

**THREE RIVERS DISTRICT COUNCIL  
AND  
WATFORD BOROUGH COUNCIL**

**SHARED SERVICES AGREEMENT**

**THIS AGREEMENT** is made the

day of **2014**

**BETWEEN:**

- (1) THREE RIVERS DISTRICT COUNCIL**
- (2) WATFORD BOROUGH COUNCIL**

**WHEREAS:**

- (i) The Authorities share finance, information technology, revenues and benefits, and human resources services pursuant to a Delegation and Joint Committee agreement dated 26<sup>th</sup> August 2008.
- (ii) In order to provide more cost effective services and ensure that the Authorities have access to the widest possible expertise the Authorities have agreed to collaborate upon the basis set out in this agreement.
- (iii) The Authorities agree that such an arrangement would contribute to the promotion and improvement of the economic well-being of their respective areas as provided under Sections 1 and 2 of the Local Government Act 2000.
- (iv) It is agreed and acknowledged by the Authorities that the Services shall be delivered on a not for profit basis.
- (v) This Agreement now sets out details of how the Authorities will collaborate under section 1 of the Local Authorities (Goods and Services) Act 1970 and sections 101, 111, 112 and 113 of the Local Government Act 1972.
- (vi) It is acknowledged and agreed that the Authorities will wish to keep this Agreement under review and in the future may wish to take action such as increasing the number of services shared, trading commercially, delegating a function to an officer and delegating functions to each other.
- (vii) This Agreement is established for the purpose of creating resilience, sharing resources and achieving financial efficiencies. Nothing in this Agreement shall be construed as creating a legal partnership within the meaning of the Partnership Act 1890 or otherwise between the Authorities.
- (viii) The Authorities intend that this agreement will commence upon the dissolving of the Joint Shared Services Committee by each Council.

**NOW IT IS HEREBY AGREED** as follows:-

**1 Definitions**

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

## Appendix 1

Agreed Service Plan	means a plan updated annually which sets out the costs and income of the Shared Service along with the objectives for delivery of that Service.
Agreement	means this agreement between the Authorities entered into on the date given above.
Asset	means an item appearing in the list set out at Schedule 2 as updated amended or replaced from time to time or which is or has been treated by either Authority as an Asset.
Authorities	means Three Rivers District Council and Watford Borough Council collectively and “Authority” shall refer to each of Three Rivers and Watford individually.
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.
Change	means a change to the Shared Services and/or a variation to the terms of the Agreement (including, but not limited to any change to the Service Level Agreements).
Charges	means the charges which shall become due and payable by the Client Authority to the Lead Authority in respect of the Shared Services in accordance with the provisions of clause 4.
Chief Financial Officer	means the officer who has been appointed by each Authority to act as the designated officer under section 151 of the Local Government Act 1972 or her authorised representative;
Client Authority	means the Authority on whose behalf the Shared Service task is undertaken by the Lead Authority.
Commencement Date	means the date on which both Authorities shall have dissolved the Joint Shared Services Committee.
Commercially Sensitive Information	means any information in respect of which the Authorities agree that disclosure would or would be likely to prejudice the commercial interests of any person.
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 the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
Dispute Resolution	means the procedure set out in clause 12.

## Appendix 1

### Procedure

Executive Board	means the Board established pursuant to clause 6.
Exempt Information	means information which is exempt information by virtue of any provision of Part II of FOIA.
Exit Management Plan	means the plan agreed between each Authority in accordance with Clause 10.5.
Financial Year	shall begin on April 1st in any year and end on the following March 31st.
FOIA	means the Freedom of Information Act 2000 as amended.
Force Majeure Event	means any cause affecting the performance by either Authority of its obligations under this agreement arising from acts, events, omissions or non events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm, or earthquake and any disaster, but excluding any industrial dispute relating to either Authority.
Head of Service	means the officer for the time being appointed as Head of each Shared Service and responsible to the Operations Board howsoever that post is titled.
Intellectual Property Rights	means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached to such rights.
Joint Shared Services Committee	means the joint committee established by the Authorities pursuant to the agreement dated 26 <sup>th</sup> August 2008.
Law	means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom.
Lead Authority	means the Authority having the principal responsibility for undertaking the particular tasks within the Shared Services and that is authorised to determine how to undertake the task.
Member	means an elected member of either Authority.
Monitoring Officer	means the officer designated by an Authority to fulfil the Monitoring Officer role in accordance with Section 5 of the Local Government and Housing Act 1989.
Operations Board	means the Board established pursuant to clause 6.

## Appendix 1

Personal Data	shall have the meaning given to it in Section 1 of the Data Protection Act 1998.
Relevant Employee	means the employees that are the subject of a Relevant Transfer.
Relevant Posts	means those posts identified in Schedule 1 to this agreement.
Relevant Staff	means staff employed in Relevant Posts.
Relevant Transfer	means a relevant transfer for the purposes of TUPE.
Replacement Services	means any services that are identical to or substantially similar to any part of the Shared Services and which an Authority receives in substitution for any part of the Shared Services following the termination of this Agreement whether such services are provided by the Authority internally or by any Replacement Service Provider.
Replacement Service Provider	means any third party supplier of Replacement Services appointed by either Authority from time to time.
Request for Information	has the meaning set out in FOIA or any apparent request for information made under the FOIA or the Environmental Information Regulations 2004.
Schedule	means a schedule to this Agreement.
Schedule of Charges	means the list of Charges at Schedule 4 made by the Lead Authority at the Commencement Date for providing the Shared Service to the Client Authority in the first year of this Agreement and thereafter annually.
Scrutiny	means the function of overview and scrutiny as set out in section 21 of the Local Government Act 2000.
Service Transfer Date	means 1 <sup>st</sup> April 2014 or such other date which the Authorities shall agree.
Service Level Agreement	means each of the output specification in Schedule 3.
Shared Services	means the Shared Services to be provided by the Lead Authority as set out in clause 3 and Schedule 3 to this Agreement.
Support Services	means the services within each Authority which may be required to assist the Shared Services, the Operations Board or the Executive Board in the carrying out of their obligations under this Agreement.
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purpose of implementing the EC Acquired

Rights Directive 77/187 as amended.

VAT means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function.

- 1.2 References to any statute or statutory provision (including any EU Instrument) shall, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provision, or re-enacted in any such statute or provision, and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.3 The headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.4 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.5 A reference in this Agreement to any clause, paragraph or Schedule is, except where it is expressly stated to the contrary, a reference to a clause or paragraph of or Schedule to this Agreement.
- 1.6 Any reference to this Agreement or to any other document unless otherwise specified shall include any variation, amendment or supplements to such document expressly permitted by this Agreement or otherwise agreed in writing between the relevant parties the Schedules forming part of this Agreement and reference to this Agreement shall include the Schedules.
- 1.7 Where either Authority or the Authorities have entered an agreement with a third party prior to the Commencement Date for the provision of services including without limitation the agreements in respect of IT management, payroll and internal audit services the terms of such contracts shall prevail where inconsistent with the terms of this Agreement

## **2. COLLABORATION**

- 2.1 With effect from the Commencement Date, the Authorities shall collaborate in the establishment and subsequent operation of the Shared Services and the Executive and Operations Boards.
- 2.2 Each Authority will:
  - 2.2.1 co-operate and use all reasonable endeavours to ensure the success of the Shared Services;
  - 2.2.2 act in good faith and in the spirit of co-operation in Shared Services;

- 2.2.3 ensure that all communications are constructive, comprehensive, timely and open;
  - 2.2.4 provide information promptly to the other relating to their involvement in the Shared Services including results and interim results;
  - 2.2.5 aim to reach agreement in discussions for the good of the Shared Services rather than for individual Authority gain.
- 2.3 From the Commencement Date the Lead Authority shall provide the Client Authority with the Service pursuant to the statutory provisions recited above and the Client Authority hereby appoints the Lead Authority to deliver the Shared Service to it.
- 2.4 In consideration of the Lead Authority providing the Shared Service to the Client Authority as set out in clause 3 and the Client Authority paying the Charges to the Lead Authority as set out in clause 4 the Lead Authority will provide the Shared Services in accordance with the Service Level Agreements at Schedule 3. The Authorities acknowledge and confirm that any Charges due under this Agreement shall not exceed the cost of providing the Service.

### **3. THE SHARED SERVICES**

- 3.1 This Agreement will have effect from the Commencement Date.
- 3.2 Upon the Authorities entering into this Agreement for the Shared Services, they shall:
- 3.1.1 provide the Shared Services as set out in Schedule 3 in consideration of the payment of the Charges;
  - 3.1.2 Procure that the Heads of Service will provide the following reports/plans to the Operations Board and/or the Executive Board.
    - (a) an Agreed Service Plan by January in each year for the following financial year to fit in with each Authority's financial and service planning timescales; and
    - (b) Quarterly updates against the work in the Agreed Service Plan, identifying significant changes;
    - (c) An annual report to the Scheduled Meeting of the Operations Board by no later than the 30<sup>th</sup> June each year on the outcomes against the Agreed Service Plan for the preceding year identifying significant changes.
- 3.3 The Head of Service shall have direct access to each Authority's Portfolio Holder or Lead Member, to officers and to any information that is considered to be relevant for the delivery of the Service to that Authority.
- 3.4 Each Authority's Portfolio Holder or Lead Member shall have direct access to each Head of Service.
- 3.5 The Monitoring Officer of each Authority shall have direct access to each Head of Service, the Operations Board and the Executive Board and any information held by the Shared Services relating to their Authority.

- 3.6 The Heads of Service shall be entitled to:
- 3.6.1 access the Authorities premises at all reasonable times;
  - 3.6.2 report independently to any level of officer at the relevant Authority as appropriate, including the Head of Paid Service and for this purpose the Chairman of that Authority's Audit Committee;
  - 3.6.3 report to and attend meetings of the Operations Board for the purpose of fulfilling the terms of this Agreement.

#### **4. CHARGES AND OPEN BOOK ACCOUNTING FOR SHARED SERVICES**

- 4.1 The Operations Board shall propose for the approval of the Executive Board the Charges to be paid to each Lead Authority by the end of November in each year.
- 4.2 The Charges shall be paid in equal instalments payable on the first day of each month with any variations to the Charges to be billed by the Lead Authority one month in arrears and settled within thirty days of presentation of an agreed invoice by the Client Authority.
- 4.3 The Executive Board shall approve or amend the proposed Charges and shall submit a final proposal to each Authority by no later than twentieth December in the same year.
- 4.4 If either Authority fails to approve or in the event it finally rejects the Charges proposed by the Executive Board the matter will proceed in accordance with clauses 12.6 or 12.7 and pending resolution of that process:
- 4.4.1 the Charges approved in the year immediately preceding that under dispute will continue to be payable until resolution of the dispute;
  - 4.4.2 In addition to the Charges payable under clause 4.4.1 the Client Authority will pay such sum as the Operations Board or the Executive Board determines as a reasonable pre estimate of the percentage increases in the Shared Services costs for the period in dispute.
- 4.5 Each Authority authorises and requests the Operations Board on its behalf to maintain a true and complete set of records of personnel, activities and transactions relating to the performance of the Shared Services and all transactions entered into by the Authorities arising out of this Agreement.
- 4.6 All documents kept by an Authority pursuant to clause 4.5 shall be available at all reasonable times for inspection and copying by the Operations Board, the Executive Board and any person duly authorised for or on behalf of either Authority and the Operations Board shall make available (or, as the case may be, procure the availability of) such items of clarification or substantiation as may be reasonably required by either Authority in relation thereto including such oral or written explanations as may be considered necessary.
- 4.7 For the purposes of any scrutiny or other reasonable request for information relating to the Shared Services by either Authority or for examination and certification of either Authority's accounts or for the purposes of any internal or external audit of the Shared Services the Operations Board shall provide and each Authority shall co



operate and assist it in providing such information as may reasonably be required from time to time to meet obligations and to provide reports and returns.

## **5. ASSETS SUPPORT SERVICES AND ACCOMMODATION**

- 5.1 Each Authority owns the Assets particularised in Schedule 2 and makes the Assets available to the Shared Services to be used for the purposes and term of this Agreement.
- 5.2 Each Authority retains title to its own Assets and will subject to any decision otherwise by the Executive Board or the Operations Board remain responsible for the upkeep repair or maintenance of its Assets during the existence of this Agreement so that they are maintained in the same or similar condition as at the Commencement date with fair wear and tear excepted.
- 5.3 Each Authority shall on expiry or termination of this Agreement and upon reasonable notice provide to the other Authority such access to its premises or facilities as shall be required for the removal of the requesting Authority's Assets.
- 5.4 The Lead Authority shall ensure that:
- 5.4.1 where using the Client Authority's Assets or accommodation they are kept properly secure and it will co operate with the Client Authority's authorised representatives' reasonable directions regarding the security of the same;
  - 5.4.2 only those of the Lead Authority's Relevant Staff that are duly authorised to enter upon the Client Authority's premises for the purposes of providing the Shared Services do so.
- 5.5 Support Services shall be provided by each Authority to the Shared Services, the Operations Board or the Executive Board.
- 5.6 If the Operations Board or the Executive Board determine during the existence of this Agreement that additional Support Services are necessary for a Shared Service it will consult with the Authority it considers should provide the additional Support Services to determine the most effective way to do so and the cost and if that Authority is unable to agree a request from the Executive Board, the matter shall be dealt with in accordance with clause 12.
- 5.7 The Authorities shall ensure that appropriate accommodation and facilities for the provision of the Shared Services are provided and such facilities shall include serviced workstations and access to power, stationery and supplies, relevant hardware and software, (including MS Word Office, Excel and Outlook or equivalent), and telephone all at their own cost.

## **6. The Executive Board and the Operations Board**

- 6.1 There shall be a group made up of the Head of Paid Service of each Authority and the Chief Finance Officer which shall be known as the Executive Board and shall meet on no less than one weeks notice when ever the occasion requires but not less than quarterly.

- 6.2 The Executive Board will regulate its own proceedings and may waive the notice requirement. Two shall form a quorum provided that it includes at least one representative from each Authority other than the Chief Finance Officer.
- 6.3 Each member of the Executive Board shall be entitled to nominate a substitute.
- 6.4 The Executive Board shall be responsible for the strategic direction and overall supervision of the Shared Services and the Executive Board's activities shall include but not be limited to:
- (a) Determining the strategic direction of the Shared Services;
  - (b) Monitoring performance (including financial performance) and receiving and acting upon any complaint received via either Authority in respect of the Shared Services;
  - (c) Resolving conflicts between competing interests amongst the Authorities;
  - (d) Reviewing the governance arrangements as set out in this Agreement;
  - (e) Determining any matters referred to it by the Operations Board;
  - (f) Exercising overall supervision of the Shared Services via the Operations Board and the Heads of Service including at its discretion the calling in for determination of any decision that has or would have been made by the Operations Board;;
  - (g) Receiving Annual reports on each Shared Service from the Operations Board;
  - (h) Receiving and determining Change Control requests made pursuant to clause 7.5.
- 6.5 There shall be a group made up of the Chief Financial Officer and the Heads of each of the Shared Services which shall be known as the Operations Board which will meet on no less than 1 weeks notice whenever the occasion requires but no less than quarterly.
- 6.6 The Operations Board will regulate its own proceedings and may waive the notice requirement. Three shall form a quorum provided that it includes at least one representative from each Authority and the Chief Financial Officer or her nominated substitute.
- 6.7 Each member of the Operations Board shall be entitled to nominate a substitute.
- 6.8 The Operations Board will address any poor performance of a Shared Service and its activities shall include, but not be limited to:
- (a) setting monitoring and reviewing service standards via the Agreed Service Plan for each Shared Service;
  - (b) Reviewing and updating the Service Level Agreements at Schedule 3;
  - (c) Reviewing feedback questionnaires;
  - (d) Providing general supervision of the Shared Services;

- (e) Referring any matter it deems necessary to the Executive Board for determination;
- (f) Receiving and considering Change Control requests made pursuant to clause 7 and/or Support Services to be provided and referring such requests to the Executive Board with a recommendation for approval or otherwise save where the request is made pursuant to clause 7.5;
- (g) Determining for approval of the Executive Board the Charges to be paid by each Authority pursuant to clause 4.1;
- (h) Preparing an annual report on the performance of each of the Shared Services for the Executive Board.

## **7. VARIATION AND CHANGE CONTROL**

- 7.1 Either Authority (a “Requesting Authority”) may request that the Operations Board (or Executive Board if Clause 7.5 below applies) implements a Change to the Shared Services and/or a variation to the terms of the Agreement including any change to the Service Level Agreements and any requirement for a Change shall be subject to the provisions of this clause 7.
- 7.2 Any discussions taking place between the Authorities in connection with a request or recommendation before acceptance of a Change shall be without prejudice to the rights of either Authority.
- 7.3 If the Requesting Authority wishes to introduce a Change, it must serve a Notice of Change (which has been authorised by the relevant Requesting Authority’s Head of Service) on the Operations Board setting out the proposed Change in sufficient detail to enable the Operations Board to evaluate it in full and specify the Requesting Authority's reasons for proposing the Change. Each such notice shall contain:
- (a) the title of the request;
  - (b) the originator and date of the request;
  - (c) the reason for the Change;
  - (d) full details of the Change;
  - (e) any implications of the Change to the Shared Services or this Agreement;
  - (f) whether a variation to the Charges is proposed (and, if so, give a detailed cost estimate of the proposed charge in a format acceptable to the Operations Board);
  - (g) a timetable for implementation of the Change;
  - (h) a schedule of payments, where appropriate;

- (i) Details of the likely impact of the Change on any other aspects of this Agreement including but not limited to:

- (i) human resource implications;

- (ii) proposed changes to working arrangements;

- (iii) implications for any other services across either Authority;

- (iv) if there are any dates by which a decision by the Operations Board is critical.

7.4 In the event that a Head of Service from a non-Shared Service wishes to request a Change, that Head of Service must consult with the Head of the affected Shared Service before submitting the Notice of Change to the Operations Board in accordance with 7.3 above.

7.5 Within 28 days of receipt of the Notice of Change, or such earlier period as shall be reasonably required by the Requesting Authority, the Operations Board shall:

- (a) evaluate the Requesting Authority's proposed Change in good faith (and if necessary, request further information before doing so);

- (b) propose modifications or accept or reject such proposal;

- (c) refer the matter (along with the Operation Board's views on the proposed Change) to the Executive Board for consideration where the Operations Board considers it appropriate to do so. In the event that the Notice of Change requests a Change that has budgetary or staffing level implications, the Notice of Change must be referred by the Operations Board to the Executive Board in accordance with this Clause 7.5(c) and the decision on the Change shall be taken by the Executive Board, rather than the Operations Board, within 28 days of the referral, or such other period as is necessary for the purposes of the proposed Change. In these circumstances, the procedure outlined in clauses 7.5(a) and (b) and 7.6 to 7.11 must be followed (replacing references to "Operations Board" with "Executive Board").

7.6 If the Operations Board accepts any of the Requesting Authority's suggested changes (with or without modification), the relevant Change shall be implemented after the Operation Board's acceptance as soon as the Operations Board has approved all remaining details and any documents required, if any, to amend this Agreement which are necessary to give effect to the Change.

7.7 If the Operations Board rejects the Requesting Authority's suggested Change, it shall also give its reasons for such a rejection. The Operations Boards' decision shall be final.

7.8 Unless the Operations Boards' acceptance of the Requesting Authority's suggested Change specifically agrees to an increase in the Charges and states the amount of that increase, there shall be no increase in the Charges as a result of the Change.

- 7.9 Upon acceptance of the proposed Change the Operations Board shall issue a Change Control Confirmation which shall be deemed to be a variation of this Agreement.
- 7.10 Upon receipt of a Change Control Confirmation, work shall commence to perform the relevant Change in accordance with the terms thereof.
- 7.11 Any work undertaken by an Authority which has not been authorised in advance by a Change Control Confirmation or otherwise agreed in accordance with this clause 7 shall be undertaken entirely at the risk of the Authority carrying it out.

## **8. INTELLECTUAL PROPERTY**

- 8.1 Any Intellectual Property Rights created through the establishment and running of the Shared Services shall vest in the Authorities and be held jointly by them at the time they were created.

## **9. LIABILITIES IN RESPECT OF THIS AGREEMENT**

- 9.1 All losses, claims, expenses, actions, demands, costs and liability incurred in relation to this Agreement shall be shared by each Authority on such terms as may be agreed from time to time by the Operations Board or the Executive Board.
- 9.2 Each Authority shall (and hereby undertakes with the other Authority to) indemnify the other Authority against and/or contribute to and pay a share of all or any liabilities claims costs and/or expenses of or incurred by that Authority arising out of or in connection with or in the course of or as a result of it fulfilling its obligations under this Agreement with the intent that the Authority being indemnified and the other Authority shall be jointly liable to indemnify in respect of all such liability claims costs and/or expenses unless otherwise agreed by the Operations Board or the Executive Board.

**PROVIDED THAT** such indemnity on the part of each Authority shall not extend to liabilities or claims arising or costs and/or expenses incurred by reason or in consequence of any of the following on the part of the Authority seeking to be indemnified:

- (a) breach by that Authority of its obligations under this Agreement save each Authority agrees that a failure to achieve any key performance indicator set out in Schedule 3 including a performance indicator applied to a third party will not without more amount to such breach;
- (b) breach by that Authority of its obligations under clause 5.2 of this agreement;
- (c) gross negligence, gross misconduct, persistent breach of Law or duty where such breach has been brought to the attention of that Authority; or
- (d) any act or omission that is in breach of proper accounting or local government practice;
- (e) any act or omission that is in breach of local government Law.

- 9.3 For the avoidance of doubt such indemnity shall include but is not limited to matters relating to the employment or transfer of staff, losses, costs, expenses or liabilities arising from contracts with third parties or from legislative change.
- 9.4 Each Authority shall be entitled to recover from the other Authority, the cost of any liabilities which have been caused by that Authority and which are discovered after that Authority withdraws from this Agreement or this Agreement has ended.
- 9.5 This clause 9 shall survive the expiry or determination of this Agreement.

## **10. TERMINATION AND CONSEQUENCES OF TERMINATION OF THIS AGREEMENT**

- 10.1 Either Authority may terminate this Agreement in accordance with the following procedure.
- 10.2 The terminating Authority shall give not less than 18 months notice in writing to the other Authority and to the Operations Board, to be served on or before 1<sup>st</sup> September in any year. The Operations Board shall consult the Authority upon whom the notice has been served and determine:
- 10.2.1 any loss of funding which may arise from such termination to include any non-payment, claw back or repayment of that funding;
  - 10.2.2 any other loss, liability, damage, claim or expense which would be incurred by the remaining Authority by reason of such termination;
  - 10.2.3 whether as a result of the termination Shared Services should cease.
- 10.3 The Authority wishing to terminate this Agreement in accordance with clause 10.2 undertakes as a condition of such termination to make, prior to termination, such reasonable payment or payments as shall be determined in accordance with clause 10.2 by the Operations Board and no notice of termination under clause 10.2 shall take effect unless and until such payment has been made.
- 10.4 The Authority wishing to withdraw hereby acknowledges and confirms that it will remain liable for and will make any payments that are due in respect of its participation in the Shared Services under this Agreement whether or not such payments are claimed before or after the date on which that Authority's 18 months notice expires.
- 10.5 On termination the provisions of this clause 10 shall have effect and the Authorities shall co operate fully and agree with each other an Exit Management Plan to ensure an orderly transfer of the relevant service performed by the Lead Authority to the Client Authority or at the relevant Authority's request to a Replacement Service Provider.
- 10.6 On termination of this agreement and on satisfactory completion of any action required to be taken in accordance with an Exit Management Plan (or where reasonably so required by an Authority before such completion) the Operations Board shall procure that all data and other material belonging to each Authority (and all media of any nature containing information and data belonging to either Authority or relating to the Service), shall be delivered to the Authority from whom it was

obtained as soon as practicable and in any event within 3 months of such termination.

## **11. DURATION OF AGREEMENT**

11.1 This Agreement shall come into force on the Commencement Date and shall continue until terminated in accordance with the provisions of this Agreement.

## **12. DISPUTE RESOLUTION PROCEDURE**

12.1 Other than a dispute under clause 4 in the event of any dispute arising, such dispute should be referred initially to the relevant Head of Service by the Authority.

12.2 If the Head of Service and the Authority in dispute are unable to resolve the matter within one month, they shall refer the dispute to the Operations Board.

12.3 If the Operations Board is unable to resolve the matter within two months of it being referred to them, they shall refer the dispute to the Executive Board.

12.4 Subject to clause 12.7 if the Executive Board is unable to resolve the matter within two months it, shall agree any further dispute resolution procedure that it deems appropriate. This may include but is not limited to mediation via the Centre for Effective Dispute Resolution (CEDR).

12.5 The relevant Head of Service shall bring to the attention of the Operations Board without delay any circumstances that do or may give rise to any conflict of interest or dispute between the Authorities in relation to the Shared Service or this Agreement.

12.6 Where a dispute arises under clause 4, it shall within seven days be referred to the Executive Board for resolution unless either Authority certifies that the dispute should be referred to mediation pursuant to clause 12.4 forthwith.

12.7 Where a dispute under clause 4 has been referred to the Executive Board pursuant to clause 12.6 and has not been resolved within 14 days of that reference it shall automatically be referred to mediation pursuant to clause 12.4 unless the Authority initiating the dispute requests further time for resolution by the Executive Board.

## **13. NOTICES**

13.1 Any demand, notice or other communication given in connection with or required by this Agreement shall be made in writing and shall be delivered to the recipient at it's usual business address (or such other address as may be notified in writing from time to time) or by e-mail to any two members of the Operations Board.

13.2 Any such demand, notice or communication shall be deemed to have been duly served:

13.2.1 if delivered by hand, when left at the proper address for service;

13.2.2 if sent by e-mail, at the time of transmission provided that it is sent to the email addresses of any two Operations Board members and evidence showing the date and time of being sent is made available.

## **14. DATA PROTECTION AND DATA SHARING**

- 14.1 The Authorities shall at all times comply with Data Protection Legislation, including maintaining a valid and up to date registration or notification under Data Protection Legislation, including but not limited to any data processing to be performed in connection with this Agreement.
- 14.2 The Authorities shall only undertake processing of Personal Data reasonably required in connection with the operation of this Agreement.
- 14.3 The Authorities shall not disclose Personal Data to any third parties other than:
- 14.3.1 in response to a valid data subject access request;
  - 14.3.2 to employees and contractors to whom such disclosure is necessary in order for the Authorities to comply with their obligations under this Agreement; or
  - 14.3.3 to the extent required to comply with a legal obligation.
- 14.4 The Authorities will where applicable to the function being undertaken follow the Guidance issued and from time to time updated by the Information Commissioner's Office (ICO) in relation to Data Sharing which includes but is not limited to:
- Data sharing code of practice
  - Disclosure of employee information under TUPE
  - Releasing information to prevent or detect crime
  - When can I disclose information to a private investigator?
  - Data Sharing Checklists

## **15. FREEDOM OF INFORMATION**

- 15.1 The Authorities are public authorities as defined within the FOIA and therefore recognise that information relating to this Agreement may be the subject of a Request for Information.
- 15.2 Each Authority shall assist the other in complying with their obligations under the FOIA, including but not limited to assistance without charge in gathering information to respond to a Request for Information.
- 15.3 Either Authority shall be entitled to disclose any information relating to this Agreement and the Shared Services in response to a Request for Information, save that in respect of any Request for Information which is in whole or part a request for Exempt Information:
- 15.3.1 the Authority which receives the Request for Information shall circulate the Request for Information and shall discuss it with the other Authority;
  - 15.3.2 the Authority which receives the Request for Information shall in good faith consider any representations raised by the other Authority when deciding whether to disclose Exempt Information save that the Authority which receives the Request for Information shall retain the right to



determine at their absolute discretion how to respond to the Request for Information; and

- 15.3.3 the Authority that receives the Request for Information shall not disclose any Exempt Information beyond the disclosure required by FOIA without the consent of the Authority to which it relates.
- 15.4 The Authorities acknowledge and agree that any decision made by an Authority which receives a Request for Information as to whether to disclose information relating to this Agreement pursuant to FOIA is solely the decision of that Authority.
- 15.5 An Authority will not be liable by this Agreement for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to a Request for Information.

## **16. INSURANCE**

- 16.1 Each Authority shall ensure that insurance cover of at least the following minimum amounts is effected and maintained and notified annually throughout the duration of this agreement to the Operations Board in respect of:
  - (a) £25 million public liability insurance;
  - (b) £20 million employer's liability;
  - (c) £2 million professional indemnity insurance.

## **17 CONFIDENTIALITY**

- 17.1 The Authorities shall keep confidential any Commercially Sensitive Information relating to this agreement or the Intellectual Property Rights of the parties and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Commercially Sensitive Information relating to the Agreement or Intellectual Property Rights of the Parties.
- 17.2 Clause 17.1 shall not apply to:
  - 17.2.1 Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;
  - 17.2.2 Any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
  - 17.2.3 Any disclosure to enable a dispute to be resolved under clause 12 (Dispute Resolution);
  - 17.2.4 Any disclosure which is required by any Law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of Law;
  - 17.2.5 Any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;

- 17.2.6 Any disclosure by a party to this Agreement to a department, office or agency of the Government;
  - 17.2.7 Any disclosure for the purpose of the examination and certification of the Authorities accounts.
- 17.3 Where disclosure is permitted under clause 17.2, the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

## **18. SCRUTINY**

- 18.1 Scrutiny remains the responsibility of each individual Authority.

## **19. VAT**

- 19.1 The Authorities agree that so far as permitted by law they will not charge VAT on any amounts payable under the terms of this agreement as a non business supply arising out of an administrative event.

## **20. FORCE MAJEURE**

- 20.1 The Authorities shall be released from their respective obligations in the event that a Force Majeure Event renders the performance of this Agreement not reasonably practicable whereupon all money due and payable to any party under this agreement shall be paid immediately and clause 10 shall apply as if the Authorities participating had agreed to determine this Agreement.

## **21. SEVERABILITY**

- 21.1 If at any time any clause or part of a clause or Schedule or part of a Schedule to this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:
- 21.1.1 that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement;
  - 21.1.2 the Authorities shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the Laws of that jurisdiction and so that the amended clause complies with the Laws of that jurisdiction; and
  - 21.1.3 if the Authorities cannot agree upon the terms of any amendment within six months of the date upon which a clause was determined to be wholly or partly illegal, invalid or unenforceable by any court, tribunal or administrative body of competent jurisdiction, the dispute will be determined in accordance with the clause 12 (Dispute Resolution Procedure).

## **22. RELATIONSHIP OF PARTIES**

- 22.1 Each of the parties is an independent local authority and nothing contained in this agreement shall be construed to imply that there is any relationship between the parties of partnership or principal/agent. Neither party shall have any right or authority to act on behalf of another party by contract or otherwise except to the extent expressly permitted by the terms of this agreement.

## **23. CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999**

- 23.1 The Authorities do not intend that any of the terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it save as provided by Schedule 1.

## **24. ENTIRE AGREEMENT**

- 24.1 This Agreement and all documents referred to in it contains the whole agreement between the parties relating to the subject matter covered by them and supersedes and replaces all prior communications, representation, warranties undertakings and agreements, arrangements and understandings between the parties. Each Authority acknowledges that it does not enter into this agreement in reliance on any warranty representation or undertaking other than those contained in this Agreement.

## **25. TUPE**

- 25.1 The parties agree that the provisions of Schedule 1 shall apply to any Relevant Transfer of staff under this Agreement.

## **26. AUTHORITY GOVERNANCE AND DEMOCRACY**

- 26.1 The Lead Authority shall in providing the Shared Services or the Support Services contribute to the Authorities Governance arrangements and structures by:
- 26.1.1 attendances at such officer, democratic and political group meetings as are required by the Authority holding the meeting;
  - 26.1.2 ensuring that there is presented in sufficient time such clear and comprehensible written or oral reports as may be required by each Authority in accordance with its governance arrangements;
  - 26.1.3 attendances at such Committee meetings as shall be required by each Authority;
  - 26.1.4 providing strategic support to each Authority including high level advice and guidance to ensure that Authority complies with all relevant statutory or legal duties.

**27. GOVERNING LAW**

27.1 This Agreement shall be governed by the Laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

Appendix 1

This Agreement has been entered into on the date stated at the beginning of it

## **Schedule 1 TUPE**

### **Part 1. Transfer of employees**

#### **1. DEFINITIONS**

The definitions found in this paragraph, or where not found in this paragraph in the principal Agreement to which this Schedule 1 applies, apply in this schedule:

**Appropriate Pension Provision:** in respect of:

- (a) Eligible Employees:
  - (i) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer.
- (b) New Employees:
  - (i) membership of the Local Government Pension Scheme where the employer has admitted body status within the scheme and makes the requisite contribution.

**Eligible Employees:** the Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Service Transfer Date.

**Employee Liability Information:** the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against it arising out of the employee's employment with that Authority; and
- (e) information about any collective agreement that will have effect after the Service Transfer Date in relation to the employee under regulation 5(a) of TUPE.

**Employment Liabilities:** all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for discrimination under the Equality Act 2010, claims

for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equalities and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**Further Service Transfer Date:** the date on which the Service (or any part of the Service), transfers from the Client Authority to the Lead Authority or any Replacement Service Provider.

**LGPS:** Local Government Pension Scheme.

**LGPS Regulations:** include:

- (f) the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239); and
- (g) the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166) (as amended); and
- (h) the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (SI 2008/239); and
- (i) the Local Government Pension Scheme Regulations 1997 (SI 1997/1612) (as amended).

**New Employees:** those employees employed on or after the Service Transfer Date by the Lead Authority to provide the Service in addition to the Transferring Employees.

**Redundancy Costs:** statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Lead Authority to the Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

**Redundant Transferring Employees:** Transferring Employees whom the Lead Authority has dismissed following a lawful redundancy within six (6) months of the Service Transfer Date.

**Relevant Employees:** those employees whose contracts of employment transfer with effect from the Further Service Transfer Date to the Lead Authority or a Replacement Service Provider by virtue of the application of TUPE.

**Replacement Service Provider:** has the meaning given to it in paragraph 3.1.

**Final Staff List:** the list of all the Client Authority's personnel engaged in, or wholly or mainly assigned to, the provision of the Shared Services or any part of the Shared Services at the Further Service Transfer Date.

**Provisional Staff List:** the list prepared and updated by the Client Authority or the Lead Authority of all its personnel engaged in, or wholly or mainly assigned to, the

provision of the Shared Services or any part of the Shared Services at the date of the preparation of the list.

**Staffing Information:** in relation to all persons detailed on the Provisional Staff List, in an anonymised format, such information as the Lead Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Shared Services.

**Transferring Employees:** employees of the Client Authority whose contracts of employment transfer with effect from the Service Transfer Date to the Lead Authority by virtue of the application of TUPE as listed in this Schedule 1.

## 2. TRANSFER OF EMPLOYEES FROM CLIENT AUTHORITY TO LEAD AUTHORITY

- 2.1 The Client Authority and the Lead Authority agree that where the identity of the provider of the Shared Service changes on or after the Service Transfer Date, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees shall transfer to the Lead Authority which shall comply and shall procure that each sub-contractor shall comply with their obligations under TUPE.
- 2.2 The Client Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date. The Client Authority shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Lead Authority, as required by TUPE. The Client Authority shall use its best endeavours to ensure the accuracy or completeness of the Employee Liability Information supplied by it.
- 2.3 Subject to paragraph 2.4, the Client Authority shall indemnify and keep indemnified the Lead Authority against any losses, except indirect losses incurred by the Lead Authority or any relevant sub-contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Client Authority in relation to any Transferring Employee prior to the Service Transfer Date (except where such act, fault or omission arises as a result of the Lead Authority or any relevant sub-contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Service by virtue of TUPE on the Service Transfer Date.
- 2.4 The Lead Authority shall indemnify and keep indemnified the Client Authority against Employment Liabilities arising from or as a consequence of any proposed changes to terms and conditions of employment the Lead Authority may consider making on or after the Service Transfer Date.
- 2.5 The Lead Authority shall indemnify and keep indemnified the Client Authority against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees any other person who is or will be employed or engaged by the Lead Authority in connection with the provision of the Shared Service, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Service Transfer Date.



- 2.6 The Lead Authority shall immediately on request by the Client Authority provide details of any measures that the Lead Authority envisages it will take in relation to any Transferring Employees within six months prior to the Service Transfer Date including any proposed changes to terms and conditions of employment. If there are no measures, the Lead Authority shall give confirmation of that fact, and shall indemnify the Client Authority against all Employment Liabilities resulting from any failure by it to comply with this obligation.
- 2.7 The Lead Authority will ensure that all New Employees are offered an Appropriate Pension Provision.

**3. EMPLOYMENT EXIT PROVISIONS**

- 3.1 This Agreement envisages that subsequent to the Service Transfer Date, the identity of the provider of the Service (or any part of the Service) may change (whether as a result of termination of this Agreement or otherwise) resulting in a transfer of the Service in whole or in part (Further Service Transfer). If a Further Service Transfer is a Relevant Transfer then the Client Authority or other provider of the Services (Replacement Service Provider) will inherit liabilities in respect of the Relevant Employees.
- 3.2 The Lead Authority shall on receiving notice of termination of this Agreement or otherwise, on request from the Client Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Lead Authority in the provision of the Shared Services, the Lead Authority's Provisional Staff List and the Staffing Information together with any additional information required by the Client Authority, including information as to the application of TUPE to the employees. The Lead Authority shall notify the Client Authority of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Further Service Transfer Date, the Lead Authority shall prepare and provide to the Client Authority and/or, at the direction of the Client Authority, to the Replacement Service Provider, the Lead Authority's Final Staff List, which shall be complete and accurate in all material respects. The Lead Authority's Final Staff List shall identify which of its personnel named are Relevant Employees.
- 3.4 The Client Authority shall be permitted to use and disclose the Lead Authority's Provisional Staff List, the Lead Authority's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any Shared Services that are substantially the same type of services as (or any part of) the Shared Services.
- 3.5 The Lead Authority shall ensure at all times that it has the right to provide these records under Data Protection Legislation.
- 3.6 In the six months prior to termination of this Agreement, the Lead Authority shall not materially increase or decrease the total number of staff listed on its Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Client Authority's prior written consent.
- 3.7 The Lead Authority shall indemnify and keep indemnified in full the Client Authority against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Lead Authority in connection with the provision of any of the Shared Services; or

- (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Lead Authority),

arising from or connected with any failure by the Lead Authority to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

- 3.8 The Authorities shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Service Transfer will be fulfilled.
- 3.9 The Authorities agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3 to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Lead Authority or the Client Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.10 Despite paragraph 3.9, it is expressly agreed that the Authorities may rescind or vary any terms of this Schedule without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

#### **4. PENSIONS**

- 4.1 The Lead Authority shall ensure that all Eligible Employees and New Employees are offered Appropriate Pension Provision.
- 4.2 The provisions of this paragraph 4 of this Schedule shall be directly enforceable by an affected employee.

#### **5. BENEFITS UNDER THE LGPS**

- 5.1 The Lead Authority shall and shall procure that any relevant sub-contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Client Authority.
- 5.2 Under paragraph 5.1, where such benefits are of a discretionary nature (Discretionary Benefits), they shall be awarded on the basis of the Client Authority's written policy in relation to such benefits at the Service Transfer Date. Where the payment of Discretionary Benefits is not, for whatever reason, possible, the Lead Authority shall compensate the Eligible Employees in a manner that is broadly comparable or equivalent in cash terms.