

DATED 20th day of June 2013

SHROPSHIRE COUNCIL (1)

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL (2)

WORCESTERSHIRE COUNTY COUNCIL (3)

THE BOROUGH OF TELFORD & WREKIN (4)

WEST MERCIA ENERGY
JOINT AGREEMENT

THIS AGREEMENT is made the 20th day of June 2013

BETWEEN

- (1) SHROPSHIRE COUNCIL (~~hereinafter referred to as "SC"~~)
- (2) THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL (~~hereinafter referred to as "HC"~~)
- (3) WORCESTERSHIRE COUNTY COUNCIL (~~hereinafter referred to as "WCC"~~)
- (4) THE BOROUGH OF TELFORD & WREKIN (~~hereinafter referred to as "Telford & Wrekin Council"~~)

(hereinafter referred to as "the Member Authorities or "the Member Authority" as the context determines)

WHEREAS

- i) A local authority or any public body may under the Local Authority (Goods and Services) Act 1970 (hereinafter referred to as "the 1970 Act") enter into an agreement for the supply of any goods material or services within the meaning of the 1970 Act to any body or authority referred to in the 1970 Act and local authorities have additional powers to provide services under section 1 of the Localism Act 2011, subject to any restrictions contained therein.
- ii) The Member Authorities ~~have~~ each operate ~~introduced~~ executive arrangements under the provisions of the Local Government Act 2000.
- iii) Following the sale by the Member Authorities of the stationery supplies business operated under the Joint Committee known as West Mercia Supplies, the Executives of each of the Member Authorities have agreed to continue the form a Joint Committee for the purposes of s.101 Local Government Act 1972 (hereinafter called "the 1972 Act") and pursuant to Section 9EB of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012~~00~~ in accordance with made under s.20 of the Local Government Act 2000 and the Executives of each of the Member Authorities wish to enter this Agreement
- iv) Section 103 of the 1972 Act provides that the expenses incurred by a Joint Committee of two or more local authorities shall be defrayed by those authorities in such proportions as they may agree or in the case of disagreement as may be determined by a single arbitrator appointed by the member authorities on the nomination of the President for the time being of the Chartered Institute of Public Finance and Accountancy in accordance with and subject to the provisions of the Arbitration Act 1996
- v) The Member Authorities have agreed that the Joint Committee shall have the power to appoint staff and that one Member Authority shall be referred to as the Lead Authority. The Lead Authority shall employ the staff and hold property employed, on behalf of the Member Authorities, for the purposes of the Joint Committee.

1. Definitions

1.1 In this agreement where the context so permits the following words shall have the meanings shown:-

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| <u>Annual Business Plan</u> | shall mean the Plan referred to in Clause 5.3 and 5.4 |
| <u>Chair</u> | shall mean such person as shall from time to time be duly elected to be the Chair of the Joint Committee in accordance with Clause 3.9. |
| <u>Chief Executive</u> | shall mean the Head of Paid Service of each Member Authority or such other officer as each Member Authority determine |
| <u>Delegated Functions</u> | shall mean those functions, powers and responsibilities set out in Schedule 2 hereto subject to the restrictions expressed therein and otherwise in this agreement. |
| <u>Director</u> | shall mean the officer, so designated under paragraph 1(iv) of Schedule 2, employed to operate and manage WME |
| <u>Executive Elected Member</u> | shall mean any person duly elected to be a Council Member of any of the Member Authorities who is also a Member of the Executive of that Member Authority. |
| <u>Key Contract</u> | means a contract entered into on behalf of the Member Authorities as directed by the Joint Committee with a Utility Supplier which the Joint Committee designates as a contract during which a Member Authority may not withdraw from membership of the Joint Committee. Contracts for the supply of gas and electricity shall automatically be deemed Key Contracts unless otherwise agreed by the Joint Committee. |
| <u>Key Decision</u> | A decision likely to be taken by the Joint Committee, or by an officer pursuant to a delegation by the Joint Committee, which is likely to result in income, expenditure or savings of £500,000 or greater, or to have a significant effect, on, two or more Electoral Divisions of a Member Authority. |
| <u>Joint Committee Member</u> | shall mean an Executive Elected Member who shall from time to time be nominated by a Member Authority to represent the executive of that Member Authority on the Joint Committee. |
| <u>Joint Committee</u> | shall mean the Joint Committee established by this agreement referred to at paragraph 2.1 |
| <u>Lead Authority</u> | shall mean Shropshire Council or such other Member Authority as may from time to time be agreed by a majority of the Member Authorities in writing |

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| <u>Member Authority</u> | shall mean each authority included in Schedule 1 hereto and the phrase “Member Authorities” shall be interpreted accordingly. |
| <u>Overview and Scrutiny</u> | means the arrangements of each Member Authority in respect of a committee which oversees and scrutinises each Member Authority’s involvement in the decisions of the Joint Committee in accordance with the Local Government Act 2000 (as amended) and any statutory instruments made thereunder. |
| <u>Scheme of Delegation</u> | shall mean a written record of any delegations made by the Joint Committee |
| <u>Strategic Policies</u> | shall mean the Policies referred to in Clause 5.2. |
| <u>Utility Supplier</u> | means a supplier of gas, electricity or any other utility service with whom WME has agreed to purchase services on behalf of the Member Authorities and WME Customers. |
| <u>Vice-Chair</u> | shall mean the person from time to time elected to be Vice-Chairman of the Joint Committee in accordance with Clause 3.9 |
| <u>West Mercia Energy or “WME”</u> | shall mean West Mercia Energy business operated under the authority of the Joint Committee. |

- 1.1 ~~Member Authority~~ shall mean each authority included in Schedule 1 hereto and the phrase “Member Authorities” shall be interpreted accordingly.
- 1.2 ~~Lead Authority~~ shall mean Shropshire Council or such other Member Authority as may from time to time be agreed by a majority of the Member Authorities in writing.
- 1.3 ~~Delegated Functions~~ shall mean those functions, powers and responsibilities set out in Schedule 2 hereto subject to the restrictions expressed therein and otherwise in this agreement.
- 1.4 ~~Director~~ shall mean the officer, so designated under paragraph 1(iv) of Schedule 2, employed to operate and manage WME.
- 1.5 ~~West Mercia Energy or “WME”~~ shall mean West Mercia Energy business operated under the authority of the Joint Committee.
- 1.6 ~~Strategic Policies~~ shall mean the Policies referred to in Clause 5.2.
- 1.7 ~~Annual Business Plan~~ shall mean the Plan referred to in Clause 5.3 and 5.4
- 1.8 ~~Joint Committee~~ shall mean the Joint Committee established by this agreement referred to at paragraph 2.1
- 1.9 ~~Chief Executive~~ shall mean the Head of Paid Service of each Member Authority or such other officer as each Member Authority shall determine.
- 1.10 ~~Executive Elected Member~~ shall mean any person duly elected to be a Council Member of any of the Member Authorities who is also a Member of the Executive of that Member Authority.
- 1.11 ~~Joint Committee Member~~ shall mean an Executive Elected Member who

- ~~shall from time to time be nominated by a Member Authority to represent the executive of that Member Authority on the Joint Committee.~~
- ~~1.12 Chair~~ shall mean such person as shall from time to time be duly elected to be the Chair of the Joint Committee in accordance with ~~Clause 3.9.~~
- ~~1.13 Vice Chair~~ shall mean the person from time to time elected to be Vice Chairman of the Joint Committee in accordance with ~~Clause 3.9~~
- 1.214 Any reference to a statutory provision, subordinate legislation or other enactment includes reference to it as amended, extended or replaced from time to time and includes any subordinate legislation, bylaw or other enactment made under it.
- ~~1.315~~ Where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'.
- ~~1.416~~ This Agreement shall be governed by English Law and where the context so admits the words contained in the Definitions Section shall bear the meanings specified therein.

NOW IT IS HEREBY AGREED as follows:

2. The Joint Committee

- 2.1 The Executives of the Member Authorities agree to form a Joint Committee which shall arrange for the discharge of their functions, as set out in clause 4, in connection with this Agreement under the name West Mercia Energy.
- 2.2 The Member Authorities agree that the role of the Joint Committee shall be strategic in nature and that whilst the Joint Committee shall maintain a strategic oversight of the business of WME the day to day running of that business and the implementation of any strategy agreed by the Joint Committee shall be delegated to the appointed Director.
- 2.3 The Joint Committee shall have the power to appoint sub-committees comprising Joint Committee Members ~~or officers of the Member Authorities~~, and the Joint Committee may delegate such of its functions to a sub-committee as it deems reasonably necessary.
- 2.3A The Joint Committee may set up advisory groups as required to enable it to execute its responsibilities effectively and may delegate tasks as it sees fit to these groups, which may be formed of officers or members of the Member Authorities or such third parties as the Joint Committee considers appropriate.
- 2.3B The Joint Committee may delegate such of its functions to the Director or officers of the Member Authorities as it sees fit to provide for the effective operation of the business conducted on behalf of the Joint Committee.
- 2.4 The Lead Authority shall appoint from its officers a ~~S~~secretary to undertake the role set out in Clause 2.5 below ("the Secretary") and a ~~T~~treasurer to undertake the role set out in Clause 2.6 below ("the Treasurer") to the WME Joint Committee. The Secretary and Treasurer shall liaise with the monitoring officers and ~~section 151 Officers the Treasurers~~ of the Member Authorities to enable those officers to comply with their responsibilities under Section 5 of the Local Government and Housing Act 1989 and Section 151 of the Local Government Act 1972.
- 2.5 The responsibilities of the Secretary shall be as follows: ~~responsible for the production and compilation of the Joint Committee's agenda and minutes and shall provide legal advice~~

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and services to the Committee.

- i. to make all necessary arrangements for the publication of forthcoming decisions, convening of meetings of the Joint Committee and any Sub-Committees, to ensure that the meetings and decision making of the Joint Committee are undertaken in accordance with legal requirements;
- ii. to provide, or, where necessary, procure the provision of, all necessary legal advice on matters under consideration by the Joint Committee or relevant to the Committee's functions;
- iii. to arrange for the taking and maintenance of minutes of meetings of the Joint Committee and any Sub-Committees, the publication of any resulting decisions and ensure that the business of the Joint Committee at its meetings is conducted in accordance with legal requirements;
- iv. to manage and co-ordinate the day-to-day affairs of the Joint Committee and its administrative support.

2.6 The responsibilities of the Treasurer shall be as follows:

- i. to provide financial advice to the Joint Committee;
- ii. in conjunction with the Director, to prepare an annual budget for the Joint Committee;
- iii. in conjunction with the Director, to keep proper accounts of the monies received and expended by the Joint Committee;
- iv. to calculate overheads and in accordance with clause 7 below; and
- v. the calculation, apportionment and distribution of any accumulated surplus in accordance with clause 8 below;
- vi. the calculation and apportionment of liabilities in accordance with clause 9 below;
- vii. to fulfil or arrange the requirements in respect of the external audit of the Joint Committee;
- viii. to ensure that an appropriate internal audit function is provided to the Joint Committee;
- ix. to present to the Joint Committee the annual statement of accounts for approval.

2.7 The Joint Committee or the Director as appropriate may arrange for the purchase of other services from wheresoever it considers such services are most efficiently and effectively provided.

2.8 The costs of all services mentioned in 2.4 shall be a charge levied on the annual budget of WME.

Membership

3. Membership and Meetings

3.1 Membership of This Agreement WME shall run from 1st April 2013 and shall continue until terminated in accordance with clause 10.1, or in respect of an individual Member Authority's membership, until their membership is terminated in accordance with clause 10.3, until 31st March 2020 and thereafter may be extended by agreement between the Member Authorities.

3.2 Wherever in this Agreement the Member Authorities have the power to decide any matter by majority vote then each Member Authority shall have such number of votes as that Member Authority has representatives (or an entitlement to representatives)

on the Joint Committee. Unless otherwise stated, any reference in this Agreement to the 'approval' of the Joint Committee shall be taken to mean approval provided by the Joint Committee by way of a majority vote.

- 3.2A All voting shall be by a show of hands, unless the provisions of paragraph 3.2B below apply. Any question coming before the Joint Committee shall be decided by a simple majority of those present and voting the Chair having the casting vote in the event of an equality of votes in addition to his/her vote as a member of the Committee.
- 3.2B Recorded votes shall be taken if requested by any one Committee Member, and any Member shall have the right to have the way s/he individually voted (or abstained) recorded in the minutes.
- 3.3 Each Member Authority shall be entitled to appoint that number of their Executive Elected Members as specified in Schedule 1 hereto to serve on the Joint Committee for a term expiring upon the retirement of the Executive Elected member following Council elections or unless earlier replaced by the appointing Member Authority following written notice to the Secretary (such written notice may be given by electronic mail) which will take effect upon receipt unless any later date is specified. Substitute members may be appointed in accordance with clause 3.11 below.
- 3.4 A Joint Committee Member appointed in accordance with 3.3 shall nevertheless cease to be a Joint Committee Member when he or she ceases to be an Executive Elected Member of the Member Authority by whom he or she is appointed.
- 3.5 Appointments should be notified formally in writing to the Secretary of the Joint Committee by the Chief Executive or other nominated officer for each Member Authority (such written notice may be given by electronic mail).
- 3.6 Any Joint Committee Members who are absent from meetings of the Joint Committee for three consecutive meetings (unless excused by the Joint Committee) or who communicate in writing to the Secretary to the Joint Committee a wish to resign shall thereupon cease to be Joint Committee Members. The Secretary shall notify the relevant Member Authority and invite them to appoint replacement Joint Committee Members in accordance with clause 3.3.
- 3.7 Notices of meetings and accompanying documents shall be sent to the members and officers of the Joint Committee and relevant officers of each Member Authority by the Secretary of the Joint Committee in accordance with clause 3.7C. ~~to the Chief Executive of each Member Authority by the Secretary of the Joint Committee.~~
- 3.7A The Secretary shall undertake the publication of notices of meetings and accompanying documents and conduct the Joint Committee's meetings in accordance with the 'Access to Information Procedure Rules' as contained within the Lead Authority's constitution. These requirements will include the publication of notices of any forthcoming Key Decisions to be taken by the Joint Committee (the 'Forward Plan') on the Lead Authority's website at least 28 clear days before a Key Decision is to be taken and publication of notice of a meeting, copies of the agenda and reports open to the public on the Lead Authority's website at least five clear working days before the meeting. Each Member Authority shall be responsible for ensuring they provide a link from their own website to the information published on the Lead Authority's website, or such other method of publication of the required information as they deem appropriate, in order to comply with their own access to information obligations.
- 3.7B A copy of the notice of meeting, the agenda for each meeting, any relevant reports and the minutes of the previous meeting shall be provided by the Secretary, at least five (5) clear days before such meeting to each Joint Committee Member.

- 3.7C At the same time, such papers will also be provided to:
- (i) to the Chief Executive of each Member Authority or such other senior officer of a Member Authority as may be nominated in writing by a Member Authority to the Secretary's clerk to the Joint Committee meeting;
 - (ii) the Monitoring Officer of each member Authority;
 - (iii) such other addressees as a Member Authority may nominate in writing from time to time to the Secretary to the Joint Committee.
- 3.7D The notice of meeting shall contain notice of all business, except urgent business, which is required to be brought before the Joint Committee either in the ordinary course of business, or which is brought by the Chairman, the Vice-Chairman or the clerk of the Committee.
- 3.7E Meetings of the Joint Committee will be open to the public and press except where the Joint Committee resolve that the press and public be excluded (which may only be during consideration of items containing confidential or exempt information within the meaning of the Local Government Act 1972) and in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 3.7F Minutes of the Joint Committee shall (subject to the provisions of clause 3.7E above) be available to the public and press and published on the Lead Authority's website as though they were minutes of a meeting of a Member Authority.
- 3.7G Decisions of the Joint Committee shall be published on the Lead Authority's website as soon as reasonably practicable after each meeting. Each Member Authority shall be responsible for ensuring they provide a link from their own website to the Joint Committee decisions published on the Lead Authority's website, or such other method of publication of the required information as they deem appropriate, in order to comply with their own access to information obligations.
- 3.8 There shall be an Annual Meeting of the Joint Committee in September of each year and at least one further ordinary meeting in February of each year for the approval, inter alia, of the Annual Business Plan unless the Joint Committee shall agree that further meetings are required at such time or times as shall be deemed necessary by the Joint Committee. A Special Meeting may be requisitioned by the Chief Executive of a Member Authority, such requisition to set out the business to be transacted at the meeting and to be delivered to the Secretary of the Joint Committee in normal circumstances at least ten clear working days prior to the date of the meeting and the Secretary shall undertake the relevant publication of notices and documents relating to the Special Meeting in accordance with this clause 3. Where it is certified that the business to be transacted is urgent business the time limit for delivery of such requisition may be waived by the Secretary of the Joint Committee following consultation with the Chair of the Joint Committee. Where a Key Decision is likely to be made at the Special Meeting the provisions of the Lead Authority's 'Access to Information Procedure Rules' in relation to urgent decisions shall apply.
- 3.9 At the meeting in February 2013 and thereafter every year at the ordinary meeting in February the Joint Committee shall elect by majority vote one of their members to be Chair for the ensuing 12 month period and another member to be Vice-Chair for the same term. The Chair and Vice-Chair shall not be from the same Member Authority nor any person hold office for longer than one term consecutively.
- 3.10 The Chair and Vice-Chair shall hold office until the appointment of their successors as provided for in clause 3.9 above or until such earlier date as they shall cease to be an Executive Elected Member of their respective Member Authorities in which case the

respective office shall be filled at the next meeting of the Joint Committee. In the absence of both the Chair and Vice-Chair from a meeting the members present shall before any other business is transacted elect, by majority vote, one of their number to preside at that meeting.

- 3.11 A substitute member shall only be entitled to attend, speak and vote as if an ordinary member of the Joint Committee where, at least one clear working day prior to the date of the meeting, notice has been given to the Secretary that:
- (i) it is impracticable for the named ordinary member of the Joint Committee to attend a specified meeting;
 - (ii) the named substitute member will attend in place of their named ordinary members; and
 - (iii) the named substitute member is also an Executive Elected Member.
- 3.12 The quorum of the Joint Committee shall be two members from at least two separate member authorities.
- 3.13 The proceedings of the Joint Committee shall not be invalidated by any vacancy in their number or by any defect in the appointment or qualification of any Joint Committee Member whose appointment is properly notified to the Secretary of the Joint Committee.
- 3.14 With the agreement of the Chair of the Joint Committee, or in his absence the Vice-Chair, or the member elected so to act in accordance with 3.10, any Elected Member of the Member Authorities or authorised officers from the Member Authorities or WME may attend and speak but not vote at meetings of the Joint Committee. The Executive Member responsible for procurement policy of each Member Authority or the Leader of the Member Authority shall have the right to attend and speak but not vote if they are not the nominated Joint Committee member.
- 3.15 Notwithstanding the provisions of 3.14, a Member Authority may, with the agreement of the Chair or in his absence the Vice- Chair, or the member elected so to act in accordance with 3.10, invite any person to attend a meeting of the Joint Committee for the purpose of making a presentation, or providing advice or information, on any item relevant to the Joint Committee's functions where that person is able to provide a professional or commercial viewpoint, which the Member Authority considers would be of assistance to the Joint Committee.
- 3.16 Each Joint Committee Member shall observe and comply with the provisions of the Code of Conduct for elected members adopted by their appointing Member Authority ("Code of Conduct").
- 3.17 Where a Joint Committee Member attends a meeting of the Joint Committee they must declare any disclosable pecuniary and other interests as required by their Code of Conduct either at the start of the meeting, or otherwise as soon as the interest becomes apparent in the course of the meeting.
- 3.18 An interest, other than a disclosable pecuniary interest, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the actions of the Joint Committee Member may be disregarded if the Joint Committee so resolves.
- 3.19 Where in relation to any meeting a Joint Committee Member has a disclosable pecuniary interest in an item which prevents their participation in the discussion and

voting on that item, the Joint Committee Member must leave the room for the duration of the discussion and voting on that matter. In respect of all other interests, the Chair has the right to decide whether a Joint Committee Member declaring an interest can observe the meeting and not contribute or should be asked to leave.

3.20 Where Joint Committee Member(s) has declared an interest which requires them to withdraw from the meeting and vote, the meeting will be deemed to be quorate.

4. Objectives

4.1 The objectives of the Joint Committee shall be to maintain effective, efficient and economic arrangements for the purchase and supply of energy at the request of and to the satisfaction of the Member Authorities and to other public bodies, non-profit making charitable organisations, education providers including Academies and private sector organisations delivering services on behalf of public bodies and such other organisations which may be approved by the Joint Committee (including approval via the Annual Business Plan) where it is permitted by law and is to the benefit of Member Authorities to do so.

4.2 The Joint Committee shall be responsible for the discharge of the functions of the Member Authorities in relation to those matters delegated by the Member Authorities set out in Schedule 2 hereto.

4.3 The Joint Committee shall make available the above services of WME in accordance with the approved Annual Business Plan, the interests of Member Authorities and the law.

5. Procedure

5.1 WME shall, following approval by the Joint Committee, adopt and operate a set of financial procedures and standing orders ~~regulations~~ for the procurement of goods and services.

5.1A In the absence of any specific Standing Orders adopted by WME applicable to an issue, the Lead Authority's standing orders shall apply to the Joint Committee in respect of that issue.

5.2 The Joint Committee shall approve and adopt ~~produce and~~ thereafter keep under review Strategic Policies for adoption ~~strategic policies necessary for the proper operation of the Committee and the WME business ("the Strategic Policies"), and where appropriate shall adopt the Lead Authority's relevant policies~~ (with or without revision) and shall conduct its affairs in conformity with the provisions of such Strategic Policies or subsequent amendment. The Strategic Policies shall include ~~comprise:-~~

- ~~i) an the Lead Authority's Equal Opportunities Policy;~~
- ~~ii) a the Lead Authority's Health and Safety Policy;~~
- ~~iii) pay and conditions for WME staff, together with other relevant employment policies where these are different to those of the Lead Authority; and~~
- iv) Standing Orders in respect of contract and procurement matters; ~~and~~
- v) a set of financial regulations governing the operation of the financial matters of WME;
- ~~vi) the Lead Authority's policies relating to modern environmental practices and sound environmental sustainability in the sourcing of its products and services from suppliers;~~
- vii) a risk management strategy.

5.3 The Joint Committee shall approve an Annual Business Plan. The Annual Business

Plan shall be recommended to the Joint Committee by the Chief Executives of the Member Authorities. The Chief Executives of the Member Authorities may recommend any material variations to the Annual Business Plan to the Joint Committee, including the acquisition of new customer markets not already referred to therein.

- 5.4 The Annual Business Plan shall comprise a comprehensive statement of the business aims and proposed actions of the Joint Committee for the ensuing financial year and inter alia shall include:-
- i) business and financial objectives
 - ii) performance standards
 - iii) marketing strategy
 - iv) indicative staffing levels and changes
 - v) proposed main activities
 - vi) permitted trading and customer markets that the Director has authority to engage in
- 5.5 The Joint Committee shall agree its own detailed budgets for internal use by the Joint Committee at a level of detail by the Treasurer and Director as necessary to exercise proper management control of the activities of WME. Such budgets shall be in accordance with the Annual Business Plan.
- 5.6 The Joint Committee (or the Director as provided in the Scheme of Delegation) shall be empowered to make any necessary operational decisions necessary for the effective operation of WME including the virement of budgets and appointment of staff provided any such actions are consistent with the approved Standing Orders, Financial Regulations, Annual Business Plan and Strategic Policies.

5A. Scrutiny Arrangements

- 5A.1 The decisions made by (and, for the avoidance of doubt, not mere recommendations of) the Joint Committee shall be subject to the Overview and Scrutiny arrangements of each Member Authority.
- 5A.2 Notification of the publication of decisions of the Joint Committee on the Lead Authority's website shall be sent to the nominated contact within each Member Authority (who has responsibility for administering that Member Authority's committee or democratic process) together with all those to whom agenda papers etc are despatched as soon as possible after publication in accordance with clause 3.7G above. Each Member Authority shall circulate notification of the publication of such decisions as they deem appropriate within their own authority.
- 5A.3 The Joint Committee Members and their officer advisers shall fully cooperate with the relevant Overview and Scrutiny Committee of the Member Authorities.
- 5A.4 Any decision or action of the Joint Committee may be called in for scrutiny by members of a Member Authority. A decision is called in by members of a Member Authority in the same way in which they would call in a decision of that Member Authority's Executive except that:
- (a) decision may not be called-in after 5pm on the 5th working day after the date upon which the decision is published.
 - (b) a call in of such a decision or action can only be made if the decision or action concerned affects the Member Authority whose membership wishes to call in the decision or action.
- 5A.5 Once a decision is called in it may not be implemented until the Overview and Scrutiny arrangements of the Member Authority whose membership has called in the decision or

action has been completed or if called in by more than one such Member Authority, until the last has been completed. Where a Member Authority's Overview and Scrutiny committee or a full Council requires reconsideration of the decision by the Joint Committee the Joint Committee shall arrange for the decision to be reconsidered in the light of comments made by the Committee or the full Council and the final decision of the Joint Committee shall not be subject to call in.

6. Reports

- 6.1 The Joint Committee shall receive in each year at each September annual meeting the report of the Director and the Treasurer in respect of the twelve months ending the Thirty first day of March of that year and a copy thereof shall be forwarded to the Chief Executive of each Member Authority.
- 6.2 The reports shall include, inter alia:-
- a) A statement showing progress in achieving the objectives in the Annual Business Plan including a report and financial statement on the operation of WME.
 - b) A summary revenue account and statement of capital spending including the recommendations as to the distribution or use of any revenue surplus and the financing of any capital expenditure.
- 6.3 At each meeting of the Joint Committee the Joint Committee shall consider whether it will be appropriate to task the Director with the holding of meetings or the undertaking of reviews on any matter (at the absolute discretion of the Joint Committee) upon which it shall require a formal report to be presented at its next or any subsequent meeting. .

7. Overheads, Pricing and Financial Requirements

- 7.1 The costs of all overheads including staffing costs and liabilities shall be recovered as an oncost on any energy or services sold.
- 7.2 The prices at which energy and services shall be sold shall be at the discretion of the Director. The Director will fix prices with a view to attaining the following objectives:-
- a) Meeting budgeted operating costs for the ensuing year.
 - b) Achieving the projected surplus of income over expenditure in accordance with the agreed Annual Business Plan.
- 7.3 a) The Joint Committee shall determine the level of accumulated surplus that shall be retained for contingency, for future investment or for other reserve purposes, having considered the recommendations of the Treasurer and Director; and
- b) The whole or any part of any remaining accumulated surplus balance (not otherwise retained for contingency, future investment or reserve purposes) shall be distributed to the Member Authorities in the manner described in clause 8 hereto
- 7.4 Interest due or accrued on credit or debt balances with the Lead Authority shall be accounted for.
- 7.5 The accounts and records of WME shall be subject to a continuous process of audit by the Treasurer to the Joint Committee and shall also be subject to audit in accordance with the provisions of Sections 2 and 3 of the Audit Commission Act 1998. The Member
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Authorities agree to recommend to the Commission that the same auditors should be appointed to audit the accounts of the Lead Authority and the Joint Committee.

- 7.6 The accounts and records of WME shall be open for inspection by the Chief Finance Officer or other nominated officer of any Member Authority.

8. Distribution of Surplus

- 8.1 In ~~September~~ of each year the accumulated surplus identified in clause 7.3(b) shall be distributed in accordance with the relevant provisions of this clause 8.

- 8.2 ~~NOT USED~~ The accumulated surplus identified for distribution in September 2012 shall be distributed to each Member Authority in accordance with clause 8.5.

- 8.3 ~~NOT USED~~ The accumulated surplus identified for distribution in September 2013 shall be distributed to each Member Authority in proportions calculated using the arithmetic mean of the proportions identified by the distribution method stated in clause 8.5 and proportions identified by the distribution method stated in clause 8.6

- 8.4 ~~NOT USED~~ The accumulated surplus identified for distribution in September 2014 and in September of each subsequent year during the term of this Agreement shall be distributed to each Member Authority in accordance with clause 8.6.

- 8.5 ~~NOT USED~~ In respect of clause 8.2 the balance of the accumulated surplus shall be distributed as follows:

- ~~a) the proportion of the accumulated surplus identified as arising from sales and receipts generated by transactions other than with a Member Authority shall be divided and distributed between the Member Authorities in equal shares (which for the avoidance of doubt shall be a 25% share for each of the Member Authorities)~~
- ~~b) the amount of the accumulated surplus identified which is attributable to the use of WME (or its predecessor West Mercia Supplies) by transactions with the Member~~

~~Authorities shall be divided between the Member Authorities in a ratio equal and rounded to the nearest 0.5% percentile equivalent of their respective previous five year purchasing history of each Member Authority from WME (or its predecessor West Mercia Supplies)~~

- 8.6 In respect of clause 8.4 ~~t~~ The balance of the accumulated surplus identified for distribution shall be divided and distributed to each Member Authority as follows:

- a) each Member Authority shall receive a percentage share of the accumulated surplus identified for distribution arising from transactions with the Member Authorities calculated in accordance with the percentage of the gross profit generated by the receiving Member Authority's transactions with WME during the financial year prior to the date of distribution; and
- b) each Member Authority shall receive 25% of the accumulated surplus identified for distribution generated by transactions with non-Member Authority customers during the financial year prior to the date of distribution .

9. Obligations of Member Authorities

- 9.1 Each Member Authority shall defray the expenses of their own respective Joint Committee Members.
- 9.1A Except as expressly stated, where the costs, expenses and liabilities of the Joint Committee and the operation of the business cannot be met out of the monies identified in clause 7.3a the provisions of clause 9.2 and 9.3 below shall apply.
- 9.2 Subject to clause 9.3, the Member Authorities shall be jointly liable in equal shares and shall indemnify the Lead Authority for the liabilities of WME in respect of all claims, liabilities and costs incurred by the Lead Authority in respect of the staff employed or previously employed by the Lead Authority for the purposes of WME or its predecessor West Mercia Supplies.
- 9.3 Contracts entered into in the name of WME (or in its previous name of West Mercia Supplies or 'WMS) shall be the joint and several liability of all Member Authorities. Where contracts are entered into by WME on behalf of a named body it shall be presumed that WME acts as agent for that body unless the contrary can be shown.
- 9.4 Clauses 9.2 and 9.3 shall survive the termination of this agreement.

10. Termination

- 10.1 ~~NOT USED For the avoidance of doubt the Member Authorities agree that they may not withdraw from membership during the term of this agreement.~~
- 10.2 If the Member Authorities at any time jointly and unanimously decide that it is expedient to discontinue WME any assets vested in it or in the Lead Authority in trust for the Member Authorities shall be distributed amongst the Member Authorities at the time of such discontinuance in such manner as the Member Authorities may jointly determine to be fair and reasonable after payment of all expenses or liabilities properly incurred. For the avoidance of doubt all expenses and liabilities shall include any redundancy costs or pension fund deficit, actuarially assessed at the date of termination, or any such related costs payable by the Lead Authority in respect of the employees of WME Any deficit arising at such time shall be borne by the Member Authorities in equal shares.
- 10.3 The Member Authorities agree that an individual Member Authority may not withdraw from membership during the term of any Key Contract with a Utility Supplier to which that Member Authority is a party on behalf of WME.
- 10.4 Subject to 10.3 above, should an individual Member Authority wish to terminate their membership of the Joint Committee they may serve at least 12 months written notice of termination ("the Notice") to the Chief Executives of the other Member Authorities and the Director to take effect on the latest date of expiry of any unexpired agreements with the Utility Supplier(s) to which the individual Member Authority is a party at the date the Notice is served.
- 10.5 Where an individual Member Authority has served Notice further to clause 10.4 (hereafter "the Exiting Authority"), during the Notice period the Exiting Authority shall not be a party to any renewal of an Utility Supplier contract and the Exiting Authority shall cease to be entitled to any surplus generated from that renewed Utility Supplier contract whilst the Notice period is being served. During the Notice period the Exiting Authority shall not remove any sites from the list of sites being supplied under the Energy Supply contracts

without the approval of the Director.

10.6 The Treasurer shall assess the assets and liabilities of the Joint Committee as they exist at the date of termination of the Exiting Authority's membership of the Joint Committee. Upon exit, the Exiting Authority shall be entitled to an equal share of the value of any assets held on behalf of the Joint Committee net of any liabilities of the Joint Committee. The Exiting Authority shall be liable for an equal share of any liabilities of the Joint Committee incurred up to the date of their exit, irrespective of whether the liability is claimed prior to or after the date of exit which shall include the Exiting Authority's equal contribution to any pension fund deficit actuarially assessed as at the date of exit. The Treasurer shall calculate any amount due to or from the Exiting Authority as at the date of exit of the Exiting Authority. Any payments for liabilities due from the Exiting Authority may be deducted from any surpluses due to the Exiting Authority in accordance with this Agreement or from any payment due upon exit to reflect the value of any share of the assets of the Joint Committee to which the Exiting Authority is entitled.

10.7 Where the Joint Committee requests a payment from the Exiting Authority for a contribution to its liabilities in accordance with clause 10.6, the Exiting Authority shall make the relevant payment within 20 days of receipt of the request.

10.8 Following receipt of a Notice pursuant to clause 10.4, where the remaining Member Authorities jointly decide that it is not expedient to continue with the Joint Committee, the provisions of clause 10.2 shall take effect and apply in precedence over the remainder of this clause and the Notice shall be revoked.

11. Disputes

11.1 Any dispute arising under or out of this Agreement shall be referred by a Member Authority, by notice in writing to the others, to the Chief Executives of the Member Authorities, who shall co-operate in good faith to resolve the dispute as amicably as possible within 30 days of service of the notice.

11.2 If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators.

11.3 If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be England and Wales. The arbitration shall be governed by both the Arbitration Act 1996 and Rules as agreed between the parties. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary.

11.4 Nothing in this clause shall be construed as prohibiting a party from applying to a court for interim injunctive relief.

12. Amendment

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12. This Agreement may be varied from time to time by the unanimous decision of the Member Authorities who remain in membership at the time of such amendments such amendments being recorded in memoranda to be attached hereto and executed under the hands of the duly authorised Officers on behalf of the Member Authorities.

IN WITNESS whereof Shropshire Council, The County of Herefordshire County, Worcestershire County Council and The Borough of Telford & Wrekin ~~Council~~ have caused their respective common seals to be hereunto fixed the day and year first before written.

THE COMMON SEAL of SHROPSHIRE)
COUNCIL was hereunto)
affixed in the present of:)
the date and year first before written)

SEALED BY SHROPSHIRE COUNCIL

THE COMMON SEAL of THE COUNTY)
OF HEREFORDSHIRE DISTRICT COUNCIL)
was hereunto affixed in the presence of:)
the date and year first before written)

SEALED BY THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

THE COMMON SEAL of THE COUNTY)
OF WORCESTERSHIRE COUNTY COUNCIL)
was hereunto affixed in the presence of:)
the date and year first before written)

SEALED BY WORCESTERSHIRE COUNTY COUNCIL

THE COMMON SEAL of THE BOROUGH OF)
TELFORD & WREKIN COUNCIL was hereunto)
affixed in the presence of:)
the date and year first before written)

SEALED BY THE BOROUGH OF TELFORD & WREKIN

SCHEDULE 1**MEMBER AUTHORITIES**

| Name of Member Authority | Number of Joint Committee Members |
|--|-----------------------------------|
| The County of Herefordshire District Council | 2 |
| Shropshire Council | 2 |
| Worcestershire County Council | 2 |
| Borough of Telford & Wrekin | 2 |

SCHEDULE 2

DELEGATIONS

1. The following matters are delegated to the Joint Committee by the Member Authorities:-
 - (i) To determine the strategic direction and have oversight of WME on behalf of the Member Authorities and in so doing exercise all powers and responsibilities of the Member Authorities to that end.
 - (ii) To purchase on behalf of the Member Authorities such energy and utility services as the Member Authorities may from time to time require WME to procure.
 - (iii) To purchase such energy and utility services as may from time to time be required by anybody which is listed as approved in the current Annual Business Plan or is specifically approved by the Joint Committee provided always that the extent of such trading shall be contained within any limit or restrictions contained in the Annual Business Plan and the provisions of section 1 of the Localism Act 2011.
 - (iv) To appoint a Director with delegated responsibility for the day to day running of the business, the implementation of any strategy agreed by the Joint Committee and responsibility to report to the Joint Committee such officer to be employed and line managed by the Lead Authority which shall on the recommendation of and in consultation with the Director employ such staff, equipment and premises as may be required in connection therewith and in respect of which budget provision has been made in accordance with the Annual Business Plan.
 - (v) To introduce by consultation or negotiation as appropriate revised terms and conditions for WME employees but making it clear at all times that they remain employees of Shropshire Council as the lead authority as a matter of employment law.