

**Dated** **2021**

**WEST NORTHAMPTONSHIRE AUTHORITY**

and

**NORTH NORTHAMPTONSHIRE AUTHORITY**

**ADMINISTRATIVE AGREEMENT**

For the Hosted / Lead Provision of  
Discharged Functions and Delivered Services

between

West Northamptonshire Council

and

North Northamptonshire Council

Anthony Collins Solicitors LLP

34 Edmund Street

Birmingham, B3 2 ES

Ref. OJB/MM/51240.0001

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**THIS AGREEMENT** is made the                      day of                      2021

**BETWEEN**

- (1) **WEST NORTHAMPTONSHIRE COUNCIL (“WNC”)** of One Angel Square, Angel Street, Northampton, NN1 1ED
- (2) **NORTH NORTHAMPTONSHIRE COUNCIL (“NNC”)** of Sheerness House, 41 Meadow Road, Kettering, NN16 8TL

**WHEREAS**

Pursuant to the Northamptonshire (Structural Changes) Order 2020 on the 1 April 2021

- (A) the County of Northamptonshire is abolished as a local government area and the Northamptonshire County Council is wound up and dissolved
- (B) the West Northamptonshire districts and boroughs are abolished as local government areas and shall be wound up and dissolved
- (C) the North Northamptonshire districts are abolished as local government areas and shall be wound up and dissolved
- (D) a new district council to be known as West Northamptonshire Council is established as the sole principal authority for the non-metropolitan district of West Northamptonshire
- (E) a new district council to be known as North Northamptonshire Council is established as the sole principal authority for the non-metropolitan district of North Northamptonshire
- (F) The new Councils have all the powers of a non-metropolitan county council and a district council and shall become respectively the West Northamptonshire Council and the North Northamptonshire Council on 1 April 2021
- (G) During the shadow period the shadow authorities are under a duty to take all such practical steps as are necessary or expedient to prepare for the transfer of the discharge of functions and the delivery of services from Northamptonshire County Council to the West Northamptonshire Council and the North Northamptonshire Council and to ensure the continuation of delivery of public services after 1 April 2021
- (H) Pursuant to their powers under the Local Government Act 1972 the shadow authorities have agreed that for a specified period of time the functions and services previously discharged and delivered by Northamptonshire County Council shall be discharged and delivered by one of the shadow authorities, acting as the host or lead authority, for and on behalf of the other authority

- (I) Pursuant to their powers under the Local Government Act 1972 the shadow authorities have agreed to establish a Joint Committee to govern the arrangements for the discharge of Functions and Services set out in Schedule 2 of this Agreement.
- (J) This Agreement sets out the administrative arrangements and general terms on which the Hosted and Lead Functions and Services will be discharged and delivered between the Councils pursuant to Section 101 of the Local Government Act 1972
- (K) The Councils, during the term of this Agreement, shall agree arrangements for the discharge of those Functions and the delivery of the Services herein provided for or subject to existing PFI agreements.

## **IT IS HEREBY AGREED AS FOLLOWS**

### **1. DEFINITIONS AND INTERPRETATION**

**“Additional Sum”** means a sum in addition to a Financial Payment for undertaking Extraordinary Work;

**“Arbitrator / Expert”** means the person appointed in accordance with clause 37.3.1 to 37.5.5;

**“Commencement Date”** means 1 April 2021;

**“Confidential Information”** means information which is disclosed by a Party or its staff in connection with this Agreement which is expressed to be confidential or which the other Party ought reasonably to regard as being confidential to the disclosing Party whether or not such information is expressly stated to be confidential or marked as such;

**“Council”** means West Northamptonshire Council or North Northamptonshire Council as the context dictates;

**“Councils”** means both West Northamptonshire Council and North Northamptonshire Council as the context dictates;

- “Data Protection Legislation”** means all Law relating to privacy and the processing of personal data, or any replacement EU or UK data protection or related privacy Law in force in England and Wales, including all applicable guidance and codes of practice issued by the Information Commissioner’s Office;
- “Employees”** means all employees of the Parties discharging the Function and / or delivering the Services;
- “EIR”** means the Environmental Information Regulations 2004 and any successor legislation and any guidance and / or codes of practice issued by the Information Commission in relation to such legislation;
- “Exit Strategy”** means the strategy set out in Schedule 6 of this Agreement;
- “Extraordinary Work”** means work undertaken in addition to the Function;
- “Financial Payment”** means a financial payment made by the Receiving Authority to the Host / Lead Authority for the discharge of the Function and the delivery of the Services;
- “Financial Year”** means the year ending on the 31st March;
- “FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner in relation to such legislation;
- “Functions”** means the Functions to be discharged by the Host or Lead Authority for the Receiving Authority in accordance with this Agreement;
- “Host Authority”** means the Host Council for the Function and the Services;
- “Intellectual Property Rights”** means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether

registrable or not in any country (including but not limited to the United Kingdom);

**“Joint Committee”**

Means the Joint Committee established by the Shadow Authorities to govern the functions and Services delivered as set out in Clause 4. means the body established by the Parties as set out in clause 4;

**“Joint Officer Board”**

**“Law”**

means any of the following in force in England and Wales:

(1) any Act of Parliament or subordinate legislation within Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within Section 2 of the European Communities Act 1972;

(2) any applicable guidance, direction or determination with which either Council is bound to comply; and

any applicable judgment of a relevant court of law which creates binding precedent in England and Wales;

**“Lead Authority”**

means the Lead Council for the Function and the Services;

**“Material Breach”**

means a breach of this Agreement that is of sufficient seriousness having regard to the nature of the breach, the consequences of the breach for any Party, the significance of the breach in the context of this Agreement, and shall include (without limitation) in particular the failure to pay sums due under this Agreement;

**“Member”**

means an elected councillor of one of the Parties;

**“Monitoring Officer”**

means the officer designated by a local authority as the person responsible for the proper and lawful administration of its affairs as required by section 5 of the Local Government and Housing Act 1989;

**“Month”**

means calendar month;

**“New Supplier”**

means any person, firm or company who is engaged

whether directly or indirectly by the Receiving Authority after the Termination Date in the discharge of functions and delivery of services which are the same or similar to the Functions and Services or any part of them;

- “Officer”** means an employee of either Party;
- “Parties”** means West Northamptonshire Shadow Authority and North Northamptonshire Shadow Authority and from 01 April 2021 West Northamptonshire Council and North Northamptonshire Council, and “Party” shall be construed accordingly.
- “Personal Data”** has the meaning set out in the Data Protection Legislation
- “Processing”** has the meaning set out in the Data Protection Legislation
- “Receiving Authority”** means the Council receiving the Function and the Services from the Host / Lead Authority.
- “Services”** means the Services provided by the Host or Lead Authority discharging the Function;
- “s151 Officer”** means the Officer designated by a local authority as the person responsible for the proper administration of its financial affairs, as required by section 151 of the Local Government Act 1972;
- “Termination Employees”** means the Employees who it is determined in accordance with the procedure as set out in clause 21.7 will transfer to the Host or Lead Authority on the Termination Date;
- “Transferring Employees”** means employees of the Receiving Authority who are listed in Schedule 4;
- “TUPE Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- “Working Days”** means the days on which the Parties’ offices are open to the public to attend, whether physically or by remote means but does not include times when access is limited to the Parties websites



- 1.1 The terms and expressions set out above shall have the meanings ascribed therein.
- 1.2 Words importing the singular meaning include where the context so admits the plural meaning and vice versa.
- 1.3 Words importing the masculine include the feminine and the neuter.
- 1.4 Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted.
- 1.6 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

## **2. POWERS AND DELEGATION**

- 2.1 In exercise of their powers under the Northamptonshire (Structural Changes) Order 2020 and sections 101 (1) (b) and 113 of the Local Government Act 1972 and under Part 1A Chapter 2 Section 9EB of the Local Government Act 2000 and pursuant to the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and any other enabling legislation, the Parties have agreed the delegation of statutory functions in respect of Executive Functions as follows:
  - 2.1.1 The Receiving Authority has agreed to discharge the Functions and Services set out in Schedule 1 of this Agreement and the delivery of the Services by the Host / Lead Authority;
  - 2.1.2 The Host / Lead Authority has agreed to discharge the Function and deliver the Services in accordance with this Agreement and in compliance with all relevant Law.
- 2.2 Where a Function within a Service that is Hosted or Lead cannot be lawfully aggregated, the Receiving Authority shall retain the power to exercise such (Non-Executive) Functions pursuant to Regulation 2 and schedule 1 of the Local Authorities (Functions & Responsibilities) (England) Regulations 2000 (as amended). In respect of Non-Executive Functions; such powers shall be either reserved to Full Council or

delegated by Full Council to Officers pursuant to a Scheme of Delegation as set out in [ ], such Arrangements to be governed by [ ].

- 2.3 The Parties have entered into this Agreement in the spirit of partnership with the object of providing an effective economic and efficient service and the Parties declare their intention to seek to continuously improve the discharge of the Functions and delivery of the Services in accordance with the principles of best value.

### **3. COMMENCEMENT AND TERM**

- 3.1 This Agreement shall commence on the Commencement Date and shall continue in force from year to year **PROVIDED THAT** this Agreement may be terminated:

3.1.1 by any Party serving not less than twelve months' notice in writing upon the other or;

3.1.2 in the event of a Material Breach of this Agreement in accordance with clause 21.

provided that this Clause 3 may be amended by the agreement of the Parties.

### **4. GOVERNANCE AND SCRUTINY**

- 4.1 The Parties shall establish a Joint Committee to exercise the executive function of the Parties in respect of the Functions and the Services subject to this Agreement and for the purposes of this Agreement.

4.2 The Joint Committee shall operate and conduct its business in accordance with the terms of the Joint Committee Agreement and the Terms of Reference specified therein.

4.3 The Parties shall establish a Joint Officer Board in accordance with the Terms of Reference agreed by the Joint Committee.

4.4 The Parties shall equally provide the resources and support to the Joint Officer Board as may be required the costs of which shall be shared equally by the Parties.

### **5. HOSTED / LEAD FUNCTION AND SERVICES**

- 5.1 The Functions and Services subject to this Agreement shall be as set out in the List of Functions & Services at Schedule 1 and / or as otherwise agreed by the Parties Committee from time to time.

## **6. DISCHARGE OF FUNCTION AND DELIVERY SERVICES**

- 6.1 During the term of this Agreement the Host / Lead (Provider) Authority and the Receiving Authority shall agree a Service Plan for the financial management and provision of the Hosted / Lead Functions and Services for the remaining term of this Agreement and shall agree arrangements for the continuation of the Functions and Services subsequent to the termination of this Agreement. Such Service Plans and arrangements shall be approved by the Joint Committee.
- 6.2 The Host / Lead (Provider) Authority shall discharge the Functions and deliver the Services (set out in Schedules 1 and 2 of this Agreement), for and on behalf of the Receiving Authority, in accordance with the Terms of this Agreement
- 6.3 Arrangements for the discharge of the Functions and delivery of the Services subsequent to the termination of this Agreement shall be approved by the Councils.

### **Extraordinary Work**

- 6.4 The Parties acknowledge that the agreed budget as set out in the Service Plans shall include the cost of discharging the Functions and delivering the Services other than Extraordinary Work.
- 6.5 Extraordinary Work shall be accounted for separately.
- 6.6 Unless otherwise agreed by the Parties, Extraordinary Work shall include the following:
- 6.6.1 work outside of the Service Schedules for the Functions and Services as detailed at Schedule 2 or outside of the subsequent Service Plan agreed by the Parties for the discharge of a Function and / or the delivery of a Service for the term of this Agreement;
  - 6.6.2 work required to be undertaken or commissioned for or in connection with the discharge of a Function and / or the delivery of a Service outside of the agreed Service Plan for the Functions and Service including but not limited to procurement, professional and consultancy services;
  - 6.6.3 work undertaken for project teams or boards established in accordance with project management principles for delivery of significant / major one-off projects with discharge of the Functions and / or the delivery of the Services;
  - 6.6.4 work pertaining to the arrangements to be agreed by the Parties for the discharge of the Functions and the delivery of Services subsequent to the termination of this Agreement;
  - 6.6.5 other work identified as additional work as agreed by the Parties.

6.7 An Additional Sum shall be payable for undertaking Extraordinary Work in accordance with terms agreed between the Parties and as approved by the Joint Committee.

## **7. PRIVATE FINANCE INITIATIVE (PFI) PROVISION**

7.1 Where the discharge and / or delivery of a Hosted or Lead Function and / or Service is subject to an existing PFI agreement the discharge of the Function and / or the delivery of the Service shall continue on the terms of the existing PFI agreement and in accordance with such interim arrangements as have been agreed by the Parties in respect thereof until such time as the Parties have agreed alternative arrangements for the continuing discharge and delivery of those Functions and Services in accordance with clause 8.3

7.2 Such interim arrangements as are provided for at clause 8.1 shall include but are not limited to the participation of the Receiving Authority in the management of the PFI agreements.

7.3 The Parties agree that during the term of this Agreement they shall review the discharge and delivery of those Functions and Services subject to existing PFI agreements and the terms of such agreements and shall agree such alternative arrangements or variations to the PFI agreements as may be required to ensure the continuation of the Function and Service subsequent to the termination of this Agreement.

## **8. WARRANTIES**

8.1 The Host / Lead Authority warrants and represents that:-

8.1.1 it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good service practice applicable to the Function and the Services;

8.1.2 all obligations set out in this Agreement shall be performed and rendered by appropriately experienced, qualified and trained Employees (or locums or secondees if appointed) with all due skill, care and diligence;

8.1.3 the Function shall be discharged and the Services shall be delivered in accordance with this Agreement and in compliance with all relevant law.

## **9. COMPLAINTS**

9.1 Complaints from the public or any third parties relating to the discharge of the Function and the delivery of the Services shall be handled in accordance with the Host / Lead

Authority's corporate complaints procedure; and all such complaints and how they have been resolved shall be notified to the Receiving Authority where the complaint concerns the discharge of the Function or the delivery of the Service for the Receiving Authority.

- 9.2 Complaints relating to the discharge of the Function and the delivery of the Services from Officers or Members of the Receiving Party shall be reported to and investigated by the [Joint Officer Board / Joint Committee] or such other Officer as is considered appropriate by the Host / Lead Authority or as agreed with the Officer or Member.
- 9.3 The Parties shall co-operate fully with each other in responding to any legal proceedings or enquiries in the course of investigations carried out by the Local Government and Social Care Ombudsman the Information Commissioner or any other regulator relevant statutory body or statutory officer which shall include the Monitoring Officers and s151 Officers of the Parties.

## **10. TRANSFERRING EMPLOYEES**

- 10.1 The Parties acknowledge that the discharge of the Function and the delivery of the Services by the Host / Lead Authority from the Commencement Date shall with respect to each of any transferring Employees ("the Transferring Employees") shall be treated as a relevant transfer for the purposes of the TUPE Regulations and the Parties agree that as a consequence of that relevant transfer the contracts of employment made between the Receiving Authority and the Transferring Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under occupational pension scheme) shall have effect from and after the Commencement Date as if originally made between the Host / Lead Authority and the Transferring Employees.
- 10.2 The Transferring Employees shall remain members of Northamptonshire County Council Local Government Pension Scheme [or its successor] (the "Scheme") after the relevant transfer referred to in clause 12.1 or shall remain eligible to be members for those who opt out after transfer. The Parties agree that any payments payable by the Host / Lead Authority to the Scheme in respect of the Transferring Employees shall be calculated on the assumption that as at the Commencement Date any liabilities relating to the Transferring Employees' membership prior to the Commencement Date are 100% (one hundred per cent) funded (as determined by the Actuary to the Scheme in accordance with the most recent actuarial valuation of the Scheme before the Commencement Date) by the Receiving Authority.
- 10.3 The Receiving Authority warrants that the information in respect of the Transferring Employees as set out in Schedule 4 and all other information relating to the Transferring Employees disclosed to the Host / Lead Authority pursuant to regulation 11 of the TUPE Regulations is accurate and complete

10.4 The Receiving Authority shall indemnify the Host / Lead Authority from and against each and every cost claim, liability expense or demand which is properly and reasonably incurred by the Host / Lead Authority in connection with and as a result of any action or omission by the Receiving Authority up to and including the Commencement Date in connection with any matter relating to or arising out of:

10.4.1 the Host / Lead Authority's breach of its obligations under clause 12.3

10.4.2 the employment or termination of employment of any Transferring Employee by the Receiving Authority up to and including the Commencement Date;

10.4.3 anything done or omitted to be done by or on behalf of the Receiving Authority in respect of any Transferring Employee up to and including the Commencement Date which is deemed to have been done or omitted to be done by or on behalf of the Host / Lead Authority in accordance with the TUPE Regulations save insofar as any such failure results from any failure by the Host / Lead Authority to comply with its obligations pursuant to regulation 13 (4) of the TUPE Regulations;

10.4.4 any failure by the Receiving Authority to pay any of the Transferring Employees any remuneration due or provide any benefits in respect of the period prior to Commencement Date;

10.4.5 any claim by or on behalf of all or any of the Transferring Employees arising out of any failure by the Host / Lead Authority to comply with its legal obligations in relation to information and consultation pursuant to regulations 13 and 14 of the TUPE Regulations save insofar as any such failure results from any failure by the Host / Lead Authority to comply with its obligations pursuant to regulation 13 (4) of the TUPE Regulations;

10.4.6 any claims arising out of any substantial change by WNC / NNC [delete as appropriate] to the employees' material detriment.

10.5 The Receiving Authority shall indemnify the Host / Lead Authority against all claims, liabilities, costs, demands (including all reasonable expenses associated therewith) made within twelve months of the Commencement Date by or in relation to each and every Employee or former Employee of the Receiving Authority who is not a Transferring Employee and who was prior to the Commencement Date employed by the Receiving Authority in the provision of the Functions in respect of whom it is alleged their employment or any liabilities have transferred to the Host / Lead Authority pursuant to the TUPE Regulations being any claim, liability, cost and demand arising out of:

- 10.5.1 the employment or termination of employment of such a person up to and including the Commencement Date; or
- 10.5.2 the employment or any termination of employment of such a person after the Commencement Date by the Receiving Authority; or
- 10.5.3 any claim by or on behalf of any such person arising out of any failure to comply with regulations 13 and 14 of the TUPE Regulations.

**PROVIDED THAT** in the event of any such claim being made the Receiving Authority shall forthwith notify the Host / Lead Authority and no agreement or settlement shall be reached or entered into by the Receiving Authority without the prior written consent of the Host / Lead Authority such consent not to be unreasonably withheld or delayed.

10.6 The Host / Lead Authority shall indemnify and keep the Receiving Authority indemnified from and against each and every cost, claim, liability, expense or demand which is properly and reasonably incurred by the Receiving Authority in connection with or as the result of any act or omission by the Host / Lead Authority up to and including the Termination Date in connection with any matter relating to the Transferring Employees as follows:

- 10.6.1 the employment or termination of employment of any Transferring Employee by the Host / Lead Authority after the Commencement Date, but up to and including the Termination Date;
- 10.6.2 any claim by or on behalf of all or any of the Transferring Employees arising out of the Host / Lead Authority's failure to comply with its legal obligations in relation to information and consultation pursuant to regulations 13(4).

## **11. SECONDED EMPLOYEES AND THE APPLICATION OF S113 LGA 1972**

11.1 The Parties agree that where any Employees of the Receiving Authority are engaged on work for the Host / Lead Authority the provisions of section 113 of the Local Government Act 1972 will apply and that those Employees will be placed by the Receiving Authority at the disposal of the Host / Lead Authority for the purposes of the Function and the Services, and such Employees shall be treated at all times as an Officer of the Host / Lead Authority whilst so engaged and the Receiving Authority undertakes that it shall have duly consulted such Employees prior to placing them at the Host / Lead Authority's disposal and that the Receiving Authority shall continue to treat such employees as its own Employees.

11.2 A written record of which Employees shall be treated as seconded section 113 of the Local Government Act 1972 and the purposes of their secondment shall be agreed between WNC/NNC from time to time.

## **12. ACCOMMODATION**

- 12.1 The Receiving Authority shall make available as required and as agreed by the Parties from time to time working space and associated facilities and services (including internet connection to facilitate remote access to the Host / Lead Authority to accommodate the number of Employees necessary for the discharge of the Function and the delivery of the Services to be performed at the Receiving Authority's locations in accordance with this Agreement.
- 12.2 The Receiving Authority hereby grants a licence to the Host / Lead Authority to allow any of the Employees to enter the Receiving Authority's offices for the purposes of discharging the Function and delivering the Services and to utilise such associated services and facilities as shall be provided from time to time in accordance with this clause 14.
- 12.3 The Parties agree that no charge shall be made for the provision of such accommodation, facilities and services unless subsequently agreed between the Parties and approved by the Joint Committee.

## **13. ASSETS**

- 13.1 The Parties shall agree from time to time and as required the utilisation of and / or the transfer to the Host / Lead Authority from the Receiving Authority of any assets belonging to the Receiving Authority the purpose of the discharge of the Function and the delivery of the Services.
- 13.2 The transfer of any assets under clause 15.1 shall be on such terms as are agreed by the Parties and approved by the Joint Committee.

## **14. ICT AND EQUIPMENT**

- 14.1 Each Party shall cooperate with each other to make technical specifications available to each other as necessary to ensure the continuous discharge of the Function and the delivery of the Services and shall take appropriate steps to protect against unauthorised access tampering or systems failure of each other's ICT systems.
- 14.2 From the Commencement Date the Parties shall ensure that all their employees engaged in the discharge of the Functions and the delivery of the Services shall have access to all of the Parties' data as is necessary for the discharge of the relevant Function and the delivery of the relevant Service at the Parties' offices (and remotely) [and shall not have access to any of the Parties' data which is not relevant to the provision of the Function or the delivery of the Services].



14.3 The Parties agree that all Employees will comply with their respective security policies and shall undertake training as necessary and that appropriate security badges to gain entry to accommodation at the Parties' offices shall be provided to all Employees as appropriate.

## **15. SUPPORT SERVICES**

15.1 The Receiving Authority shall provide to the Host / Lead Authority such administrative and support services in connection with the discharge of the Function and the delivery of the Services on such terms as may be agreed by the Parties and approved by the Joint Committee from time to time.

## **16. SERVICE PLANS AND FINANCIAL PAYMENTS**

16.1 The Parties agree that the budget for the Functions and Services shall be set out in Service Plans to be developed and Agreed during the term of this Agreement.

16.2 The Receiving Authority shall pay to the Host / Lead Authority any Additional Sums for Extraordinary Work within twenty-eight days of receipt of an invoice in such intervals as may be agreed between the Parties or in accordance with such other arrangements as may be agreed by the Parties and approved by the Joint Committee.

16.3 The Host / Lead Authority shall use their reasonable endeavours to ensure that the actual cost of the Function and Services for the Receiving Authority is not more than the agreed budget as set out in the Service Plans and where the Host / Lead Authority considers that the budget may be exceeded they shall seek the approval of the Receiving Authority at the earliest opportunity and in any event prior to the sum being spent **PROVIDED THAT** where approval is not granted (or is granted in part) the Parties acknowledge that there may be a consequential diminution in the discharge of the Function and the delivery of the Services but that such diminution shall not be a Material Breach for the purposes of clause 21.1.

### **Dispute as to Sums Payable**

16.4 In the event of a dispute between the Parties as to the amount which may be due to the Host / Lead Authority from the Receiving Authority in any year the disputed amount may be dealt with in accordance with the dispute resolution procedures set out in clause 37.

16.5 Whenever in respect of this Agreement any sum of money shall be recoverable from, or payable by, one party to the other, the same may not be set- off from any sum due, or which at any time thereafter may become due to the other.

16.6 In the event that the Receiving Authority does not make a Financial Payment on the appropriate due date or otherwise as agreed by the Parties or if it is determined (by agreement of following the dispute resolution procedures set out in clause 37) that the Receiving Party has wrongly disputed a sum claimed then the Host / Lead Authority reserves the right to charge daily interest at an annual rate of 2% above the Bank of England base lending rate on the unpaid Financial Payment from the due date of payment to the actual date of payment.

### **Annual Financial Estimates**

16.7 The Host / Lead Authority shall each year provide to the Receiving Authority an estimated budget for the discharge of the Function and the delivery of the Services for the following financial year.

## **17. COSTS OF FUNCTION AND SERVICES**

17.1 The Host / Lead Authority shall ensure that any sums awarded to them in respect of costs for the discharge of the Function and / or delivery of the Services shall be reimbursed to the Receiving Authority as soon as possible following receipt.

## **18. PROCUREMENT**

18.1 The Host / Lead Authority with the Agreement of the Receiving Authority and the approval of the Joint Committee may procure any contract as may be required for the purpose of the discharge of the Functions and the delivery of the Services.

18.2 The costs of any procurement shall be shared equally by the Parties unless otherwise agreed.

18.3 Any procurement by the Host / Lead Authority shall comply with the Host / Lead Authority's procurement rules and procedures and all relevant procurement Law.

18.4 All contracts entered into by the Host / Lead Authority on behalf of the Receiving Authority shall:

18.4.1 be made for the benefit of both Parties and any New Supplier or organisation to which the discharge of the Functions and the delivery of the Services may in the future be transferred;

18.4.2 indemnify all the Receiving Party and any New Supplier or organisation to which the discharge of the Functions and the delivery of the Services may in the future be transferred;

18.4.3 be Supplier Contracts.

18.5 The Parties acknowledge that under any Supplier Contract:

18.5.1 the Contracting Party is under an obligation to the Supplier that the Contracting Party shall not be relieved of, or excused from, any responsibility, liability or obligation under this Agreement by directing the Supplier to carry out services or provide goods for the Parties;

18.5.2 the Contracting Party is under an obligation to the Supplier that the Contracting Party shall, as between itself and the Supplier be responsible for the performance, acts, defaults, omissions, breaches and negligence of the other Party; and

18.5.3 that all reference in the Supplier Contract to any act, default, omission, breach or negligence of the Contracting Party shall be deemed to include any such non-performance, act, default, omission, breach or negligence of the other Party.

18.6 A Contracting Party acknowledges to the other Party that it will hold any money and all damages it receives from the Supplier on trust for the Parties.

18.7 The Contracting Party and the other Party shall, and the Contracting Party shall procure that Supplier shall, at all times act in a spirit of mutual trust and co-operation towards one another.

## **19. TERMINATION**

19.1 In the event of the termination of this Agreement in accordance with clause 3.1 or clause 3.2 the Parties agree to give effect to the Exit Strategy as set out in Schedule 7 to enable the termination of the Agreement to take effect as soon as reasonably possible.

19.2 Without prejudice to the Exit Strategy upon termination the Host / Lead Authority shall:

19.2.1 provide the Receiving Authority with all relevant information and support relating to the Function and Services which the Receiving Authority reasonably requires to enable them to discharge the Function and deliver the Services from the date of termination;

19.2.2 prepare and maintain an asset register of all assets and equipment used in discharging the Function and delivery the Services and those assets and equipment shall be valued by agreement of the Parties or in the absence of agreement by the Arbitrator / Expert;

- 19.2.3 each Party shall receive such portion of (or sum equal to the value of) the aforesaid valued assets and equipment according to the calculation set out in clause 21.3 below;
- 19.2.4 where none of the Parties wishes to receive a particular valued asset or equipment such item shall be sold by the Party in possession of it at the best price reasonably obtainable and the resulting sums shall be distributed (after deduction of expenses reasonably incurred in the item sale) according to calculation set out in clause 21.3 below;
- 19.2.5 The Host / Lead Authority shall deliver to the Receiving Authority no later than seven days after termination any data held by the Host / Lead Authority relates to the discharge of the Function and the delivery of the Services for or by the Receiving Authority.
- 19.3 The distributions made in clause 21.2.4 shall be made on an equal basis between the Parties and where any assets or items do not realise a value the Parties agree to share on an equal basis any costs incurred in the disposal of those assets or items.
- 19.4 The Parties acknowledge that it is their intention that on the cessation of the discharge of the Function and the delivery of the Services by the Host / Lead Authority and the commencement of any discharge of any functions and delivery of the services which are the same or similar to the Function and Services (or any part of them) by the Receiving Authority or any New Supplier shall with respect to each of the Termination Employees be treated as a relevant transfer for the purposes of the TUPE Regulations.
- 19.5 Without prejudice to the TUPE Regulations the Host / Lead Authority shall when requested by the Receiving Authority any time within the twelve month period prior to the expiry of this Agreement, or if at any time any Party serves notice to terminate provide in respect of the Employees:
- 19.5.1 full and accurate details regarding their identity, age, sex, length of service, job title, grade and terms and conditions of employment;
- 19.5.2 current, pending and threatened claims, disputes, trade disputes and industrial action by any Employee or their representative and circumstances known to the Host / Lead Authority which make such a claim, dispute or industrial action possible;
- 19.5.3 and any other information which the Receiving Authority may reasonably request.
- 19.6 The Host / Lead Authority shall provide the information referred to above at clause 21.5 as soon as reasonably practicable after receipt of the said written notice and at no cost

to the Receiving Authority and notify the Receiving Authority forthwith in writing of any material changes to such information as soon as reasonably practicable as and when such changes arise.

- 19.7 The Parties will in good faith and following consultation with the Employees of the Host / Lead Authority and any appropriate representatives within the meaning of TUPE attempt to agree which of the Employees will be deemed to transfer to the Receiving Authority or any New Supplier in accordance with clause 21.4 based on the Disaggregation Criteria who shall be, for the purposes of this Agreement, the Termination Employees, with the remainder of such Employees remaining with the Host / Lead Authority. If the Parties have not agreed the identity of the Termination Employees and to which of the Parties or any New Supplier each of the Termination Employees will transfer (“the Agreed New Employer”) at least three months prior to the Termination Date, then the Parties will resolve the matter in accordance with the dispute resolution procedure set out in clause 37.
- 19.8 The Disaggregation Criteria used to determine who shall be the Termination Employees shall be:
- 19.8.1 the relative proportion of work undertaken for the Parties in twelve-month period immediately prior to the Termination Date;
  - 19.8.2 any preference stated by the Employee;
  - 19.8.3 the relative costs involved in terminating and/or transferring the Employee, so as to ensure a fair sharing of the costs between the Parties; and
  - 19.8.4 the skills of the Employee and requirements after the Termination Date of Consider this period as against the intended duration of the Agreement and/or any New Supplier, so as to ensure a balance of skills and continuity of service for the Parties after the Termination Date.
- 19.9 If TUPE does not apply on the Termination Date, the Agreed New Employer shall offer, or where the Agreed New Employer is a New Supplier, the Parties shall procure that any New Supplier offers, employment to the Termination Employees on the same terms and conditions as applied immediately before the Termination Date (save in relation to any change which would otherwise be in accordance with regulation 4(5) of TUPE) including full continuity of employment.
- 19.10 The Host / Lead Authority shall indemnify the Receiving Authority and any New Supplier from and against each and every cost claim, liability expense or demand which is properly and reasonably incurred by the Receiving Authority and any New Supplier in connection with and as a result of any action or omission by the Host / Lead

Authority up to and including the Termination Date in connection with any matter relating to or arising out of:

- 19.10.1 arising from the Host / Lead Authority's breach of its obligations under clause 21.5
  - 19.10.2 the employment or termination of employment of any Termination Employee by the Host / Lead Authority up to and including the Termination Date;
  - 19.10.3 anything done or omitted to be done by or on behalf of the Host / Lead Authority in respect of any Termination Employee up to and including the Termination Date which is deemed to have been done or omitted to be done by or on behalf of the Receiving Authority or any New Supplier in accordance with the TUPE Regulations;
  - 19.10.4 any failure by the Host / Lead Authority to pay any of the Termination Employees any remuneration due or provide any benefits in respect of the period prior to the Termination Date;
  - 19.10.5 any claim by or on behalf of all or any of the Termination Employees arising out of any failure by the Host / Lead Authority to comply with its legal obligations in relation to information and consultation pursuant to regulations 13 and 14 of the TUPE Regulations save insofar as any such failure results from any failure by the Receiving Authority or any New Supplier to comply with its obligations pursuant to regulation 13 (4) of the TUPE Regulations.
- 19.11 The Host / Lead Authority shall indemnify the Receiving Authority or any New Supplier from and against all claims, liabilities, costs, demands (including all reasonable expenses associated therewith) made within twelve months of the Termination Date by or in relation to each and every Employee or former Employee of the Host / Lead Authority who is not a Termination Employee and who was prior to the Termination Date employed by the Host / Lead Authority in the discharge of the Function and the delivery of the Services in respect of whom it is alleged their employment or any liabilities have transferred to the Receiving Authority or any New Supplier pursuant to the TUPE Regulations being any claim, liability, cost and demand arising out of:
- 19.11.1 the employment or termination of employment of such a person up to and including the Termination Date; or
  - 19.11.2 the employment or any termination of employment of such a person after the Termination Date (excluding claims for discrimination by the Receiving Authority) by the Host / Lead Authority]; or

19.11.3 any claim by or on behalf of any such person arising out of any failure to comply with regulations 13 and 14 of the TUPE Regulations.

**PROVIDED THAT** in the event of any such claim being made by the Receiving Authority any New Supplier shall forthwith notify the Host / Lead Authority and no agreement or settlement shall be reached or entered into by the Receiving Authority or any New Supplier without the prior written consent of the Host / Lead Authority such consent not to be unreasonably withheld or delayed.

19.12 The Receiving Authority shall indemnify the Host / Lead Authority from and against each and every cost, claim, liability, expense or demand which is properly and reasonably incurred by the Host / Lead Authority in connection with or as the result of any act or omission by the Receiving Authority or the New Supplier after the Termination Date in connection with any matter relating to the Termination Employees.

19.12.1 the employment or termination of employment of any Termination Employee by the Receiving Authority or any New Supplier after the Termination Date;

19.12.2 any claim by or on behalf of all or any of the Termination Employees that the transfer involves or would involve a substantial change in working conditions to the material detriment of such a person;

19.12.3 any claim by or on behalf of all or any of the Termination Employees arising out of the Receiving Authority's or any New Supplier's failure to comply with its legal obligations in relation to information and consultation pursuant to regulations 13(4).

19.13 On the Termination Date, the Parties shall co-operate to manage the pension aspects of any onward transfer of any Termination Employees to the Receiving Authority or any New Supplier.

19.14 The Host / Lead Authority shall promptly provide to the Local Government Pension Scheme and to the Receiving Authority or any New Supplier such documents and information as may reasonably be required in advance of the Termination Date and shall fully co-operate with the reasonable requests of the Local Government Pension Scheme and the Receiving Authority and any New Supplier relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any Termination Employees on the Termination Date.

19.15 The Parties agree that any payments payable to the Local Government Pension Scheme by the Receiving Authority or any New Supplier that participates in the said Scheme in respect of the Termination Employees shall be calculated on the assumption that as at the Termination Date any liabilities relating to the Termination Employees' membership prior to the Termination Date are 100% (one hundred per

cent) funded (as determined by the Actuary to the Scheme in accordance with the most recent actuarial valuation of the Scheme before the Termination Date) by the Host / Lead Authority.

## **20. CONSEQUENCES OF TERMINATION**

20.1 Six months prior to termination or otherwise as soon as practicable, the Parties shall:

20.1.1 develop an implementation plan so that each Party will be able to meet its obligations to discharge the Function and deliver the Services and co-operate in implementing the agreed arrangements;

20.1.2 co-operate in terminating, modifying, restructuring, assigning or novating contractual arrangements entered into to mutual advantage and properly and timeously execute any documents necessary to effect such arrangements;

20.1.3 immediately transfer or return any property including data belonging to the other Party;

20.1.4 confirm in writing and produce such evidence as is reasonable to prove compliance with their obligations under this clause; and

20.1.5 agree how any ICT facilities shall be divided between the Parties so that each Party will have the facilities necessary to meet its obligations to discharge the Function and co-operate in implementing the agreed arrangements.

20.1.6 all rights and liabilities which vested before the termination of this Agreement shall remain so vested as if this Agreement continued.

20.2 The costs of termination, including any costs resulting from the division of ICT facilities shall be divided as follows:

20.2.1 if the termination of this Agreement follows the service of notice by one of the Parties in accordance with clause 3.1.1 of this Agreement, the Parties shall share equally the costs of termination;

20.2.2 if the termination of this Agreement is the result of a Material Breach by one of the Parties the Party in Material Breach shall be responsible for any costs or losses or damages incurred by the other Parties as result of early termination.

## **21. FORCE MAJEURE**

21.1 Neither of the Parties shall be liable to the other to any extent in relation to any "Force Majeure Event" (which for this purpose shall mean a failure by either Party to fulfil its



obligations under this Agreement due to reasons beyond its reasonable control). Without limiting the meaning of that expression, “reasons beyond its reasonable control” may include industrial disputes of any kind, whether involving the Employees of either Party or those of any other person, government intervention, act of war or terrorism and other hostilities, storm, fire, flood, theft, riot, earthquake and pandemic.

21.2 As soon as either Party becomes aware that a Force Majeure Event has occurred or is likely to occur, that Party will notify the other Party. The Parties shall then agree as soon as possible what action should be taken to avoid or mitigate the effects of the Force Majeure Event.

## **22. INSURANCE, INDEMNITIES AND THE CONDUCT OF CLAIMS**

22.1 Other than those actions claims demands proceedings damages losses costs charges and expenses covered by the insurances provided by Parties under clause 24.2 the Parties shall indemnify the other against all actions, claims, demands, proceedings, damages, losses, costs, charges and expenses whatsoever in respect of or in any way arising out of or in connection with the discharge of the Function and the delivery of the Services or any part of them or other work carried out pursuant to this Agreement.

22.2 The Parties shall each ensure that they effect, maintain and notify each other annually of adequate insurance cover in respect of:

22.2.1 any property held by it for the purposes of this Agreement;

22.2.2 employers' liability;

22.2.3 public liability in the sum;

22.2.4 officials indemnity.

22.3 Either Party may self-insure for all insurances except those at clause 24.2.2 and 24.2.3 if the other Party agrees in writing.

22.4 The Host / Lead Authority shall institute and defend all such claims or legal proceedings as they find reasonable to do so arising out of or in connection with the discharge of the Function and the delivery of the Services for the Receiving Authority **PROVIDED ALWAYS** that **EXCEPT** in relation to claims or proceedings in respect of which insurances provide full indemnity and cover the Host / Lead Authority shall consider any advice offered by the Receiving Authority in relation to the prosecution, defence, compromise or settlement of any proceedings taken or defended in accordance with this clause 24.4 to which the Receiving Authority is a party in the High Court of Justice the Court of Appeal or the Supreme Court but the Host / Lead

Authority shall not be obliged to take any step or any action that may compromise any claim under any insurance held by it.

22.5 The Host / Lead Authority shall use its reasonable endeavours to discharge the Function and deliver the Services in such a way as to minimise third party claims for compensation damages or otherwise for any legal liability arising out of or in connection with the discharge of the Function and delivery of the Services through the negligence, default or neglect of the Host / Lead Authority.

22.6 Neither Party shall not be liable in tort to the other Party for any negligent act or omission arising out of or in connection with the discharge of the Function and the delivery of the Services and the only remedy of a Party is under this Agreement. Each Party shall procure that no agent, contractor or Employee of that Council brings a claim in tort or otherwise against the other.

22.7 In the event of failure by either Party to reasonably comply with the requirements of this Agreement which results in the other Party incurring additional expenditure then the Party at fault shall indemnify and reimburse the other Party for the reasonable expenditure so incurred. For the purposes of this clause 24.7 the Party at fault shall be provided with evidence of the costs incurred by the other Party as a result of such failure.

22.8 Any indemnity under any provision of this Agreement shall be without prejudice to any indemnity by the same Party under any other provision of this Agreement.

22.9 If either Party receives any notice, demand, letter or other document concerning any claim for which it appears that said Party is or may become entitled to be indemnified under this Agreement, that Party shall notify the other Party in writing as soon as reasonably practicable and in any event within [2] Working Days of its receipt.

22.10 Where either Party pays to the other an amount in respect of an indemnity and the Party receiving said indemnity ("the Receiving Party") subsequently recovers a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity the Receiving Party shall immediately repay the other Party the lesser of:

22.10.1 the sum recovered less any out-of-pocket costs and expenses properly incurred by the receiving Party in recovering the sum; and

22.10.2 the amount paid to the Receiving Party by the other Party in respect of the claim under the relevant indemnity.

24.11 There is no obligation on the Receiving Party to pursue a recovery under clause 24.10. The other Party is repaid by the Receiving Party only to the extent that the amount of

recovery aggregated with the amount paid by the other party exceeds the Receiving Party's losses.

24.12 Each Party shall indemnify the other Party its members and Officers from and against all liability for any of the following which arise out of, or in consequence of, the obligations under this Agreement including but not limited to:

24.12.1 breach of a Party of its Supplier Contracts;

24.12.2 breach of a Council of the terms of any other Council's Supplier Contract.

24.13 Each Party shall indemnify the Contracting Party its members and Officers from and against all liability for any breach by the Contracting Party of the obligations under any Supplier Contracts arising out of or in consequence of any non- or part-performance, acts, defaults, omissions, breaches and negligence of a Party of any obligation in the Supplier Contract.

24.14 A Party shall not be responsible or be obliged to indemnify any other Party for:

24.14.1 any liability which arises as a direct result of a Party acting on the instructions of the other Party (to the extent that the other Party is entitled to give such instructions); or

24.14.2 any injury, loss damage, cost and expense caused by the negligence, wilful misconduct or a breach of this Agreement by the other Party or an agent, contractor or Employee of the other Party.

## **23. DATA PROTECTION**

23.1 The Parties shall comply with the requirements of the Data Protection Legislation.

23.2 The Host / Lead Authority and the Receiving Authority shall process Personal Data for the purpose of the Functions and Services in accordance with the Data Processing Agreement at Appendix 1 (of Schedule 2).

## **24. CONFIDENTIALITY, FREEDOM OF INFORMATION ACT 2000 AND THE ENVIRONMENTAL INFORMATION REGULATIONS 2004**

24.1 Each Party:

24.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;

24.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to

such persons and to such extent as may be necessary for the performance of the Function or this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

- 24.2 Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other Party or any other person under or in connection with the performance of the Function or this Agreement is treated as confidential and not disclosed (without prior approval from the other Party or other person) or used by any other person or the other Party's staff or such professional advisors or consultants otherwise than for the purposes of the Function or this Agreement.
- 24.3 Each Party shall not use any Confidential Information it receives from the other Party otherwise than for the purposes of the Agreement.
- 24.4 The provisions of clauses 26.1 to 26.3 shall not apply to any Confidential Information received by one Party from another:
- 24.4.1 which is or becomes public knowledge (otherwise than by breach of this clause 26);
  - 24.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - 24.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 24.4.4 is independently developed without access to the Confidential Information; or
  - 24.4.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' Functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), the FOIA, or the EIR.
- 24.5 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the EIR and each Party shall assist and co-operate with the other (at their own expense) to enable the other Party to comply with these Information disclosure obligations.
- 24.6 Where a Party receives a request for information in relation to information which it is holding on behalf of the other Party, it shall:
- 24.6.1 provide the other Party with a copy of all Information in its possession or power in the form that the other Party requires within five Working Days (or

such other period as the Parties may specify) of the Party requesting that information; and

- 24.6.2 provide all necessary assistance as reasonably requested by the Party to enable the Party to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 24.7 Where a Party receives a request for information which relates to the performance of the Function or this Agreement, it shall inform the other Parties of the request for information as soon as practicable after receipt and in any event within two Working Days of receiving a request for information.
- 24.8 If any Party determines that information (including Confidential Information) must be disclosed pursuant to clause 26.7, it shall notify the other Parties of that decision at least two Working Days before disclosure.
- 24.9 Each Party shall be responsible for determining at its absolute discretion whether the commercially sensitive information and / or any other Information:
- 24.9.1 is exempt from disclosure under the FOIA or the EIR; or
- 24.9.2 is to be disclosed in response to a Request for Information.
- 24.10 Each Party acknowledges that another Party may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice (or any further or updated advice from Cabinet Office, Information Commissioner's Office or similar body) on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), the FOIA or the EIR be obliged to disclose Information:-
- 24.10.1 without consulting with the other Parties; or
- 24.10.2 following consultation with another Party and having taken its views into account.
- 24.11 Each Party shall ensure that all information produced in the course delivery the Function or relating to this Agreement is retained for disclosure and shall permit the other Party to inspect such records as requested from time to time.

## **25. INTELLECTUAL PROPERTY RIGHTS**

- 25.1 Nothing in this Agreement is intended to transfer to the Host / Lead Authority any Intellectual Property Rights owned by the Receiving Authority as at the Commencement Date.

- 25.2 Each Party grants to the other an irrevocable, non-exclusive, royalty free licence to copy and use for the purpose of the Function and the Services all materials in which it has Intellectual Property Rights but this licence is not extended to:
- 27.2.1 copying or using those materials other than in connection with Function and the Services;
  - 27.2.2 granting any other person the right to copy or to use those Joint Committee materials;
  - 27.2.3 selling, transferring or otherwise disposing of or granting rights in those materials;
  - 27.2.4 any materials in which it does not own the Intellectual Property Rights.
- 27.3 Where a Party is not the owner of the Intellectual Property Rights in material required to be provided to the other Party for the purpose of the Function and the Services the Party providing the material shall obtain all necessary consents to provide the material from the owner of the Intellectual Property Rights in said material.
- 27.4 Each Party shall indemnify and hold harmless the other Party to whom any materials are provided under clause 27.2 or clause 27.3 against any liability or damages (including costs) that may be awarded or agreed to be paid to any third party because of a claim or action that the normal operation, possession or use of the materials by the Party to whom the materials have been provided infringes the Intellectual Property Rights of that third party.
- 27.5 The Parties agree to promptly notify each other in writing of any infringement or potential infringement of their own or each other's or a third party's Intellectual Property Rights in connection with the Function and / or the Services of which it becomes aware.
- 27.5 All or any Intellectual Property Rights in materials developed for and / or in connection with the Function and the Services shall vest in the Party who developed the material but shall be for the benefit of both Parties.
- 27.6 The Host / Lead Authority shall on expiry or termination of this Agreement for any reason grant to the Receiving Authority a non-exclusive perpetual revocable royalty-free licence to use and copy materials in the Intellectual Property Rights which vest in the Host / Lead Authority for the purposes of providing the Function and delivering the Services to the Receiving Authority.

## **26. AUDIT REQUIREMENT [AND PROVISION OF FINANCIAL INFORMATION]**

- 26.1 The Host / Lead Authority shall keep and maintain until six (6) years or as otherwise as required by Law after the expiry or earlier termination of this Agreement full and accurate records of this Agreement including the Function discharged and the Services delivered under it together with all expenditure and payments made under it.
- 26.2 The Host / Lead Authority shall on request permit the Receiving Authority or their External Auditors such reasonable access to the records referred to in clause 28.1 as may be required by the Receiving Authority or their External Auditors in connection with this Agreement.

## **27. WAIVER AND SEVERABILITY**

- 27.1 No waiver (whether expressed or implied) by any Party of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent a Party from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
- 27.2 If at any time a clause or part of a clause or schedule to this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:
- 27.2.1 that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement; and
- 27.2.2 the Parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the Laws of that jurisdiction and so that the amended Agreement complies with the Laws of that jurisdiction.

## **28. ENTIRE AGREEMENT**

- 28.1 This Agreement sets out the whole agreement between the Parties in relation to the arrangements and transactions for the discharge and delivery of the Functions and Services for which it provides. This Agreement supersedes and invalidates all other commitments, representations and warranties relating to its subject matter which either Party has made orally or in writing.
- 28.2 Each Party warrants that it has not entered into this Agreement on the basis of any representation made by the other except to the extent that such representation is

expressly included in it (but nothing in this clause 30 excludes any liability for fraudulent misrepresentation).

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

29.1 Nothing in this Agreement is to require either Party to act in any way which is inconsistent with its obligations as a local authority.

29.2 Each Party undertakes (subject to clause 31.1) to do all things and execute all further documents that the other may reasonably require to give effect to this Agreement.

## **30. NO PARTNERSHIP OR AGENCY**

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

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

## **31. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

31.1 It is not intended that any third party shall have a right to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 even if the terms are expressed to be for their benefit nor shall any such party have a right of veto over any future variations of this Agreement.

## **32. VARIATIONS TO THIS AGREEMENT**

32.1 A variation to this Agreement shall only be valid if it has been agreed in writing and executed as a deed by duly authorised representatives of both Parties on the approval of the Joint Committee.

32.2 If either Party wishes to vary this Agreement it shall serve on the other, the Joint Officer Board and the Joint Committee a Variation Notice which shall set out the nature of the variation sought and the reasons for it.

32.3 Where Variation Notice has been served within twenty-eight Working Days of receipt and having consulted the Parties and the Joint Officer Board as appropriate the Joint Committee shall notify the Parties in writing whether or not it agrees to the variation and if not, the reasons.



32.4 If the variation is agreed it will be incorporated into the Agreement.

### **33. VARIATIONS TO HOSTED / LEAD FUNCTIONS AND SERVICES**

33.1 Any variation to the provision of the Hosted / Lead Functions and Services or the terms of such provision shall only be valid if it has been agreed in writing and executed as a deed by duly authorised representatives of both Parties on the approval of the Joint Committee.

33.2 If either Party wishes to vary the provision of the Hosted / Lead Functions and Services or the terms of such provision it shall serve on the other, the Joint Officer Board and the Joint Committee a Variation Notice which shall set out the nature of the variation sought and the reasons for it.

33.3 Where Variation Notice has been served within twenty-eight Working Days of receipt and having consulted the Parties and the Joint Officer Board as appropriate the Joint Committee shall notify the Parties in writing whether or not it agrees to the variation and if not, the reasons.

33.4 If the variation is agreed it shall be given effect and incorporated into the Business Plan / Service Level Agreement / Service Plan for the relevant Functions and Services.

### **34. EQUALITIES/ HEALTH AND SAFETY/ CLIMATE CHANGE**

34.1 The Host / Lead Authority shall discharge the Function and deliver the Services in accordance with all appropriate statutory responsibilities including but not limited to those arising under the Equality Act 2006, the Equality Act 2010, the Health and Safety at Work Act 1974 and the Climate Change Act 2008.

### **35. DISPUTE RESOLUTION**

35.1 Either Party may request that a dispute arising in connection with the Function, the Services or this Agreement be referred to the Joint Officer Board and if necessary escalated to the Joint Committee for determination and if that does not resolve the dispute either Party may request the other Party to participate in a meeting of their respective [Chief Executives] in order to discuss the dispute and to agree a strategy to resolve it. The Parties shall then liaise in good faith to arrange and hold the meeting within ten Working Days and shall exchange statements at least three Working Days prior to the date of the meeting, setting out their respective views of the disputed issues.

35.2 If notwithstanding any steps which are taken by the Parties pursuant to clause 37.1 the dispute between them remains unresolved then at the request of either Party the

dispute in question shall be referred to an independent and professional mediator who shall be nominated without delay by agreement between Parties, or (in the absence of such agreement) by the President of the Law Society (or his authorised representative). Any such mediation shall then be carried out in confidence and on a without prejudice basis in relation to any subsequent proceedings and each of the Parties shall bear their own expenses and one half of the mediator's resulting charges.

35.3 If regardless of whether or not the Parties have implemented the procedures which are specified in clauses 37.1 and 37.2 the Parties fail to resolve their dispute within six weeks of the dispute first arising, then any Party may serve notice on the other to require the dispute to be referred to either (as applicable):

35.3.1 An Arbitrator in accordance with the Arbitration Act 1996 or an appropriate independent Expert who shall be nominated without delay by agreement between the Parties (such agreement not to be unreasonably withheld or delayed) and who shall act as an expert and not as an arbitrator, provided that in default of agreement as to such nomination, the expert shall be nominated on the joint application of the Parties (or if either Party neglects to concur in such application, then on the sole application of the other Party) by the President of the Law Society (or his authorised representative) (or such other appropriate professional body as shall be agreed by the Parties, such agreement not to be unreasonably withheld or delayed); or

35.3.2 institute legal proceedings in court.

35.4 The Parties agree that if either an Arbitrator or Expert is appointed under clause 37.3 then:

35.4.1 the decision of the Arbitrator or Expert (as applicable) shall be final and binding on the Parties provided that the Arbitrator or Expert (as applicable) provides the Parties with a detailed statement setting out his reasons for making the decision at which he has arrived;

35.4.2 each of the Parties shall bear the costs equally of the references to the Expert or Arbitrator (as applicable) unless the Arbitrator or Expert directs otherwise.

35.5 If any dispute between the Parties is resolved pursuant to the provisions of clause 37 (otherwise than via the appointment of an Arbitrator or Expert) then the Parties shall record the resolution of their dispute in writing and shall each promptly sign the same. The signed document shall then form a legally binding agreement between the Parties by way of supplement to this Agreement.

## **36. ASSIGNMENT AND SUBCONTRACTING**

- 36.1.1 Neither Party may transfer, assign, mortgage or pledge its rights or obligations under this Agreement without the consent of the other and the Joint Committee.
- 36.1.2 [Either Party may subcontract any of its obligations under this Agreement with the consent of the other and the approval of the Joint Committee (such consent and approval not unreasonably to be withheld or delayed) but the Party who subcontracts is to be liable for the performance of its subcontractors].
- 36.1.3 No rights under this Agreement are to devolve by operation of Law or otherwise on any receiver, administrative receiver, liquidator or assignee.

## **37. GOVERNING LAW AND ENFORCEMENT**

- 37.1 This Agreement is governed and construed in accordance with the Law of England and Wales and the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement, its subject matter or formation (including non-contractual disputes or claims).
- 37.2 The rights and remedies given by this Agreement are cumulative and do not exclude any other rights or remedies given by Law or under this Agreement.

## **38. NOTICES**

- 38.1 Any notice to be served under this Agreement shall be valid and effective if it is addressed to the other Parties' [Chief Executive] as appropriate and sent by prepaid recorded delivery post or delivered by hand to the other Parties' principal office.
- 38.2 Any such demand, notice or communication shall be deemed to have been duly served:
- 38.2.1 if delivered by hand, when left at the proper address for service; or
- 38.2.2 if given or made by pre-paid first-class post, two Working Days after being posted;

provided in each case that if the time of such deemed service is either after 4.00 pm on a Working Day or on a day other than a Working Day, service shall be deemed to occur instead at 10.00 am on the next following Working Day.

38.3 A notice given under this Agreement is not valid if sent by e-mail unless the Parties have previously agreed in writing to accept service by e-mail. If service by e-mail is agreed, then the following shall apply;

38.3.1 An e-mail shall be deemed delivered at 10:00am the next Working Day unless an error message or 'out of office' message is received by the sender;

38.3.2 Notices shall only be accepted if sent to the e-mail address given by a Party to the other as being the designated e-mail address for the service of notices.

38.4 If the Parties agree to service of notice by e-mail, they do not agree to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution unless specifically stated.

### **39. COUNTERPARTS**

39.1 This Agreement may be executed in two counterparts each of which shall be deemed to be an original but the counterparts shall together constitute one and the same Agreement.

### **40. COSTS OF THIS AGREEMENT**

42.1 The Parties shall bear equally costs relating to the preparation, negotiation and completion of this Agreement.

**IN WITNESS** of the above the Parties have executed and delivered this Agreement as a Deed on the above date.

**THE COMMON SEAL of**

**WEST NORTHAMPTONSHIRE SHADOW AUTHORITY**

was hereunto affixed

in the presence of:

Authorised Signatory

**THE COMMON SEAL of**

**NORTH NORTHAMPTONSHIRE SHADOW AUTHORITY**

was hereunto affixed

in the presence of:

Authorised Signatory

## SCHEDULE 1 LIST OF FUNCTIONS AND SERVICES

Programme	Unitary	Service	Area	Function	Treatment on Approved NCC Blueprint v4.7
Adults	North	Public Health - Adults Learning		Provider services Adults Learning	Lead Authority – Provider
Adults	West	Public Health - Adults Learning		Provider services Adults Learning	Lead Authority – Receiver
Adults	North	Adults - PBBS (Personal Budget Service)		Adults PBBS	Hosted < 12 months – Receiver
Adults	West			Adults PBBS	Hosted < 12 months – Provider
Adults	North	DPH (Director of Public Health)		Public health DPH	Lead Authority – Provider
Adults	West			Public health DPH	Lead Authority – Receiver
Adults	North	Public Health Intelligence & STP		Public Health Intelligence & STP	Lead Authority – Provider
Adults	West			Public Health Intelligence & STP	Lead Authority – Receiver
Adults	North	Public Health - Management, Commissioning & Admin		Public Health Management, Commissioning & Admin	APPROVED: Public Health Mgmt, Commissioning & Admin - Hosted < 12 months – Provider
Adults	West			Public Health Management, Commissioning & Admin	APPROVED: Public Health Mgmt, Commissioning & Admin - Hosted < 12 months – Receiver
Adults	North	Public Health - Wellbeing Services		Public health Provider services Wellbeing	APPROVED: Public Health Provider Services Wellbeing - Hosted < 12

				months – Provider
Adults	West		Public Health Provider services Wellbeing	APPROVED: Public Health Provider services Wellbeing – Hosted < 12 months – Receiver
Children's	North	Safeguarding in Education	Safeguarding in Education	Hosted < 12 months – Provider
Children's	West		Safeguarding in Education	Hosted < 12 months – Receiver
Children's	North	School Admissions	School Admissions	Hosted < 12 months – Provider
Children's	West		School Admissions	Hosted < 12 months – Receiver
Children's	North	Sensory Impairment Team	Sensory Impairment Team	Hosted < 12 months – Provider
Children's	West		Sensory Impairment Team	Hosted < 12 months – Receiver
Children's	North	Trust client function	Trust client function	APPROVED: Trust client function - Lead Authority – Provider
Children's	West		Trust client function	APPROVED: Trust client function - Lead Authority – Receiver
Children's	North	Virtual School	Virtual School	Lead Authority – Provider
Children's	West		Virtual School	Lead Authority – Receiver
Corporate Services	North	HR and Staff Wellbeing	Apprenticeships	Hosted < 12 months – Provider
Corporate Services	West		Apprenticeships	Hosted < 12 months –

				Receiver
Corporate Services	North		HR Advisory - Traded services	APPROVED: Hosted < 12 months – Receiver
Corporate Services	West		HR Advisory - Traded services	APPROVED: Hosted < 12 months – Provider
Corporate Services	North		HR Learning and Development	Hosted < 12 months – Provider
Corporate Services	West		HR Learning and Development	Hosted < 12 months – Receiver
Corporate Services	North	HR Payroll and HR Transactions	HR Payroll and HR Transactions	Lead Authority – Receiver
Corporate Services	West		HR Payroll and HR Transactions	Lead Authority – Provider
Corporate Services	North	Libraries support (incl. traded services)	Libraries support (incl. traded services)	Hosted < 12 months – Receiver
Corporate Services	West		Libraries support (incl. traded services)	Hosted < 12 months – Provider
Corporate Services	North	Lord Lieutenant Support	Lord Lieutenant Support	Lead Authority – Receiver
Corporate Services	West		Lord Lieutenant Support	Lead Authority – Provider
Finance	North	Pensions	Pensions	Lead Authority – Receiver
Finance	West		Pensions	Lead Authority – Provider
ICT & Customer	North	IT Business system - ERP	IT Business system - ERP	Lead Authority – Receiver
ICT & Customer	West		IT Business system - ERP	Lead Authority – Provider
ICT & Customer	North	IT Operations	IT Operations & Infrastructure	Lead Authority – Receiver
ICT & Customer	West		IT Operations & Infrastructure	Lead Authority – Provider
ICT & Customer	North		IT Service Delivery	Lead Authority – Receiver
ICT & Customer	West		IT Service Delivery	Lead Authority



Customer				– Provider
ICT Customer	& North		IT Digital	Lead Authority – Receiver
ICT Customer	& West		IT Digital	Lead Authority – Provider
ICT Customer	& North		IT Programme team	Hosted > 12 months – Receiver
ICT Customer	& West	IT Strategy and Development	IT Programme team	Hosted > 12 months – Provider
ICT Customer	& North		IT Strategy & architecture	Hosted > 12 months – Receiver
ICT Customer	& West		IT Strategy & architecture	Hosted > 12 months – Provider
Place	North		Coroners	Lead Authority – Receiver
Place	West	Coroners	Coroners	Lead Authority – Provider
Place	North		Country parks	Lead Authority – Provider
Place	West	Country Parks	Country parks	Lead Authority – Receiver
Place	North	Culture and Leisure	Outdoor Learning *	Lead Authority – Provider
Place	West	Culture and Leisure	Outdoor Learning *	Lead Authority – Receiver
Place	North		Archives (Wootton Hall)	Lead Authority – Receiver
Place	West	Document Archives	Archives (Wootton Hall)	Lead Authority – Provider
Place	North	Economic Development	Digital infrastructure	Lead Authority – Provider
Place	West	Economic Development	Digital infrastructure	Lead Authority – Receiver
Place	North		Emergency planning	APPROVED: Emergency planning - Hosted < 12 months – Provider
Place	West	Emergency Planning	Emergency planning	APPROVED: Emergency

				planning - Hosted < 12 months - Receiver
Place	North	Heritage (Chester Farm)	Heritage Chester Farm	Lead Authority - Provider
Place	West		Heritage Chester Farm	Lead Authority - Receiver
Place	North	Highways Management Contract	Business improvement	Hosted < 12 months - Receiver
Place	West		Business improvement	Hosted < 12 months - Provider
Place	North		Community Liaison	Disaggregated
Place	West		Community Liaison	Disaggregated
Place	North		Coordination of works on the highway	Hosted < 12 months - Receiver
Place	West		Coordination of works on the highway	Hosted < 12 months - Provider
Place	North		Highways Traffic Management (Kier Contract)	Hosted < 12 months - Receiver
Place	West		Highways Traffic Management (Kier Contract)	Hosted < 12 months - Provider
Place	North		Investigations, Searches and Definitive Map	Hosted < 12 months - Receiver
Place	West		Investigations, Searches and Definitive Map	Hosted < 12 months - Provider
Place	North		Licensing - Highways licences	Hosted < 12 months - Receiver
Place	West		Licensing - Highways licences	Hosted < 12 months - Provider
Place	North		New Roads and Street Works Act (NRSWA) (Administration and Inspections)	Hosted < 12 months - Receiver
Place	West		New Roads and Street Works Act (NRSWA) (Administration and Inspections)	Hosted < 12 months - Provider

Place	North		Rights of way	Hosted < 12 months – Receiver
Place	West		Rights of way	Hosted < 12 months – Provider
Place	North		Road Safety	Hosted < 12 months – Receiver
Place	West		Road Safety	Hosted < 12 months – Provider
Place	North		Technical approval authority	Hosted < 12 months – Receiver
Place	West		Technical approval authority	Hosted < 12 months – Provider
Place	North	Minerals and Waste Planning	Development control services incl waste, minerals	Lead Authority – Provider
Place	West		Development control services incl waste, minerals	Lead Authority – Receiver
Place	North	Parking	On street parking (enforcement)	Hosted < 12 months – Receiver
Place	West	Parking	On street parking (enforcement)	Hosted < 12 months – Provider
Place	North	Strategic Transport Planning	Bus services - commercial registrations	Hosted < 12 months – Receiver
Place	West		Bus services - commercial registrations	Hosted < 12 months – Provider
Place	North		Bus services – commercial registrations and subsidised services; Traveline database and Concessionary Travel	Hosted < 12 months – Receiver
Place	West		Bus services – commercial registrations and subsidised services; Traveline database and Concessionary Travel	Hosted < 12 months – Provider
Place	North		Major HW Projects (CPDU)	Hosted < 12 months – Receiver
Place	West		Major HW Projects (CPDU)	Hosted < 12 months – Receiver

				months Provider	–
Place	North		Strategic Transport Planning	Hosted < 12 months Receiver	–
Place	West		Strategic Transport Planning	Hosted < 12 months Provider	–
Place	North		Travel choices	Hosted < 12 months Receiver	–
Place	West		Travel choices	Hosted < 12 months Provider	–
Place	North	Street lighting PFI	Street lighting PFI	Lead Authority – Receiver	
Place	West		Street lighting PFI	Lead Authority – Provider	
Place	North	Transport (Home to School)	Transport (Home to School)	Hosted < 12 months Receiver	–
Place	West		Transport (Home to School)	Hosted < 12 months Provider	–
Place	North	Travellers unit	Travellers unit	Lead Authority – Provider	
Place	West		Travellers unit	Lead Authority – Receiver	
Place	North	Waste Disposal (including Closed Landfills)	Waste Disposal (including Closed Landfills)	Hosted < 12 months Provider	–
Place	West		Waste Disposal (including Closed Landfills)	Hosted < 12 months Receiver	–
Place	North	Waste HWRC	Waste HWRC	Hosted > 12 months Provider	–
Place	West		Waste HWRC	Hosted > 12 months Receiver	–

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**SCHEDULE 2 SERVICE SCHEDULES**

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## **SCHEDULE 3 SERVICE PLANS**

**1. SERVICE PLANS ARE TO BE DEVELOPED AND AGREED BETWEEN THE PARTIES DURING THE TERM OF THIS AGREEMENT.**

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## **SCHEDULE 4 TUPE EMPLOYEES**

[if this Schedule 4 is to be used / retained, cross-reference back to clause 12]

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## **SCHEDULE 5 SECONDED EMPLOYEES**

[if this Schedule 5 is to be used / retained, cross-reference back to clause 13]

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## **SCHEDULE SIX- EXIT STRATEGY**

### **1. INTRODUCTION**

- 1.1 In the event of the termination of this Agreement the Parties shall (acting reasonably) negotiate and seek to agree and execute a legally binding agreement dealing with the termination of any contracts entered into by the Host / Lead Authority on behalf of the Receiving Authority and the allocation amongst the Parties of any property, assets, rights, staff and liabilities held or employed by Host / Lead Authority on behalf of the Receiving Authority.

### **2. TRANSFER OF ASSETS**

- 2.1 Host / Lead Authority shall prepare and maintain a list of the assets owned by it on behalf of the Receiving Authority.
- 2.2 The Parties shall meet and (acting reasonably) apportion the ownership of the assets equally amongst the Parties and the Host / Lead Authority shall transfer the assets to the Receiving Authority.
- 2.3 Where assets cannot equally be apportioned between the Parties, one Party shall agree to accept the assets and provide compensation to the other Party on a mutually agreed basis.
- 2.4 Any assets used in connection with the discharge of the Function or the delivery of the Services that were owned by either Party prior to the commencement of this Agreement shall remain the property of said Party.

### **3. NOVATION OF CONTRACTS**

- 3.1 Where permitted by the Law contracts entered into by the Host / Lead Authority on behalf of the Receiving Authority may be either novated to the Receiving Authority or will be determined in accordance with the provisions of the relevant contract.
- 3.2 The Parties shall agree any residual liabilities or ongoing responsibilities of the Parties in respect of the contracts referred to in clause 3.1 above.

### **4. TRANSFER OF STAFF**

- 4.1 The Parties shall deal with the process for the transfer of any staff and assets as set out in clause 17 of this Agreement.