PROJECTS

28/3/17

Signed for and on behalf of **BRISTOL  
CITY COUNCIL**

Signature:

Name:

Position:

Date:

*P Mann*

PETER MANN

SERVICE DIRECTOR, TRANSPORT

24.2.17

## Appendix 1



**Bath and North East Somerset Council**

And

**Bristol City Council**

And

**North East Somerset Council**

And

**South Gloucestershire Council**

And

**The Local Enterprise Partnership**

**Joint Working Agreement**

**For the Creation of a**

**Local Transport Body**

**THIS AGREEMENT** is made the                      day of                      2013

**BETWEEN**

**BATH AND NORTH EAST SOMERSET COUNCIL (B&NES)** of The Guildhall, High St, Bath, BA1 5AW

**AND**

**BRISTOL CITY COUNCIL (Bristol)** of City Hall, College Green, Bristol, BS1 5TR

**AND**

**NORTH SOMERSET COUNCIL (NS )** of of the Town Hall Walliscote Grove Road, Weston-super-Mare BS23 1UJ

**AND**

**SOUTH GLOUCESTERSHIRE COUNCIL (SGC)** of Council Offices, Badminton Road, Nibley,  
South Gloucestershire

AND

**THE LOCAL ENTERPRISE PARTNERSHIP (LEP)** of Wilder House, Wilder Street, Bristol BS2 8PH

**WHEREAS**

- 1 This Agreement is supplemental to an agreement (The 2009 Agreement) made between B&NES, Bristol, SGC and NS dated 25 March 2009 relating to joint working for the development of local transport improvements within the area of the West of England Partnership ("WoE") including the establishment of the West of England Joint Transport Executive Committee ("JTEC").
- 2 The LEP is the Local Enterprise Partnership for the West of England and is committed to encouraging sustainable economic growth and the creation of substantial numbers of new private sector jobs,
- 3 The Parties have agreed to work together to establish a Local Transport Body to meet the Department for Transport ("DfT") objectives for the devolution of responsibility for developing a priority programme of major transport schemes, and overseeing their delivery at the local level and taking advantage of other DfT funding which will become available for the WoE
- 4 The Parties intend that such arrangements for the Local Transport Body shall be an effective mechanism for joint decision making and will build on existing working arrangements operating within the West of England.

**IT IS HEREBY** agreed as follows –

## 1 Interpretation

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

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

**“The Accountable Body”** means the body taking on the responsibilities set out in clause 7.

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

**“The Constitution”** means the constitution of the Board of Local Transport Body as set out in Schedule A to this Agreement.

**“The Local Transport Body”** or **“LTB”** means the Local Transport Body established by the parties in accordance with the Constitution.

**“The LTB Board”** or **“Board”** means the representatives of the parties appointed to the LTB.

**“The Parties”** means B&NES, Bristol, SGC and NS and the LEP

**“Priority Programme”** means the programme of schemes developed by the LTB in accordance with this Agreement and with schemes ranked in accordance with their strategic fit and deliverability.

**Programme Assurance Board** means the board established by the local authority parties to oversee the major schemes programme for the West of England

**“West of England”** means the combined areas of the four local authority parties.

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

## 2 Term

This Agreement shall come into effect on the Commencement Date and shall continue in force until such time as the DfT devolved funding arrangements cease or the parties otherwise agree, unless terminated earlier in accordance with its terms.

### **3 General Principles**

- 3.1 This Agreement has been entered into by the parties to establish a Local Transport Body to act through a Board comprising representatives of each of the parties.
- 3.2 The Parties will work together in good faith and in an open, co-operative and collaborative manner for the duration of this Agreement. The parties' members and officers will work together in the spirit of mutual trust in order to endeavour to procure the successful implementation of the LTB objectives and will respond in a timely manner to all relevant requests from other parties.
- 3.3 The Parties will work together to ensure that the funding received from the Department for Transport is devoted to the local transport improvement schemes to address the present and anticipated local transport needs of the West of England, agreed through an evidence based prioritisation process, and that such funds are directed at specified major transport schemes and only used by any of the Authorities for specified schemes
- 3.4 It is proposed that meetings of the LTB Board would be aligned with the quarterly programme of meetings of JTEC. LTB Board meetings would be held in public providing an open forum for debate and decision making and would comply with the principles set out in Annex A (Right of members of Constituent Bodies) and Annex B (Public Participation) of the 2009 Agreement.
- 3.5 The existing Joint Scrutiny Committee, established by the local authority parties for scrutinising West of England initiatives will apply to the LTB.
- 3.6 All LTB Board papers, technical reports which support decision making and scheme business cases will be made publicly available, including through publication on the LEP website.
- 3.7 The LTB Board will be able to draw on the existing well-established joint arrangements for the provision of administrative support and professional advice to JTEC. This will include maintaining the official record of proceedings and a schedule of decisions.
- 3.8 Clear policies on conflict of interest and hospitality will be adopted by the Board.
- 3.9 The parties and the Board shall comply with the The Code of Recommended Parctice for Local Authorities on Data Transparency.
- 3.10 Costs associated with the LTB, (including all administrative and secretarial support) and any costs properly and reasonably incurred by any member of the LTB on behalf of the LTB (having been approved beforehand by the LTB), shall be shared equally between the parties.

### **4 Status of this Agreement**

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

## **5 The Local Transport Body - Representation**

- 5.1 The Parties agree to act as a Local Transport Body and to constitute the Board of the Local Transport Body to discharge its functions on the terms set out in the Constitution.
- 5.2 In appointing representatives to the Board of the Local Transport Body, each local authority will unless there are over-riding reasons to the contrary, appoint as its primary representative the member of the Executive of that Authority who has portfolio responsibility for local transport functions within that Authority or, as the case may be, Chair of the relevant Committee. The LEP shall appoint, so far as possible, business representatives who are not elected representatives of a local authority.
- 5.3 Insofar as any representative requires authority from his/her appointing body to attend and take part in the meetings of the LTB Board and in any making decisions required of the LTB Board (falling within the provisions of clause 5 hereof), the relevant appointing body hereby confirms that it has delegated all such powers to its representative or otherwise authorised such action.
- 5.4 The Parties agree to keep the membership of the LTB under review and to consider from time to time the addition of other bodies or organisations which may contribute to the achievement of the aims and objectives of the LTB. Any changes to the membership or constitution shall only be by the written agreement of all the parties.

## **6 Functions of the Local Transport Body**

- 6.1 The functions of the Local Transport Body (to be discharged by its Board) shall include the following:
- Identify and approve a prioritised list of investments within the available devolved major schemes budget.
  - Scrutiny of individual scheme business cases to ensure they provide evidence of achieving "high value for money".
  - Make decisions on individual scheme approval.
  - Release of funding for approved schemes.
  - Approve the assurance framework
  - Monitor progress of approved scheme delivery and spend including reviewing the programme risks and its risk mitigation measures.
  - Make such returns and provide such information as required by the DfT.
  - Secure the co-operation of the Parties.
  - Active management of the DfT grant to respond to changed circumstances.
  - Take on additional transport related functions agreed by the Parties.
  - Administer additional transport funds from third parties.

## **7 Accountable Body**

- 7.1 The Parties shall agree, from time to time, to one of their number being the Accountable Body with the responsibilities set out in this Agreement.

- 7.2 The Accountable Body will hold and administer funds on behalf of the LTB, ensure decisions of the LTB comply with financial, legal and other regulations and requirements, be responsible for funding claims, making payments and for regular independent audit of the assurance framework and providing monitoring updates to the DfT and the Local Transport Body (as required) and ensuring that funds are only directed at approved major transport schemes, and the following;
- a) ensuring (through its S151 Officer) that funds are used appropriately
  - b) ensuring the assurance framework is adhered to
  - c) maintaining the official record of the LTB's proceedings and holding LTB documents
  - d) being responsible for LTB decisions (including dealing with challenges)
- 7.3 The Accountable Body will be responsible for ensuring adherence to the agreed LTB assurance framework, and that all decisions are made within the adopted governance and decision making process and that the relevant accounts are subject to regular audit independent of the Authority promoting the Scheme..
- 7.4 Any DfT grant conditions will need to be complied with and the Accountable Body will have responsibilities to ensure these are monitored and adhered to. This may include specific audit and reporting requirements with appropriate resourcing implications.
- 7.5 All funding held by the Accountable Body will be invested for treasury management purposes in accordance with the Accountable Body's Treasury Strategy. No liability will be held by the Accountable Body for capital loss resulting from temporary investment counterparty failure.
- 7.6 The Accountable Body will require resources to undertake its duties. This will include but not be limited to: -
- Direct staffing costs (financial and administration)
  - Specialist advice particularly financial and legal
  - Allocation of overheads e.g. systems, IT, telecoms, HR etc.
  - Transaction charges e.g. bank fees, payment fees etc.
  - Statutory costs as appropriate e.g. audit fees, taxes
  - Ensuring compliance with governance and decision making arrangements
- 7.7 The Accountable Body's cost reasonably incurred in discharging its duties will be shared equally between the parties unless otherwise agreed. The Accountable Body shall prepare an annual budget/statement and present this to the LTB in October of each year for approval
- 7.8 The Accountable Body shall enter into such further agreement(s) as may be required with any authority promoting a scheme approved for implementation by the LTB, in order to secure direct commitments from that authority with regard to securing the monitoring, reporting and auditing obligations needed to meet the objectives of this agreement and the requirements of any DfT grant conditions.

## **8 Scheme Prioritisation**

8.1 The parties shall develop a Priority Programme of Schemes meeting the LTB objectives and the LTB shall approve this programme at its first meeting, and thereafter review the Priority Programme at least annually. The Priority Programme shall be published on the LEP website.

8.2 The LTB shall at its first meeting adopt

- a process of developing a long list of transport infrastructure,
- criteria for the initial screening of schemes (deliverability, affordability and a £2m minimum cost threshold),
- a methodology for the short listing and
- criteria and weightings to be applied to shortlisting,

and shall publish these on the LEP Website and shall thereafter keep these under review.

8.3 The LTB shall ensure that business representatives are involved in the preparation of the Priority Programme through the Infrastructure and Place Group established under the LEP arrangements]

8.4 The parties shall work together to ensure that prior to the first meeting of the LTP Board (before July 2013) the provisionally identified Priority Programme will result in strong business cases.

8.5 The parties acknowledge that where shortlisted schemes relate to the strategic road or rail network they must identify a process of engagement with the Highways Agency and Network Rail.

8.6 The LTB expect schemes, which come forward for approval to represent 'high' value for money as determined using the DfT Transport and Business Case Guidance on published on the DfT website.

8.7 Scheme approval must be supported by a full assessment of the scheme carried out independently of the Authority/Authorities promoting the scheme.

8.8 The LTB does not intend to prescribe a maximum or minimum threshold for any local contribution to be made to any scheme although they will expect the promoting authority to explore additional funding that could bring added value.

8.9 Responsibility for implementation of any approved scheme shall rest with the authority or authorities in whose area the scheme is based. Such authority or authorities shall provide all reasonable assistance to the Accountable Body to enable it to meet its obligations under this agreement. In addition such authority or authorities shall ensure that it/they has in place arrangements to enable it/they to meet the objectives and requirements set out in this Agreement, in particular in connection with independent audit, and effective monitoring and project management and shall regularly report thereon to the Board.

## **9 Financial Arrangements**

- 9.1 The parties recognise the importance of bringing forward schemes, which provide "high" value for money. Individual schemes business cases will comply with the DfT business case guidance in particular WebTAG.
- 9.2 The parties will in principle pursue this approach but where appropriate will seek proportionality reflecting the scale and nature of the individual scheme. The appraisal and modelling work will be scrutinised on behalf of the LTB by parties independent from the scheme promoting authority.
- 9.3 It is proposed that the following general approval regime for schemes is adopted:
- Agreement on initial Priority Programme (July 2013) and selection of initial preferred scheme
  - Outline business case (OBC) for the selected scheme(s) -sufficient to support statutory processes
  - Final business case (FBC) approval to secure release of funds for the selected scheme(s).
  - In the event that the initial scheme does not progress through the OBC or FBC process the LTB shall select the next scheme from the Priority Programme and proceed to take that to OBC and FBC stages.
  - Further schemes shall be selected from the Priority Programme as funds become available.
  - The Priority Programme shall be reviewed and updated annually
  - Business Cases will be subject to approval and quality assurance by the existing Programme Assurance Board established by the Authorities before being submitted to the Board.
  - Value for money statements will be presented to the Board at each approval stage (OBC and FBC). Statements shall be signed off by the relevant S151 officer of the Authority promoting the Scheme
  - OBC and FBC shall be published on the LEP Website([westofenglandlep.co.uk](http://westofenglandlep.co.uk)) prior to submission to the Board for approval and any comments received as a result shall be reported to the Board at the meeting considering the OBC or FBC (as the case may be).
- 9.4 The LTB will establish mechanisms for monitoring and evaluating the impacts of the schemes, which are implemented. The results of these will be independently reviewed (namely by someone other than the authority promoting the scheme) and reported to the LTB and published.
- 9.5 Before any funding can be drawn down from the Accountable Body the Final Business Case must have been agreed by the Local Transport Body.
- 9.6 The parties shall ensure that a robust system of project and risk management for the individual schemes is in place, (and forms part of the FBC) and this will enable spend profiles to be effectively monitored and managed. Appropriate and proportionate mechanisms will be established for independent assurance including the identification of named responsible officers or external parties.
- 9.7 The parties shall ensure that robust systems are in place for effective and continuous programme management, including management of risk. These shall include arrangements for dealing with urgent matters arising between LTB board meetings. The chair of the LTB shall be contacted by the chair of the Programme Assurance Board in the event of the need for urgent action. The parties confirm the LTB Chair's authority to act in such cases reporting to the next LTB board.



## **10 Liabilities, Immunity and Indemnities**

- 10.1 When working as a member of the Local Transport Body, the local authority members shall be deemed to be working on behalf of their own Authority even where the particular matter under consideration relates to or also relates to another Authority.
- 10.2 In consequence of the above, both local authority members and officers shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875, as amended, in respect of their actions or omissions in respect of the functions and objectives of the LTB.
- 10.3 The parties acknowledge that the LEP representatives on the LTB shall have no personal liability for any decisions of the LTB or the Board.
- 10.4 For a period of six months or such earlier time as arrangements are in place for the protection of the LEP representatives from personal liability equivalent to those in clause 10.1 and 10.2, the local authorities shall indemnify the LEP representatives in respect of any personal liability they may incur as a consequence of any decisions made by the Board.

## **11 Incorporation of Provisions from the 2009 Agreement**

- 11.1 The following provisions of the 2009 Agreement shall apply to this Agreement with such change as may be necessary (including making reference to the LEP where appropriate) to give full effect thereto.

Clause 12	Intellectual Property
Clause 15	Remediation and Dispute Resolution
Clause 16	Withdrawal and Indemnity for Consequences of Withdrawal
Clause 17	Confidential Information
Clause 18	Compliance with Laws
Clause 19	Freedom of Information Act 2000 and Environmental Information Regulations 2004
Clause 23	General

## **12 Counterparts.**

This Deed may be executed in any number of counterparts all of which shall together be one and the same instrument.

## **13 Compliance Assurance**

The parties shall put in place arrangements for independent audit of the operation of the provisions of this agreement and the arrangements made thereunder. This audit shall be carried out by a qualified auditor independent of any of the parties. The first such audit to be carried out before December 2014, and thereafter annually.

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

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

Authorised Signatory

The Common Seal of **Bristol City Council** )  
was affixed hereto in the presence of the )  
undersigned authorised signatory )

Authorised Signatory

The Common Seal of **North Somerset Council** )  
was affixed hereto in the presence of the )  
undersigned authorised signatory )

Authorised Signatory

The Common Seal of **South Gloucestershire** )  
**Council** was affixed hereto in the presence of )  
the undersigned authorised signatory )

Signed as a Deed by the **Local Enterprise** )  
**Partnership** )

Director

Director/Secretary