

Dated: 2013

**SHROPSHIRE COUNCIL (1)
and
ip&e Limited (2)**

STRATEGIC CONTRACT

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THIS AGREEMENT is dated

2013

BETWEEN:

- (1) **SHROPSHIRE COUNCIL** of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND (the "**Council**"); and
- (2) **ip&e Limited**, a company registered in England (registration number 08089269) whose registered office is at Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND (the "**Strategic Partner**").

together "the Parties"

BACKGROUND

The overall purposes of this Agreement are:

- (A) The purpose of this Agreement is to set out the basis upon which the Council will commission certain outcomes for delivery by the Strategic Partner from time to time.
- (B) It is intended that at the commencement of the Agreement, the Strategic Partner will benefit from the "Teckal" exemption meaning there will be no need for formal procurement by the Council of the Strategic Partner.
- (C) The Council is also considering creating a Trading Company to provide services to third parties.

1 DEFINITIONS

- 1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the meanings given to them below.

"1999 Act"

means the Local Government Act 1999;

"Annual Business Plan"

means the business plan based on the Annual Business Plan Template at Schedule 2 and to be agreed and updated by the Parties in accordance with the agreement process set out in clause 6;

"Annual Review"

has the meaning set out in clause 7;

"Associated Person"

means in respect of the Strategic Partner, a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of the Strategic Partner (but for the avoidance of doubt, excluding the Council), or any person employed by or acting on behalf of any such company;

"Business Day"

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

"Buy-Back Services"

the services the Strategic Partner may request the Council to provide to the Strategic Partner pursuant to clause 9 (Resources for the Strategic Partner and Buy-Back Services);

"Chief Officers"

means the most senior appointed officer of each Party at any time;

"Commencement Date"

means the date of execution of this Agreement;

"Confidential Information"

means all information, data and/or material of any nature which either Party may receive or obtain in connection with the operation of the Agreement, including any information, data and/or material:

- (a) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998);
- (b) the release of which is likely to prejudice the commercial interests of either Party;
- (c) which is a trade secret; or
- (d) is identified at the time of disclosure as being confidential;

"Consents"

means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Strategic Partner's obligations under this Agreement, whether required in order to comply legislation or as a result of the rights of any third party;

"Council Assets"

means assets owned by the Council;

"Council Default"

means one of the following events:

- (a) a breach by the Council of its obligations under this Agreement which substantially frustrates or renders it impossible for the Strategic Partner to perform its obligations under this Agreement for a continuous period of three (3) months;
- (b) a breach by the Council of clause 8; or
- (c) the Council ceasing to exist and there being no permitted successor body;

"Council Default Termination Notice"

has the meaning set out in clause 16 (Termination on Council Default);

"Council's Data"

any data (including any Personal Data relating to the staff, customers or suppliers of the Council), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to the Strategic Partner by or on behalf of the Council, or which the Strategic Partner is required to generate, process, store or transmit pursuant to this Agreement;

"Council's Policies"

the policies (as revised or amended) of the Council or central government referred to in Schedule 4 (Council's Policies) or any additional policies of the Council notified to the Strategic Partner;

"Council's Representative"

means the representative appointed by the Council pursuant to clause 11 (Representatives);

"Data Protection Legislation"

means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"Data Controller"

shall have the same meaning as set out in the DPA;

"Data Processor"

shall have the same meaning as set out in the DPA;

"Direct Losses"

means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses;

"Disclosed Data"

means any information relating to the Enabling Services or the Services disclosed to the Strategic Partner by the Council;

"Dispute Resolution Procedure"

means the procedure for the resolution of disputes set out in clause 14;

"DPA"

means the Data Protection Act 1998;

"Enabling Services"

has the meaning set out in clause 4.1;

"Environmental Information Regulations"

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Governmental Department in relation to such regulations;

"Financial Review"

means the review of the Strategic Partner's financial position to be undertaken by the Strategic Partner and delivered to the Council in accordance with clause 7;

"Financial Year"

means 1 April to 31 March each year;

"FOIA"

means the Freedom of Information Act 2000 (the **Act**) and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner (as defined in the Act) or relevant Government department in relation to the Act;

"FOIA Code"

has the meaning given to it in clause 20.13 (Freedom of Information);

"Good Industry Practice"

means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Strategic Partner) or any sub-contractor under the same or similar circumstances;

"Indirect Losses"

means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue under this Agreement;

"Information"

has the meaning given under Section 84 of the FOIA;

"Intellectual Property Rights" or "IPR"

means patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Local Government Requirements"

means all local government circulars, guidance, official requests or requirements for the time being in force, but only to the extent that the same are published and publicly available or the existence and contents of them have been notified to the Strategic Partner by the Council;

"Party"

means the Council or the Strategic Partner and "Parties" shall be construed accordingly;

"Performance Review"

means the review of the Strategic Partner's performance to be undertaken by the Strategic Partner and delivered to the Council in accordance with clause 7;

"Personal Data"

means personal data as defined in the DPA which is supplied to the Strategic Partner by the Council or obtained by the Strategic Partner in the course of performing the Services;

"Prohibited Act"

means

- (a) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;
- (b) entering into this Agreement or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Strategic Partner or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Council;

"Quarter"

means a period of three calendar months starting on any of the 1st January, 1st April, 1st July or 1st October in any year;

"Relevant Authority"

means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or European Union;

"Request for Information"

shall have the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);

"Services"

means the services as set out in the Annual Business Plan which are available for possible transfer to the Strategic Partner in accordance with this Agreement and those services provided by the Strategic Partner pursuant to a Services Contract;

"Services Contract"

means each contract agreed pursuant to this Agreement for the delivery of Services to the Council;

"Strategic Partner Default"

means one of the following events:

- (a) material breach by the Strategic Partner of any of its obligations under this Agreement;

- (b) material non-compliance with the Annual Business Plan or a failure to provide the Annual Business Plan or Annual Review in accordance with the terms of this Agreement;
- (c) a Court makes an order that the Strategic Partner shall be wound up or a resolution for a voluntary winding-up of the Strategic Partner is made;
- (d) any receiver or receiver manager in respect of the Strategic Partner is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006;
- (f) an administration order is made or an administrator is appointed in respect of the Strategic Partner;
- (g) the discovery of any irregularity in the accounts of the Strategic Partner, provided that such discovery shall not constitute a Strategic Provider Default if, within ninety (90) Business Days from the date of discovery of the irregularity, the involvement in the provision of the Enabling Services and the Services of each director, officer or employee responsible for such irregularity is terminated and a replacement (acceptable to the Council, acting reasonably) is appointed by the Strategic Partner, provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of any such persons, the Council shall:
 - (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of the irregularity and the identity of the person committing it; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Agreement; or
- (h) the termination of any Services Contract for Strategic Partner Default (as such term is defined in the relevant Services Contract);

"Strategic Partner Default Termination Notice"

has the meaning set under clause 17;

"Strategic Partner's Representative"

means the person to be appointed by the Strategic Partner pursuant to clause 11 (Representatives);

"Trading Company"

means the trading company set up by the Council to provide Services to third parties;

"Trading Company Strategic Contract" means the strategic contract initially to be entered into between (1) the Council and (2) the Trading Company, as the same may be amended or supplemented from time to time;

"TUPE"

means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 246);

"Value for Money"

means the amount of benefit provided to the Council, as well as the people, businesses and communities of Shropshire, in proportion to the amount of resources available;

"VAT"

means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

"Voluntary Termination Date"

means the termination date specified by the Council in a termination notice given to the Strategic Partner in accordance with clause 15 (Voluntary Termination by the Council);

"Voluntary Termination Notice"

has the meaning set out in clause 15 (Voluntary Termination by the Council).

2 INTERPRETATION

2.1 In this Agreement except where the context otherwise requires:

2.1.1 the masculine includes the feminine and vice-versa;

2.1.2 the singular includes the plural and vice versa;

2.1.3 a reference to any clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;

2.1.4 save where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;

2.1.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;

2.1.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

2.1.7 headings are for convenience of reference only;

2.1.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;

2.1.9 any obligation on a Party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;

2.1.10 subject to any express provisions of this Agreement to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense;

2.1.11 the Schedules to this Agreement form part of this Agreement;

- 2.1.12 in the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence; and
- 2.1.13 References to a public organisation (other than the Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Council) shall include their successors and assignees.

PART 1: CORE OPERATIVE PROVISIONS

3 COMMENCEMENT AND DURATION

- 3.1 This Agreement and the rights and obligations of the Parties shall take effect on the Commencement Date and shall continue until such time as it is terminated in accordance with its terms.

4 ENABLING SERVICES

- 4.1 The Council commissions and the Strategic Partner agrees to deliver the Enabling Services from time to time and as may be instructed and agreed under this Agreement. The Enabling Services include making, developing and promoting proposals to the Council in relation to:

- 4.1.1 new Services for transfer to the Strategic Partner;
- 4.1.2 transformation of existing Services in a more efficient way;
- 4.1.3 investment in the delivery of supplies, services or other resources required by the Strategic Partner;
- 4.1.4 delivering outcomes for the Council from time to time.

- 4.2 Either the Council may propose to the Strategic Partner and/or the Strategic Partner shall be entitled to put forward to the Council any proposals for any Enabling Services at any time. These may include new and innovative service provision models, new or alternative service delivery methods and ideas for future partnering and local community engagement.

- 4.3 The Council shall:

- (i) upon issuing a request for Enabling Services pursuant to clause 4.2, within fifteen (15) Business Days set out its requirements of the Strategic Partner in the carrying out of the Enabling Services or,
- (ii) upon receiving a request for Enabling Services pursuant to clause 4.2, notify the Strategic Partner as to whether it approves the proposal in principle within fifteen (15) Business Days and identify its process and timetable for developing the requirements. The Council may discuss these requirements with the Strategic Partner but it is for the Council to ultimately decide on its requirements at its absolute discretion. These requirements and any approval in principle to a request, will set out the process to be followed by the Parties in considering the Enabling Services request which may ultimately lead to the award of a Services Contract and such requirement shall, as a minimum, include the Strategic Partner setting out:

- 4.3.1 the information (and format for the information) to be delivered as part of the Enabling Services including the proposal details and key documents to be delivered;
- 4.3.2 service specific key performance indicators (including the contribution to any of the Council's overarching key performance indicators) and benefits and track record on performance;
- 4.3.3 the timetable for delivery of the proposals forming part of the Enabling Services;

- 4.3.4 the budget and target costs for the delivery of the Enabling Services including income, expenditure, return, investment required and proposed cash flow;
 - 4.3.5 any resources to include any staffing resources or Buy Back Services required from the Council for the delivery of the Enabling Services;
 - 4.3.6 the proposed treatment of assets;
 - 4.3.7 the proposed contract terms and risk profile that may form the basis of the Services Contract including the suggested payment terms, specification, the monitoring regime, risk register and proposed procurement strategy and third party involvement.
 - 4.3.8 the identification of any Buy Back Services required in respect of the Services Contract;
 - 4.3.9 the identification and proposed treatment of any Council employees who the Strategic Partner is proposing would transfer to the Strategic Contract as a result of the Services Contract.
- 4.3A.1 When setting out its requirements pursuant to clause 4.3, the Council may specify any assistance it requires the Trading Company to provide to the Strategic Partner in developing any process set out pursuant to clause 4.3 and in responding the Strategic Partner shall set out and identify its relationship with the Trading Company and the resources that may be shared. The Strategic Partner may raise comments upon any such requirement within any timescale specified by the Council, and the Council will use reasonable endeavours to take such comments into account. The Council will use reasonable endeavours to ensure that the Trading Company provides any such assistance as agreed pursuant to the Trading Company Strategic Contract.
- 4.3A.2 The parties acknowledge that the Trading Company Strategic Contract contains similar provisions to this clause 4.3A. The Strategic Partner will provide such assistance to the Trading Company as may be agreed between the Council and the Trading Company pursuant to the provisions of the Trading Company Strategic Contract.
- 4.4 Until such time as a budget is approved for the Enabling Services both Parties shall bear their own costs and if the Strategic Partner exceeds any agreed budget it shall do so at its own risk.
- 4.5 The Council shall be entitled to suspend, delay, abandon or terminate any process set out pursuant to clause 4.3 at its discretion but should it do so the Strategic Partner shall be entitled to recover only those costs incurred in performing the agreed Enabling Services up to that date.
- 4.6 In circumstances where the Strategic Partner delivers the Enabling Services identified under clause 4.1.1 and the Council accepts the proposals, the Parties shall enter into a Services Contract relating to the delivery of those services, the terms of which are to be agreed by the Parties as part of the Enabling Services process.
- 4.7 The Strategic Partner may perform services similar to the Enabling Services for other entities including other public bodies and shall be entitled to do so provided such services are identified and approved in advance by the Council and do not threaten the Teckal status of the Strategic Partner in accordance with clause 5.2.

5 KEY OBLIGATIONS

- 5.1 The Strategic Partner shall in carrying out its role as Strategic Partner and in delivering the Enabling Services and the Services pursuant to any Services Contract and its other obligations hereunder shall, at all times:
- 5.1.1 deliver transferred Services in accordance with specific Services Contracts; in a manner which is not likely to cause damage to property or be injurious to people; and with that degree of skill and care that would reasonably be expected of a competent professional provider of the relevant Services;
 - 5.1.2 where the Council agrees that any Services should be provided by a third party (whether wholly, or in part through a joint venture), undertake procurement processes on behalf of the Council in respect of such Services acting as a responsible procurer and provider in accordance with Good Industry Practice and in support of the Council's objectives and as a responsible employer;
 - 5.1.3 act in accordance with all relevant law and codes of practice (including Local Government Requirements where applicable) and in accordance with all Consents; in accordance with Good Industry Practice; and
 - 5.1.4 in a manner consistent with the Council discharging;
 - 5.1.4.1 its statutory duties; and/or
 - 5.1.4.2 other functions undertaken by it as the same may be notified to the Strategic Partner from time to time;
 - 5.1.5 the Strategic Partner shall at all times deliver the Enabling Services and the Services in accordance with the Council's Policies.
- 5.2 The Strategic Partner will not take any action (or fail to take any action) that has the potential to prejudice the Council's ability to award contracts to it without conducting a competitive procurement (under the exemption commonly known as the "Teckal" principle or any statutory enactment of that principle), without the prior written consent of the Council (and the Council shall be entitled to refuse such consent on any grounds)
- 5.3 The Strategic Partner shall work with the Trading Company to ensure that all and any services are delivered either by itself, the Trading Company or a combination to ensure it is not in breach of clause 5.2. Where the Strategic Partner receives a request for resources from the Trading Company it shall promptly respond and use its best endeavours to support such a request provided always that in meeting such a request it will not be required to put itself at material risk of being in breach of its other obligations under this Agreement or any Services Contract with the Council.

6 THE ANNUAL BUSINESS PLAN

- 6.1 The Strategic Partner shall prepare an annual business plan which is to be prepared in accordance with the template Annual Business Plan in Schedule 2 and which is to separately contain the information set out in respect of:

6.1.1 the following Financial Year; and

6.1.2 the following three Financial Years,

and which is to be approved by the Council ("**Annual Business Plan**").

6.2 The Strategic Partner shall submit the Annual Business Plan to the Council by 1st October in each Financial Year for consideration. The Parties will work together to reach an agreed signed Annual Business Plan by the end of the following January which enables the Annual Business Plan to be approved by Cabinet in February.

6.3 Upon reasonable request of the Council's Representative and in any event every six (6) months the Annual Business Plan shall be received by the parties and updated, as appropriate, including to take account of any changes or improvements identified in the Annual Review. Further, at all times and upon reasonable request of the Council's Representative, the Strategic Partner shall provide any additional detail to support or clarify the Annual Business Plan.

6.4 If the Annual Business Plan has not been agreed within two months of the end of January then the Council shall be entitled to suspend relevant terms of this Agreement and the Strategic Partner shall not be entitled to recover any further costs, losses, damages or expenses other than the properly incurred and agreed fees for Enabling Services as may have been incurred to that date.

7 PERFORMANCE AND FINANCIAL REVIEWS

7.1 The Strategic Partner will conduct Performance Reviews and Financial Reviews in accordance with this clause 7 and report to the Council with a detailed report on the following basis:

7.1.1 a monthly Financial Review delivered within ten (10) Business Days of the end of the month containing, as a minimum, the information set out on business performance which shall include, without limitation, information on trading performance, a profit and loss account, balance sheet, cash flow statement, cash at bank, details of debtors, all reports on forecast and expected returns against actual and such other information as the Council may reasonably require from time to time;

7.1.2 a quarterly Performance Review delivered within ten (10) Business Days of the end of each Quarter summarising performance in relation to the Enabling Services, the Services under all and any Services Contracts and, a review against overarching key performance indicators including employee and customer indicators with a report identifying trends of performance and any rectification or improvement plan based on its performance and any risks related to their provision; and

7.1.3 an annual joint Performance Review and Financial Review following the end of each Financial Year relating, for the avoidance of doubt, to the performance of both the Enabling Services and the Services (the "**Annual Review**") to be delivered within forty (40) Business Days of the end of the Financial Year.

7.2 Performance Reviews and reports on Performance Reviews shall:

- 7.2.1 provide sufficient detail to enable the Council's Representative to verify the accuracy of the information provided under all and any Services Contracts;
 - 7.2.2 assess the Enabling Services provided to the Council by the Strategic Partner in terms of the Strategic Partner's performance;
 - 7.2.3 identify any areas of poor performance and unavailability of any of the Enabling Services or the Services the subject of Service Contracts; and
 - 7.2.4 such other information as the Council may reasonably require from time to time.
- 7.3 The Strategic Partner undertakes that the process of the Performance Review, Financial Review or Annual Review (as the case may be) and the content of its reports shall be objective, fair and reasonable and that the assessment shall be conducted and the reports shall be written in good faith and shall submit the report to the Council for approval.
- 7.4 If the Council is not satisfied (acting reasonably) with the Performance Review, Financial Review or Annual Review report (as the case may be) issued by the Strategic Partner including any additional detail reasonably requested by the Council's Representative or if the Council's Representative requires that the Strategic Partner rectifies any failure of the Strategic Partner to carry out the Performance Review, Financial Review or Annual Review (as the case may be) in accordance with this clause the Council's Representative shall make a written request for the same. The Strategic Partner will, acting reasonably, consider such request and either carry out such rectification within ten (10) Business Days of receipt by the Strategic Partner of such request or liaise with the Council's Representative in good faith to agree an action plan (the "Action Plan") in order to finalise the Performance Review, Financial Review or Annual Review report (as the case may be). If the Council does not approve the report or Action Plan, or if the Strategic Partner fails to provide the Action Plan or carry out the actions set out in the Action Plan within the agreed timescales, the Strategic Partner shall be liable for the costs of any remedial action the Council considers necessary to rectify any failings (which in the case of a Financial Review, shall include the Council having the right to instruct its own financial advisers to carry out a full audit of the Strategic Partner's financial position at the Strategic Partner's cost).
- 7.5 The Strategic Partner shall implement any Action Plan or recommendations set out in the final approved version of the Performance Review, Financial Review or Annual Review report (as the case may be).
- 7.6 The purpose of the Annual Review is to consolidate the performance and financial position of the previous Financial Year in a review document with supporting collated documentation from the monthly Financial Reviews and quarterly Performance Reviews. The Council may, upon reasonable notice, stipulate any additional content of each Annual Review but it shall include, without limitation, information on performance standards, benchmarking or other process which demonstrates that value is being offered by the Strategic Partners, set out any improvements which the Strategic Partner must make to the Services in order to achieve the key performance indicators and the Services Contract requirements as applicable, set out the risk exposure of the Strategic Partner; and record any continuous improvement in relation to the delivery and performance of the Enabling Services and Services as applicable.
- 7.7 The Strategic Partner shall, within forty (40) Business Days of the end of the Financial Year, produce a comprehensive and detailed report dealing with all issues identified by the Council in clause 7.6 ("**Annual Review**") identifying any proposals for giving better Value for Money to the Council and setting out the findings of its Annual Review for review and

agreement by the Council, following which the Strategic Partner shall implement, within any reasonable timescales specified by the Council, such improvements or recommendations as are set out in the agreed Annual Review and make any adjustments to service levels or the Annual Business Plan which are appropriate to capture continuous improvement.

7.8 Upon reasonable request of the Council's Representative, the Strategic Partner shall provide any additional detail to support or clarify any aspects of the Annual Review. The Strategic Partner shall inform the Council immediately on becoming aware of any:

7.8.1 allegation or suspicion of any material irregularity in the accounts of the Strategic Partner;

7.8.2 irregularity in the accounts of the Strategic Partner being discovered; or

7.8.3 any issue that is, or is likely to, materially affect the operation of the Strategic Partner or its ability to deliver the Enabling Services or the Services.

7.9 In the event that it is identified that there is any irregularity in the accounts of the Strategic Partner, the Council may instruct its own financial advisers to carry out a full audit of the Strategic Partner's financial position at the Strategic Partner's cost.

8 PAYMENT PROVISIONS

8.1 The Council shall make the appropriate payments to the Strategic Partner in relation to any agreed Enabling Services, as agreed from time to time in accordance with any budget agreed pursuant to clause 4.

8.2

8.2.1 Any sum set out in an invoice issued by the Strategic Partner in accordance with the payment terms agreed pursuant to clause 4, shall become due and payable by the Council thirty (30) days from the date of receipt of the relevant invoice.

8.2.2 Each Party shall be entitled to receive interest on any payment not duly made pursuant to the terms of this Agreement on the due date calculated from day to day at a rate of 4% per annum above the base rate of the Bank of England from time to time in force.

8.2.3 It is agreed between the Parties that the provisions of this clause 8 provide the Parties with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

8.3 All payments under this Agreement shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made.

8.4 Disputed Amounts

8.4.1 If the Council, in good faith, disputes any amounts which are the subject of an invoice provided pursuant to this clause 8, the Council shall, no later than five (5) Business Days prior to the date such invoice becomes due and payable in accordance with clause 8, notify the Strategic Partner.

- 8.4.1.1 of the amounts which are not in dispute which shall become due and payable in accordance with the provisions of clause 8; and
- 8.4.1.2 of the amounts which are in dispute (a **Disputed Amount**), providing reasonable details of the nature of each such Disputed Amount. The Parties shall use all reasonable endeavours to resolve the dispute in question within twenty (20) Business Days of the dispute arising. If they fail to resolve the dispute, either Party may refer the matter to the Dispute Resolution Procedure. Following resolution of the dispute, any amount agreed or determined to have been payable shall be paid forthwith by the Council to the Strategic Partner together with interest at four (4)% above the Bank of England base rate calculated from the date on which payment should have been made.

9 RESOURCES FOR THE STRATEGIC PARTNER AND BUY-BACK SERVICES

- 9.1 The Strategic Partner may request (but cannot require) the Council to provide Buy-Back Services to it on terms which may be agreed between the Council and the Strategic Partner from time to time and subject to applicable law prevailing at the relevant time, including for the avoidance of doubt applicable procurement rules and guidance (whether or not such rules and guidance comprise law).
- 9.2 The Council shall:
 - 9.2.1 provide to the Strategic Partner such of the Buy-Back Services as are agreed pursuant to clause 9.1; and
 - 9.2.2 devote sufficient resource and expertise to providing the Buy-Back Services in a competent and timely manner and otherwise in accordance with the agreed standards and requirements.

10 REPRESENTATIVES

Representatives of the Council

- 10.1 The Council's Representative shall be the Director of Resources and Support or such other person appointed pursuant to this clause. The Council's Representative shall exercise the functions and powers of the Council in relation to the Strategic Partner which are identified in this Agreement as functions or powers to be carried out by the Council. The Council's Representative shall also exercise such other functions and powers of the Council under this Agreement as may be notified to the Strategic Partner from time to time.
- 10.2 The Council's Representative shall be entitled at any time, by notice to the Strategic Partner, to authorise any other person to exercise the functions and powers of the Council delegated to him pursuant to this clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the Council's Representative and all references to the "Council's Representative" in this Agreement (apart from this clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

Representative of the Strategic Partner

- 10.3 The Strategic Partner's Representative shall be the Managing Director or such other person appointed pursuant to this clause. The Strategic Partner's Representative shall have full authority to act on behalf of the Strategic Partner for all purposes of this Agreement. Except as previously notified in writing before such act by the Strategic Partner to the Council, the Council and the Council's Representative shall be entitled to treat any act of the Strategic Partner's Representative in connection with this Agreement as being expressly authorised by the Strategic Partner and the Council and the Council's Representative shall not be required to determine whether any express authority has in fact been given.
- 10.4 The Strategic Partner's Representative shall be entitled at any time, by notice to the Council, to authorise any other person to act with full authority on behalf of the Strategic Partner for all purposes of this Agreement. Except as previously notified in writing before such act by the Strategic Partner to the Council, the Council and the Council's Representative shall be entitled to treat any act of such person in connection with this Agreement as being expressly authorised by the Strategic Partner and the Council and the Council's Representative shall not be required to determine whether any express authority has in fact been given. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the Strategic Partner's Representative and all references to the "Strategic Partner's Representative" in this Agreement (apart from this clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.
- 10.5 The Strategic Partner may by notice to the Council, change the Strategic Partner's Representative. Where the Strategic Partner wishes to do so it shall, by written notice to the Council, propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Agreement. Such appointment shall be subject to the approval of the Council (not to be unreasonably withheld or delayed).

Appointment of Representatives

- 10.6 During any period when either no Council's Representative or Strategic Partner's Representative has been appointed (or when either Party's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) the relevant Party shall appoint a temporary replacement (and notify the other Party of the identity of such temporary replacement), who shall carry out the functions which would otherwise be performed by the Party's Representative.
- 10.7 At any time the Council may appoint more than one Council's Representative and the Strategic Partner may appoint more than one Strategic Partner's Representative provided in each case the appointer provides written confirmation to the Strategic Partner or Council as appropriate of the extent of its Representative's authority.

11 STAFF

- 11.1 The Parties shall deal with employment and pensions arrangements in accordance with Schedule 3.

12 ASSETS

- 12.1 There are no Council Assets identified as required for use by the Strategic Partner as at the Commencement Date. The Council shall retain such rights, titles and ownership as it has in the Council Assets, save as may be provided for pursuant to any Services Contracts.
- 12.2 The Council will retain all rights, titles and ownership of any transferred assets until full and final settlement of any sums due to the Council for the asset.
- 12.3 For assets identified by the Council in its sole discretion as key strategic assets, the Strategic Partner will not be able to dispose of such assets without the written consent of the Council (which consent may be given or refused at the Council's absolute discretion), even where ownership has transferred to the Strategic Partner.
- 12.4 Asset maintenance requirements, along with the responsibility for costs of such maintenance, shall be agreed between the Parties as part of the new Services Contract.
- 12.5 Responsibility for the maintenance of an inventory shall sit with the asset owner.

PART 2 – GENERAL PROVISIONS

13 RESERVED DECISIONS

- 13.1 In undertaking its obligations under this Agreement the Strategic Partner will obtain the prior written approval of the Council in relation to Reserved Decisions (Schedule 1).

14 DISPUTE RESOLUTION PROCEDURE

- 14.1 If there is any dispute between the Parties arising out of or in connection with this Agreement (the "Dispute") the Representatives of each party shall work together in good faith to resolve the Dispute to the mutual satisfaction of the Parties.
- 14.2 If the Representatives cannot resolve the Dispute within ten (10) Business Days of it being referred to the Representatives the Dispute shall be referred to the Chief Officers of each Party. The Chief Officers shall attempt in good faith to resolve the Dispute to the mutual satisfaction of the Parties.
- 14.3 If any the Dispute arises out of or is in connection with the sum payable to the Strategic Partner in accordance with clause 8 of this Agreement, or any other financial remuneration due from the Council to the Strategic Partner, then either Party may refer the dispute for resolution by expert determination in accordance with the procedure in Schedule 5 of this Agreement.
- 14.4 The decision of an expert in accordance with Schedule 5 shall be binding on, and implemented by the parties pending final determination of the relevant dispute by the English Courts.
- 14.5 The provisions of this clause 14 shall survive termination or expiry of this Agreement.

15 VOLUNTARY TERMINATION BY THE COUNCIL

- 15.1 The Council may terminate this Agreement by serving a termination notice of no less than three (3) months on the Strategic Partner (the "Voluntary Termination Notice") stating:
- 15.1.1 that the Council is terminating this Agreement under this clause 15 (Voluntary Termination by the Council); and
 - 15.1.2 that this Agreement will terminate on the Voluntary Termination Date.
- 15.2 Following receipt of the Voluntary Termination Notice, this Agreement will terminate on the Voluntary Termination Date.
- 15.3 For the avoidance of doubt, no compensation on termination shall be payable by the Council to the Strategic Partner due to a termination pursuant to this clause 15 save for any funds due to the Strategic Partner in accordance with clause 8 (Payment Provisions).

16 TERMINATION ON COUNCIL DEFAULT

- 16.1 If a Council Default has occurred and the Strategic Partner wishes to terminate this Agreement the Strategic Partner must serve a termination notice (the "Council Default Termination Notice") on the Council within fifteen (15) Business Days of becoming aware of the Council Default.
- 16.2 The Council Default Termination Notice must specify the type of Council Default which has occurred entitling the Strategic Partner to terminate.
- 16.3 This Agreement will terminate on the day falling six months after the date the Council receives the Council Default Termination Notice, unless the Council rectifies the Council Default within forty (40) Business Days of receipt of the Strategic Partner Termination Notice.
- 16.4 For the avoidance of doubt, no compensation on termination shall be payable by the Council to the Strategic Partner due to a termination pursuant to this clause 16 save for any funds due to the Strategic Partner in accordance with clause 8 (Payment Provisions).

17 TERMINATION ON STRATEGIC PARTNER DEFAULT

Right to terminate

- 17.1 Subject to clauses 17.3 to 17.5 (Rectification), if a Strategic Partner Default has occurred, the Council shall be entitled to terminate this Agreement by serving a written notice (a "Strategic Partner Default Termination Notice") on the Strategic Partner.
- 17.2 Subject to clauses 17.3 and 17.5, this Agreement shall terminate on the day falling forty (40) Business Days after the date the Strategic Partner receives the Strategic Partner Default Termination Notice.

Rectification

- 17.3 If the Strategic Partner Default is deemed capable of remedy by the Council, the Strategic Partner shall submit an acceptable rectification programme and the Strategic Partner shall rectify the Strategic Partner Default within the time period specified by the Council in the Strategic Partner Default Termination Notice;

- 17.4 If the Strategic Partner either rectifies the Strategic Partner Default within the time period specified by the Council in the Strategic Partner Default Termination Notice the Strategic Partner Default Termination Notice will be deemed to be revoked and this Agreement will continue.
- 17.5 If the Strategic Partner fails to rectify the Strategic Partner Default within the time period specified by the Council in the Strategic Partner Default Termination Notice, the Council may give notice stating that this Agreement will terminate on the date falling five (5) Business Days after the date of receipt of such notice.
- 17.6 For the avoidance of doubt, no compensation shall be payable by the Strategic Partner due to a termination pursuant to this clause 17 unless the Strategic Partner is in breach of clause 5.2 or its activities are no longer covered by the Teckal status protection in which case the Strategic Partner shall be liable to the Council for all costs, losses, damages and expenses suffered or incurred by the Council in relation to this Agreement and the cost of finding replacement providers to perform the Enabling Services and the Services.

18 TERMINATION ON CORRUPT GIFTS AND FRAUD

18.1 Strategic Partner's Warranty

The Strategic Partner warrants that in entering into this Agreement it has not committed any Prohibited Act.

18.2 Termination for Corrupt Gifts and Fraud

- 18.2.1 If the Strategic Partner or any Associated Person or any of its or their agents or shareholders commits any Prohibited Act, then the Council shall be entitled to act in accordance with the provisions of this clause 18.2 (Termination for Corrupt Gifts and Fraud).
- 18.2.2 If a Prohibited Act is committed by the Strategic Partner or by an Associated Person not acting independently of the Strategic Partner or by an employee not acting independently of the Strategic Partner, then the Council may terminate this Agreement by giving notice to the Strategic Partner.
- 18.2.3 If the Prohibited Act is committed by an employee of the Strategic Partner or Associated Person acting independently of the Strategic Partner, then the Council may give notice to the Strategic Partner of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Strategic Partner terminates the employee's or Associated Person's employment and demonstrates to the reasonable satisfaction of the Council that the employee or Associated Person was acting independently of the Strategic Partner and (if necessary) procures the performance of such part of the employee's or Associated Person's duties by another person.
- 18.2.4 If a Prohibited Act is committed by any legal person not referred to in clause 18.2.2 above, then the Council may give notice to the Strategic Partner of termination and this Agreement will terminate, provided that if within twenty (20) Business Days of receipt of such notice the Strategic Partner
- 18.2.4.1 terminates or procures the termination of such person's employment and the appointment of their employer (where not employed by the Strategic Partner and the individual has not been acting

independently of the employer) (in the case of an individual) or terminates the relevant appointment (in the case of an entity);

18.2.4.1.1 demonstrates to the reasonable satisfaction of the Council that the relevant person was acting independently of the Strategic Partner and in the case of an individual (unless such individual's contract of employment has been terminated) their employer; and

18.2.4.1.2 (if necessary) procures the performance of such part of such person's duties by another person,

the Council may (in its absolute discretion) decide not to give notice of termination to the Strategic Partner.

18.2.5 Any notice of termination under this clause 18.2 shall specify:

18.2.5.1 the nature of the Prohibited Act;

18.2.5.2 the identity of the party whom the Council believes has committed the Prohibited Act;

18.2.5.3 the date on which this Agreement will terminate, in accordance with the applicable provision of this clause.

18.2.6 In this clause 18, the expression "not acting independently of" (when used in relation to the Strategic Partner or a sub-contractor) means and shall be construed as acting with the authority of, or knowledge of any one or more of the directors of the Strategic Partner or any sub-contractor (as the case may be).

19 CONSEQUENCES OF TERMINATION

Termination of Agreement

19.1 Notwithstanding any other provisions of this Agreement, this Agreement shall only terminate in accordance with the express provisions of this Agreement.

Pending Termination

19.2 The Parties shall continue to perform their obligations under this Agreement, notwithstanding the service by either Party of a notice of termination or indicating that that Party may terminate this Agreement, until such time as such termination becomes effective.

19.3 Notwithstanding any breach of this Agreement by either Party and without prejudice to any other rights which the other Party may have in relation thereto, the other Party may elect to continue to treat this Agreement as in full force and effect and to enforce its rights under this Agreement.

19.4 The failure of either Party to exercise any right under or in respect of this Agreement including any right to terminate the employment of the Strategic Partner hereunder and any right to claim damages shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

Steps to be Taken upon Termination

- 19.5 Upon a termination of this Agreement howsoever arising:
- 19.5.1 the Strategic Partner shall where so requested by the Council assign or novate to the Council, or to such other person as the Council may elect, with effect from the date of termination, any subcontract (and the Strategic Partner shall take all necessary steps and execute such documents as are necessary to give effect to such assignment or novation);
 - 19.5.2 the Strategic Partner shall promptly and in an orderly manner and with all reasonable speed and economy deliver to the Council all documents and Council Data (howsoever held) relating to the provision of the Enabling Services which are for the time being under the control of the Strategic Partner;
 - 19.5.3 the Strategic Partner shall where so requested by the Council transfer its rights, title and interest in and to the assets to the Council, or to such other person as the Council may elect, with effect on and from the date of termination;
 - 19.5.4 the Strategic Partner shall as soon as practicable remove from the Council's property all property of each of the Strategic Partner and any sub-contractors whose presence on the Council's property is no longer expressly or impliedly permitted; and
 - 19.5.5 the Strategic Partner shall and shall procure that all sub-contractors whose presence on the Council's property is no longer expressly or impliedly permitted shall as soon as practicable vacate the Council's property and shall leave the Council's property in a safe, clean and orderly condition.

Co-operation

- 19.6 On termination or expiry of this Agreement, the Strategic Partner shall (and shall ensure that its sub-contractors shall) co-operate fully with the Council and any replacement providers of any of the Enabling Services (or any other matters being delivered pursuant to the Annual Business Plan that are not the subject of a Services Contract) in order to achieve a smooth transfer of the Enabling Services and any other matters being delivered pursuant to the Annual Business Plan that are not the subject of a Services Contract to the Council or any replacement providers of any of the Enabling Services.

Continuing Obligations

- 19.7 The Parties acknowledge and agree that:
- 19.7.1 termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination; and
 - 19.7.2 termination of this Agreement shall not affect the continuing rights and obligations of the Strategic Partner and the Council under clause 11 (Staff), 8(Payment Provisions), clause 17 (Termination on Strategic Partner Default), 18 (Termination on Corrupt Gifts and Fraud), 19 (Consequences of Termination), 20 (Freedom of Information and Confidentiality), clause 25 & 26 (General Warranties and Indemnities), clause 22 (Insurance), clause 14 (Dispute Resolution), clause 21 (Intellectual Property), clause 27 (Notices), and clause 38 (Governing Law and Jurisdiction) or under any other provision of this Agreement which is expressed to survive termination or which is

required to give effect to such termination or the consequences of such termination.

Effect on Service Contracts

- 19.8 For the avoidance of doubt, without prejudice to the provisions of the Service Contracts, termination of this Agreement shall not in itself give rise to termination of any of the Services Contracts.

20 FREEDOM OF INFORMATION AND CONFIDENTIALITY

Duty of Confidentiality

- 20.1 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement and the Services Contracts and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

Permitted Disclosure

- 20.2 Clause 20.1 (Duty of Confidentiality) shall not apply to:
- 20.2.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Agreement for the performance of those obligations;
 - 20.2.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 20;
 - 20.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Strategic Partner and any of its sub-contractors;
 - 20.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
 - 20.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 20.2.6 any provision of information to the Parties' own professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Strategic Partner in connection with carrying out its obligations under this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - 20.2.7 any application for registration or recording of any Necessary Consents and property registration required;

20.2.8 any disclosure of information by the Council to any other department, office or agency of the government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to this Agreement, or to an or any officer, agent, contractor, employee or sub-contractor of any tier of the Council (acting in the course of their office, employment or appointment (as the case may be)); and

20.2.9 any disclosure for the purpose of:

20.2.9.1 the examination and certification of the Council's or the Strategic Partner's accounts; or

20.2.9.2 any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Council has used its resources; or

20.2.9.3 complying with a proper request from either Party's insurance advisers, or insurers on placing or renewing any insurance policies; or

20.2.9.4 (without prejudice to the generality of clause 20.2.4) compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither clauses 20.2.9.4 nor 20.2.4 shall permit disclosure of Confidential Information otherwise prohibited by clause 20.1 where that information is exempt from disclosure under section 41 of the FOIA.

Obligations Preserved

20.3 Where disclosure is permitted under clause 20.2 (Permitted Disclosure) (other than clauses 20.2.2, 20.2.4, 20.2.5, 20.2.8 and 20.2.9) the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

Exploitation of Information

20.4 The Strategic Partner shall not make use of this Agreement or any information issued or provided by or on behalf of the Council in connection with this Agreement otherwise than for the purposes of this Agreement, except with the written consent of the Council.

Disclosure by auditor

20.5 The Parties acknowledge that the Council's external auditor has the right to publish details of this Agreement in its relevant reports to parliament.

20.6 The provisions of this clause 20 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

Freedom of Information

20.7 The Parties acknowledge that each of the Parties is subject to the requirements of the FOIA and the Environmental Information Regulations and shall each facilitate the other's compliance with its Information disclosure requirements pursuant to the same in the manner provided for below. Where, in the future, the Parties become subject to additional statutory requirements in relation to the disclosure of information or datasets the Parties

agree to assist each other as is reasonably necessary to each facilitate the other's compliance with its disclosure requirements under such legislation.

20.8 Where either Party (the "**First Party**") receives a Request for Information in relation to Information that the other Party (the "**Second Party**") is holding on its behalf the First Party may transfer to the Second Party such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Second Party shall:

20.8.1 provide the First Party with a copy of all such Information in the form that First Party requires (acting reasonably) as soon as practicable and in any event within ten (10) Business Days (or such other period as the First Party acting reasonably may specify) of the First Party's request; and

20.8.2 provide all necessary assistance as reasonably requested by the First Party in connection with any such Information, to enable the First 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 Environmental Information Regulations.

20.9 Following notification under clause 20.8 and up until such time as the Second Party has provided the First Party with all the Information specified in clause 20.8.1, the Second Party may make representations to the First Party as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the First Party shall be responsible for determining at its absolute discretion:

20.9.1 whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

20.9.2 whether the Information is to be disclosed in response to a Request for Information, and

in no event shall the Second Party respond directly or allow its sub-contractors to respond directly to a Request for Information unless expressly authorised to do so by the First Party.

20.10 The Strategic Partner shall ensure that all Information held on behalf of the Council is retained for disclosure for at least six (6) years or such longer period as may be notified by the Council (acting reasonably) from the date it is acquired and shall permit the Council to inspect such Information as requested from time to time.

20.11 The Strategic Partner acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of FOIA and the Environmental Information Regulations.

20.12 In the event of a request from the First Party pursuant to clause 20.8, the Second Party shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the First Party of the Second Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the First Party under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the First Party's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the First Party shall inform the Second Party in writing whether or not it still requires the Second Party to comply with the request and where it

does require the Second Party to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the First Party is entitled to under Section 10 of the FOIA. In such case, the First Party shall notify the Second Party of such additional days as soon as practicable after becoming aware of them and shall reimburse the Second Party for such costs as the Second Party incurs in complying with the request to the extent the First Party is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

20.13 The Strategic Partner acknowledges that (notwithstanding the provisions of clause 20) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the FOIA Code), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Strategic Partner or the Agreement:

20.13.1 in certain circumstances without consulting with the Strategic Partner; or

20.13.2 following consultation with the Strategic Partner and having taken its views into account,

provided always that, where clause 20.13.1 applies, the Council shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Strategic Partner prior to any disclosure.

21 INTELLECTUAL PROPERTY

21.1 The Parties agree and acknowledge that all Intellectual Property Rights ("IPR") existing at the date of this Agreement which are owned by either Party shall remain vested in that Party.

21.2 The Strategic Partner agrees and acknowledges that all IPR created or developed in the provision of the Services or otherwise arising from or in connection with the Enabling Services or this Agreement, including all IPR created or developed by or on behalf of the Strategic Partner or the Enabling Services, shall vest in and belong absolutely and exclusively to the Council.

21.3 The Council provides a revocable, non-exclusive, royalty free licence to the Strategic Partner to use the Council's IPR solely for the purposes of delivery of the Enabling Services in accordance with this Agreement, such licence to automatically terminate upon termination of this Agreement.

21.4 Neither Party shall transfer, copy, sell, sub-licence or make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any part of the other Party's IPR without the prior written approval of that other Party.

21.5 Each Party (the "**IPR Indemnifier**") will indemnify and hold harmless the other Party (the "**IPR Beneficiary**") against any and all direct liability, loss, damages, costs, reasonable legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the IPR Beneficiary in respect of any claim or action against the IPR Beneficiary that the use of the IPR Indemnifier's Background IPR under any licence granted hereunder infringes the Intellectual Property Rights of any third party (an "**Intellectual Property Infringement**") provided that the IPR Beneficiary:

- 21.5.1 gives notice to the IPR Indemnifier of any Intellectual Property Infringement forthwith upon becoming aware of the same;
 - 21.5.2 gives the IPR Indemnifier the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the IPR Indemnifier; and
 - 21.5.3 acts in accordance with the reasonable instructions of the IPR Indemnifier and gives the IPR Indemnifier such assistance as it shall reasonably require in respect of the conduct of the said defence.
- 21.6 Each Party grants the other Party a non-exclusive licence for the duration of the Agreement to use that Party's brand in relation to the Enabling Services and the Services, provided that:
- 21.6.1 in the case of the Council's brand the Strategic Partner agrees to comply at all times with the Council's policies regarding the Council brand;
 - 21.6.2 each Party agrees to cease using the other Party's brand immediately on termination or expiry of this Agreement; and
 - 21.6.3 the Council may at any point during the Agreement impose additional directions or obligations on the Strategic Partner in relation to the Council's brand, if the Council is not satisfied with the Strategic Partner's use or other treatment of the Council's brand.
- 21.7 This clause 21 shall survive termination or expiry of the Agreement.

22 INSURANCE

- 22.1 The Strategic Partner shall ensure it has all appropriate insurances in place as required by law and shall inform and update the Council regularly and pursuant to clause 22.1. The Council shall be entitled to approve all and any insurances proposed by the Strategic Partner.
- 22.2 The Strategic Partner can request the Council to arrange for the activities of the Strategic Partner relating to this Agreement to be covered by its insurance policies subject always to agreement. If the Council does effect such insurances, the Strategic Partner shall be responsible for all and any costs arising, and in the event of any claim by the Strategic Partner under such insurance policies, the Strategic Partner shall ensure that Strategic Partner's employees, sub-contractors, agents or any Associated Persons provide the Council (or its appointed agents) with such assistance and access to information, assets, personnel or documentation as is required in order to properly deal with the claim.

23 LIABILITY

- 23.1 The Strategic Partner shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:

- 23.1.1 the Strategic Partner's breach of the terms of this Agreement.
 - 23.1.2 any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with a trading contract or a Services Contract;
 - 23.1.3 any claim made against the Council by a third party arising out of or in connection with the undertaking of a trading or other contract by the Strategic Partner.
- 23.2 This indemnity shall apply whether or not the Strategic Partner has been negligent or at fault.

24 DATA PROTECTION

- 24.1 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that the Council is the Data Controller and that the Strategic Partner is the Data Processor.
- 24.2 The Strategic Partner shall comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.
- 24.3 Notwithstanding the general obligation in clause 13.1, where the Strategic Partner is processing Personal Data as a Data Processor for the Council, the Strategic Partner shall ensure that it has in place appropriate technical, organisational and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and
- 24.3.1 provide the Council with such information as the Council may reasonably require to satisfy itself that the Strategic Partner is complying with its obligations under the Data Protection Legislation;
 - 24.3.2 promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 24.3; and
 - 24.3.3 ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.
 - 24.3.4 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

25 INDEMNITIES

- 25.1 The Strategic Partner undertakes with the Council that for so long as this Agreement remains in full force:
- 25.1.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware the same may be threatened or pending or with twenty (20) Business Days after the commencement thereof where the litigation or arbitration or

administrative or adjudication or mediation proceedings is against a Key Sub-Contractor) give the Council notice of such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of this Agreement or any Service Contract(s), the Strategic Partner's ability to perform its obligations under this Agreement;

- 25.1.2 it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Strategic Partner to perform its obligations under this Agreement;
- 25.1.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
- 25.1.4 it will not undertake the performance of its obligations under this Agreement for the provision of the Services otherwise than through itself or a Sub-Contractor; and
- 25.1.5 it shall not change or cease its business in a way which would materially and adversely affect the ability of the Strategic Partner to perform its obligations under the Service Contracts.

Bribery Act Undertaking

The Strategic Partner warrants and undertakes to the Council that it has and will throughout the duration of this Agreement have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Strategic Partner from bribing any person with the intention of obtaining or retaining business for the Strategic Partner or with the intention of obtaining or retaining an advantage in the conduct of business for the Strategic Partner.

Status of Warranties

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Strategic Partner in this Agreement are cumulative and none shall be given a limited construction by reference to any other.

26 AUTHORITY WARRANTIES

No Warranty by Council

- 26.1 Subject to clause 24.3 (Fraudulent Statements), the Council does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

No Liability to Strategic Partner

- 26.2 Subject to clause 24.3 (Fraudulent Statements), neither the Council nor any of its agents, employees or advisors shall be liable to the Strategic Partner in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- 26.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or
- 26.2.2 any failure to make available to the Strategic Partner any materials, documents, drawings, plans or other information or data whatsoever relating to this Agreement or any Service Contract.

Fraudulent Statements

- 26.3 Nothing in this clause 24 shall exclude any liability which the Council or any of its agents or employees would otherwise have to the Strategic Partner in respect of any statements made fraudulently prior to the date of this Agreement.

Rights and Remedies

- 26.4 The provisions of this clause 6 are without prejudice to the Strategic Partner's express rights and remedies under or pursuant to this Agreement.

Strategic Partner's Due Diligence

- 26.5 The Strategic Partner shall, subject to the terms of this Agreement, be deemed to have:
 - 26.5.1 satisfied itself as to the nature and extent of the risks assumed by it under this Agreement; and
 - 26.5.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed.

No Relief

- 26.6 Subject to clause 26.3 (Fraudulent Statements), the Strategic Partner shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Council on grounds that any information, whether obtained from the Council or otherwise (including information made available by the Council), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

27 NOTICES

Form and Service of Notices

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

Strategic Partner	Council
Managing Director;	Head of Legal & Democratic Services
West Wing, Shirehall, Abbey Foregate, Shrewsbury SY2 6ND;	Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND
Fax: 01743 252390	Fax: 01732 252795

Provision of Information to Representatives

- 27.2 Where any information or documentation is to be provided or submitted to the Council's Representative or the Strategic Partner's Representative it shall be provided or submitted by sending the same by first class post, facsimile or by hand, or leaving the same at:

Strategic Partner's Representative	Council's Representative
Managing Director	Director of Resources and Support
West Wing, Shirehall, Abbey Foregate, Shrewsbury SY2 6ND;	Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND
Fax: 01743 252390	01743 252390

Change of Details

- 27.3 Either Party (and either Representative) may change its nominated address or facsimile number by prior notice to the other Party.

Notices by Post

- 27.4 Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

27.4.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

27.4.2 by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

28 PUBLICITY AND THIRD PARTY RELATIONS

- 28.1 The Council and the Strategic Partner shall agree from time to time the nature and content of all and any publicity.
- 28.2 The Strategic Partner will cease undertaking publicity activity or discussions where requested in writing by the Council to do so.

29 AUDIT ACCESS

- 29.1 The Strategic Partner shall provide to the Council's Representative all information, documents, records and the like (including, for the avoidance of doubt, documents relating to the Strategic Partner's accounts or any audit of its own internal processes) in the possession of, or available to, the Strategic Partner, and also provide assistance from and access to the Strategic Partner's staff, and to this end the Strategic Partner shall use all reasonable endeavours to procure that all such items in the possession of the Strategic Partner or any sub-contractor shall be available to it and the Strategic Partner shall (and shall procure that the sub-contractors shall) include appropriate terms in contracts with all sub-contractors to this effect as may be reasonably requested by the Council's Representative for any purpose in connection with this Agreement.
- 29.2 The Strategic Partner shall ensure that the Council's appointed internal auditors:

- 29.2.1 have access at reasonable times to premises or land used in the provision of the Enabling Services and/ or the Services;
 - 29.2.2 have access to all assets, records, documents, correspondence and control systems (except for those from which they are statutorily prevented);
 - 29.2.3 are given any information and explanation as they deem appropriate concerning any matter under consideration;
 - 29.2.4 are given full cooperation by any employee of the Strategic Partner to account for Council funds, stores or any Council property under their control and produce it for inspection if required;
 - 29.2.5 have access to records relating to Enabling Services and/ or Services provided by third parties, such as contractors, when required;
 - 29.2.6 are given full cooperation in the evaluation of the adequacy and effectiveness of internal controls in the operation or administration of the Council's financial and other systems;
 - 29.2.7 are given access to all supporting evidence relating to the production of key performance indicators and any plans; and
 - 29.2.8 are given full assistance and high priority in the investigation of fraud, bribery and corruption or other irregularity.
- 29.3 The Strategic Partner shall respond positively and implement recommendations necessary to secure effective internal control in the operation or administration of the Council's financial and other systems.

Audit

- 29.4 For the purposes of:
- 29.4.1 the examination and certification of the Council's accounts;
 - 29.4.2 the Local Government Finance Act 1982 (and any other Legislation relating to the inspection, examination and auditing of the Council's accounts);
 - 29.4.3 an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Council has performed its functions; or
 - 29.4.4 any other audit which may be carried out in relation to the Council's activities,

the District Auditor, Council's internal auditor or any external auditor may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Strategic Partner (including, for the avoidance of doubt, documents relating to the Strategic Partner's accounts or any audit of its own internal processes) and any sub-contractor and may require the Strategic Partner and any sub-contractor to produce such oral or written explanations as he or it considers necessary.

- 29.5 If any irregularity in the accounts of the Strategic Partner is discovered (by any entity) the Strategic Partner shall notify the Council immediately and confirm that it intends to find,

deal with and remedy the cause immediately and in any event within ninety (90) Business Days of the discovery in a manner satisfactory to the Council.

30 ASSIGNMENT AND SUB-CONTRACTING

30.1 This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other Party.

30.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

30.3 Nothing in this Agreement shall prohibit the Strategic Partner from providing or procuring the provision of the Services from a sub-contractor provided any procurement strategy related to the selection and appointment has been agreed in advance by the Council in accordance with clause 4.

30.4 The Strategic Partner shall:

30.4.1 perform its obligations under and observe all the terms of any subcontract with a sub-contractor;

30.4.2 notwithstanding any sub-contracting permitted hereunder, remain responsible for the acts and omissions of its sub-contractors as though they were its own; and

30.4.3 ensure that contracts between the Strategic Partner and its sub-contractors shall contain terms, conditions and obligations as may be necessary to enable the Strategic Partner to meet all its obligations to the Council under this Agreement.

31 AMENDMENTS

31.1 This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of all the Parties to this Agreement.

32 WAIVER

32.1 Any relaxation, forbearance, indulgence or delay (together "Indulgence") of any Party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).

33 NO PARTNERSHIP OR AGENCY

33.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Council and the Strategic Partner.

33.2 Save as expressly provided otherwise in this Agreement, the Strategic Partner shall not be, or be deemed to be, an agent of the Council and the Strategic Partner shall not hold itself out as having authority or power to bind the Council in any way.

34 ENTIRE AGREEMENT

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

34.2 Each Party acknowledges that:

34.2.1 it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

34.2.2 this clause 34 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

35 SEVERABILITY

35.1 If any court or finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

35.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

36 COUNTERPARTS

36.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement. No counterpart shall be effective until each party has executed at least one counterpart.

37 THIRD PARTY RIGHTS

37.1 No person other than a party to this Agreement shall have any rights to enforce any term of this Agreement.

38 GOVERNING LAW AND JURISDICTION

38.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by 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 such dispute.

SCHEDULE 1 – RESERVED DECISIONS

- 1 Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
- 2 Adopting or amending the Annual Business Plan.
- 3 Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
- 4 Amalgamating or merging with any other company or business undertaking.
- 5 Entering into any arrangement, contract or transaction or linked transaction with either a capital or revenue value over £100 000 where such contract is not contained within or not approved in the relevant Annual Business Plan.
- 6 Agreeing the appointment and the appointment terms (including any remuneration terms) of all directors of the Strategic Partner.
- 7 Entering into any arrangement, contract or transaction which is not within, ancillary or incidental to the Strategic Partner's business or is otherwise than on arm's length terms or as approved in the relevant Annual Business Plan.
- 8 Declaring, authorising or making dividends or distributions of assets of any kind to a shareholder.

SCHEDULE 2 – ANNUAL BUSINESS PLAN

Template information to be agreed but shall include as a minimum:

- Strategy
- Timescales
- Key Deliverables and resources to including overarching key performance indicators covering employee and customer indicators
- Financial information including:
 - Profit and Loss account
 - Balance sheet
 - Cashflow
 - Payment Schedule
- Treatment of Assets
- Monitoring Regime
- Governance
- Risk Register
- Third Party involvement

SCHEDULE 3 – EMPLOYMENT AND PENSIONS

No Employee Transfer

1

1.1

- 1.1.1 The Council and the Strategic Partner agree that there are no individuals presently employed by the Council or by any existing third party contractor to the Council whose contracts of employment will, by virtue of the transfer to the Strategic Partner of responsibility for the provision of (or procuring the provision by any sub-contractor of) any of the Enabling Services in accordance with this Agreement and in accordance with TUPE, have effect after the Commencement Date (or at any other time) as if originally made between those persons and the Strategic Partner and/or relevant sub-contractor.
- 1.1.2 If it is subsequently agreed or determined that there are persons presently employed by the Council or by any existing third party contractor to the Council whose contracts of employment do have effect after the Commencement Date as if originally made between those persons and the Strategic Partner and/or relevant sub-contractor ("Transferring Staff") then:
- 1.1.2.1 the Council shall within seven (7) Business Days of the date on which it was so agreed or determined have the opportunity to offer a position as an employee of the Council to some or all of the Transferring Staff;
- 1.1.2.2 the Strategic Partner shall procure that no person to whom the Council has offered a position in accordance with paragraph 13.1.2.1 shall be dismissed by reason of redundancy until the period for acceptance of the Council's offer has expired and the person in question has not accepted the Council's offer;
- 1.1.2.3 subject to paragraphs 1.1.2.1 and 1.1.2.2, the Strategic Partner or any sub-contractor shall be entitled to dismiss any or all of the Transferring Staff by reason of redundancy or for some other substantial reason provided that the Strategic Partner shall use and shall procure that any sub-contractor shall carry out in the required manner any obligation to consult with the Transferring Staff or any of them, or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of any costs payable in respect of the Transferring Staff or their dismissal.

The Council shall indemnify the Strategic Partner against any costs referred to in paragraph 1.1.2.3 reasonably incurred by the Strategic Partner (or by a relevant sub-contractor and for which the Strategic Partner is responsible) provided that such dismissals are made by the Strategic Partner (or by a relevant sub-contractor and for which the Strategic Partner is responsible) within three (3) months of the relevant date on which responsibility for the delivery of the relevant Enabling Services transferred to the Strategic Partner (or relevant sub-contractor).

1.2 Compliance with legislation and Council's Policies

- 1.2.1 The Strategic Partner shall comply and shall procure that each sub-contractor and all persons employed or engaged by a sub-contractor in connection with the provision of the Enabling Services and/ or the Services shall comply at all times with the Law on health and safety at work and on anti-discrimination and equal opportunities.
- 1.2.2 The Strategic Partner shall procure that each sub-contractor takes all reasonable steps to procure that all persons including any employed or engaged by a sub-contractor in connection with the provision of the Enabling Services and/ or the Services shall, so far as applicable, comply with the Council's Policies as regards health and safety at work and with those relating to anti-discrimination and equal opportunities (including those relating to harassment). The Strategic Partner also shall take and shall procure that every sub-contractor shall take all such steps as the Council may reasonably require, which shall include co-operation with action proposed or taken by the Council, to ensure that the Council complies with its duty under Section 3(1) Health and Safety at Work Act 1974 regarding the conduct of the undertaking of the Council.

1.3 Strategic Partner Indemnities

- 1.3.1 The Strategic Partner shall indemnify and keep indemnified in full the Council and, at the Council's request, each and every service provider who shall provide any service equivalent to any of the Enabling Services immediately after expiry or earlier termination of this Agreement (a **Future Service Provider**) against:-
- 1.3.1.1 claims in respect of all emoluments and all other contractual or statutory payments unpaid by the Strategic Partner or a sub-contractor to any person entitled to such payments from the Strategic Partner or a sub-contractor who is or has been employed or engaged by the Strategic Partner or any sub-contractor in connection with the provision of any of the Enabling Services and/ or the Services which relate to any period of employment or engagement with the Strategic Partner or any sub-contractor on or after the Commencement Date but prior to the date of expiry or termination of this Agreement, and all income tax and pension and national insurance contributions payable thereon; and
- 1.3.1.2 insofar as paragraph 13.3.1.1 does not apply, all Direct Losses incurred by the Council as a result of any claim against the Council in respect of any liability to any person who is or has been employed or engaged (whether as a consequence of TUPE or of the provisions of this Schedule 3) by the Strategic Partner or any sub-contractor in connection with the provision of any of the Enabling Services and/ or the Services, where such claim arises as a result of any act or omission of the Strategic Partner or the sub-contractor occurring after the Commencement Date and before the expiry or termination of this Agreement;

BUT the indemnities in paragraphs 1.3.1.1 and 1.3.1.2 shall not apply to the extent that the claim arises from a wrongful act or omission of the Council.

1.4 Termination or a Transfer Change

- 1.4.1 On the termination of this Agreement, the Council and the Strategic Partner agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to the Enabling Services and/ or the Services but the position shall be determined in accordance with the law at the Termination Date as the case may be and this clause is without prejudice to such determination.
- 1.4.2 For the purposes of this paragraph 1.4 Returning Employees shall mean those employees wholly or mainly engaged in the provision of the Enabling Services as the case may be as immediately before the Termination Date whose employment transfers to the Council or a Future Service Provider pursuant to TUPE. Upon expiry or earlier termination of this Agreement for whatever reason (such date being termed the Return Date), the provisions of this paragraph 1.4 will apply:
 - 1.4.2.1 the Strategic Partner shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Strategic Partner or the sub-contractors (who had been engaged in the provision of the Enabling Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Strategic Partner or sub-contractors up to the Return Date are satisfied;
 - 1.4.2.2 the Council shall ensure or shall procure that all wages, salaries and other benefits of the Returning Employees (who had been engaged in the provision of the Enabling Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees on and after the Return Date are satisfied;
 - 1.4.2.3 without prejudice to paragraph 1.4.2.1, the Strategic Partner shall:
 - 1.4.2.3.1 remain (and procure that sub-contractors shall remain) (as relevant) responsible for all the Strategic Partner's or sub-contractor's employees (other than the Returning Employees) on or after the Termination Date and shall indemnify the Council and any Future Service Provider against all Direct Losses incurred by the Council or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Strategic Partner's or sub-contractor's employees who do not constitute the Returning Employees; and
 - 1.4.2.3.2 in respect of those employees who constitute Returning Employees the Strategic Partner shall indemnify the Council and any Future Service Provider against all Direct Losses incurred by the Council or any Future Service Provider resulting from any claim whatsoever by

or on behalf of any of the Returning Employees in respect of the period after the Commencement Date but on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) where such claim arises out of any act, fault or omission of the Strategic Partner and/or any sub-contractor including but not limited to any failure by the Strategic Partner or any sub-contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Service Provider.

- 1.4.3 The Council shall be entitled to assign the benefit of the indemnities set out in paragraph 1.4.2 to any Future Service Provider.
- 1.4.4 The Council shall indemnify the Strategic Partner (for itself and for the benefit of each relevant sub-contractor) in respect of those employees who constitute Returning Employees against all Direct Losses incurred by the Strategic Partner or any relevant sub-contractor in connection with or as a result of any failure by the Council or any Future Service Provider to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact so apply save to the extent that any such failure arises as a result of any act or omission of the Strategic Partner or any relevant sub-contractor.

1.5 Sub-Contractors

In the event that the Strategic Partner enters into any sub-contract in connection with this Agreement, it shall impose obligations on its sub-contractors in the same terms as those imposed on it pursuant to this Schedule 3 and shall procure that the sub-contractor complies with such terms. The Strategic Partner shall indemnify and keep the Council indemnified in full against all Direct Losses, incurred by the Council or any Future Service Provider as a result of or in connection with any failure on the part of the Strategic Partner to comply with this clause and/or the sub-contractor's failure to comply with such terms.

Pensions

1.6 Co-operation on Expiry or Termination

On the termination or expiry of this Agreement (for whatever reason) for a reasonable period both before and after such termination or expiry, the Strategic Partner undertakes to co-operate fully with the Council (and any successor which provides to the Council services in the nature of any of or any part of the Enabling Services and/ or the Services) in order to achieve a smooth transfer of the ongoing pension liabilities for future service whereby any employee transferring to such successor are provided with pension benefits which are broadly similar to or better than those with which they were provided under this Agreement.

SCHEDULE 4 – COUNCIL'S POLICIES

Speaking up Against Wrong-doing (Whistleblowing)

Health & Safety at Work

Opportunity Risk Management

Equalities

Anti discrimination

Shropshire Council's Brand Rules, more particularly the section dealing with working in partnership.

Policies on Data Protection and Information Governance to include 'Data Protection', 'Records Management', 'Data Security' and 'Freedom of Information' (the Council agrees that the Strategic Partner may develop its own policies for Data Protection and Information Governance where those policies meet the equivalent standards of the Council's Policies and are approved by the Council).

The Strategic Partner shall also comply with the following central government policies:

Local Government Association Data Handling Guideline for Local Government

Government Connect Code of Connection and requirements of the Public Services Network

SCHEDULE 5 – EXPERT DETERMINATION PROCEDURE

General Principles

- 1 The Expert shall act impartially.
- 2 The Expert may take the initiative in ascertaining the facts and the law. He may use his own knowledge and experience.
- 3 The Expert's decision shall be binding until the dispute is finally determined by legal proceedings.
- 4 The Parties shall implement the Expert's decision without delay whether or not the dispute is to be referred to legal proceedings.

Application

- 5 If a conflict arises between this procedure and the Contract, unless the Contract provides otherwise, this procedure shall prevail.

Appointment of the Expert

- 6 Either Party may give notice at any time of its intention to refer a dispute arising under the Contract to expert determination by giving a written notice ("the Notice") to the other Party. The Notice shall include a brief statement of the issue or issues which it is desired to refer and the redress sought. The referring Party shall send a copy of the Notice to the Expert within 1 Business Day of the date of his/her appointment.
- 7 Where the Parties have agreed upon the identity of the Expert who has confirmed their readiness and willingness to embark upon the expert determination within 5 Business Days of the Notice, then that person shall be the Expert.
- 8 Where the Parties have not so agreed upon an Expert, or where such person has not so confirmed his willingness to act, then any Party may apply to the Chartered Institute of Arbitrators for the nomination of an Expert. The request shall be in writing, accompanied by a copy of the Notice and the appropriate fee.
- 9 If, for any reason, the Expert is unwilling to act, or fails to reach their decision within the time required by this procedure, either Party may request the Chartered Institute of Arbitrators to nominate a replacement Expert.
- 10 Unless the Parties and the Expert otherwise agree, the Expert shall be appointed on the terms and conditions set out in the attached Agreement and shall be entitled to a reasonable fee and expenses.
- 11 If a Party objects to the appointment of a particular person as Expert, that objection shall not invalidate the Expert's appointment or any decision they may reach.

Conduct of the Expert Determination

- 12 The Party serving the Notice shall send to the Expert within 5 Business Days of the appointment of the Expert and at the same time copy to the other Party, a statement of its case including a copy of the Notice, the Contract, details of the circumstances giving rise to the dispute, the reasons why it is entitled to the redress sought, and the evidence upon which it relies. The statement of case shall be confined to the issues raised in the Notice.

- 13 The date of referral shall be the date on which the Expert receives the statement of case in accordance with paragraph 12 above.
- 14 The Expert shall reach their decision within 30 Business Days of the date of referral, or such longer period as is agreed by the Parties after the dispute has been referred.
- 15 The Expert shall have complete discretion as to how to conduct the expert determination, and shall establish the procedure and timetable, subject to any limitation there may be in the Contract. Without prejudice to the generality of these powers he/she may:
 - 15.1 request a written response, further argument or counter argument;
 - 15.2 request the production of documents or the attendance of people whom he/she considers could assist;
 - 15.3 meet and question the Parties and their representatives;
 - 15.4 limit the length or time for submission of any statement, response or argument;
 - 15.5 proceed with the expert determination and reach a decision even if a Party fails to comply with a request or direction of the Expert;
 - 15.6 issue such further directions as he/she considers to be appropriate.
- 16 The Parties shall comply with any request or direction of the Expert in relation to the expert determination.
- 17 The Expert may obtain legal or technical advice, provided that they have notified the Parties of his/her intention first. He/She shall provide the Parties with copies of any written advice received.
- 18 The Expert shall decide the matters set out in the Notice, together with any other matters which the Parties and the Expert agree shall be within the scope of the expert adjudication.
- 19 The Expert shall determine the rights and obligations of the Parties in accordance with the law of the Contract.
- 20 Any Party may at any time ask that additional parties shall be joined in the adjudication. Joinder of additional parties shall be subject to the agreement of the Expert and the existing and additional parties. An additional party shall have the same rights and obligations as the other Parties, unless otherwise agreed by the Expert and the Parties.
- 21 The Expert may resign at any time on giving notice in writing to the Parties.

The Decision

- 22 The Expert shall reach and issue their decision to the Parties within the time limits in paragraph 14. He/she shall be required to give reasons unless both Parties agree at any time that he shall not be required to give reasons.
- 23 If the Expert fails to reach or issue a decision in accordance with paragraph 22, they shall not be entitled to any fees or expenses (save for the cost of any legal or technical advice subject to the Parties having received such advice).

- 24 The Expert may open up, review and revise any certificate, decision, direction, instruction, notice, opinion, requirement or valuation made in relation to the Contract.
- 25 The Expert may in any decision direct the payment of such simple or compound interest from such dates, at such rates and with such rests, as they consider appropriate.
- 26 The Expert may, within 5 Business Days of delivery of the decision to the Parties, correct his/her decision so as to remove any error arising from an accidental error or omission or to clarify or remove any ambiguity.
- 27 The Parties shall bear their own costs and expenses incurred in the expert determination.
- 28 The Parties shall be jointly and severally liable for the Expert's fees and expenses, including those of any legal or technical adviser appointed under paragraph 17, but the Expert may direct a Party to pay all or part of the fees and expenses. If he/she makes no such direction, the Parties shall pay them in equal shares. The Party requesting the expert determination shall be liable for the Expert's fees and expenses if the expert determination does not proceed.
- 29 The Parties shall be entitled to the redress set out in the decision and to seek summary enforcement, whether or not the dispute is to be finally determined by legal proceedings. No issue decided by the Expert may subsequently be referred for decision by another Expert unless so agreed by the Parties.
- 30 In the event that the dispute is referred to legal proceedings, the Expert's decision shall not inhibit the right of the court to determine the Parties' rights or obligations as if no expert determination had taken place.

Miscellaneous Provisions

- 31 Unless the Parties agree, no Party may call the Expert as a witness in any legal proceedings concerning the subject matter of the expert determination.
- 32 The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Expert (whether in negligence or otherwise) unless the act or omission is in bad faith, and any employee or agent of the Expert is similarly protected from liability.
- 33 The Expert is appointed to determine the dispute or disputes between the Parties and his/her decision may not be relied upon by third parties, to whom he shall owe no duty of care.
- 34 This procedure shall be interpreted in accordance with the law of England and Wales.

Definitions

"**Expert**" means the person named as such in the Contract or appointed in accordance with this procedure.

"**Contract**" means this Agreement.

"**Notice**" means the notice given under paragraph 6.

"**Party**" means a party to the Contract, and any additional parties joined under paragraph 20 and 'referring Party' means the Party who gives notice under paragraph 6.

AGREEMENT

This Agreement is made on the day of 20

Between

1

of

..... (the Referring Party)

2

of

.....(the Responding Party)

3

of

..... (the Expert)

A dispute has arisen between the Parties under a contract between them dated
("the Contract") in connection with

which has been referred to expert determination in accordance with the expert determination procedure in the Contract (the Procedure) and the Expert has been requested to act.

The Parties and the Expert agree that their rights and obligations shall be as set out in and subject to the terms of this Agreement:

- 1 The expert determination shall be conducted in accordance with the Procedure.
- 2 The Parties shall be jointly and severally liable to pay the Expert's fees and expenses as set out in the schedule below and in accordance with the Procedure.
- 3 The Expert and the Parties shall keep the expert determination confidential, except so far as is necessary to enable a Party to implement or enforce the Expert's decision.
- 4 The Expert may destroy all documents received during the course of the expert determination six Months after delivering his decision, provided that he shall give the parties 14 days notice of his intention to do so and that he shall return the documents to the Parties if they so request.
- 5 The Expert shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Expert (whether in negligence or otherwise) unless the act or omission is in bad faith, and any employee or agent of the Expert shall be similarly protected from liability.

6 This Agreement shall be interpreted in accordance with the law of England and Wales.

Schedule

7 The Expert shall be paid £..... per hour in respect of all time spent on the expert determination, including travelling time, with a maximum of £..... per day.

8 The Expert shall be reimbursed his reasonable expenses and disbursements in respect of the cost of legal or technical advice obtained in accordance with the Procedure, travelling, hotel and similar expenses, room charges and other extraordinary expenses necessarily incurred.

9 The Expert is / is not * currently registered for VAT (where the Expert is registered for VAT, it shall be payable in accordance with the rates current at the date the work is done).

* delete as applicable.

Signed on behalf of the Referring Party

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Signed on behalf of the Responding Party

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Signed on behalf of the Expert

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