



Dated \_\_\_\_\_ 2024

(1) **Essex County Council**

(2) **Braintree District Council**

(3) **Castle Point District Council**

(4) **Epping Forest District Council**

(5) **Tendring District Council**

**Agreement for the collaborative delivery of joint procurement services through  
the Essex Procurement Partnership**

**THIS AGREEMENT** dated [.....] 202X is made **BETWEEN**:

- (1) **Essex County Council** whose administrative offices are at County Hall, Market Road, Chelmsford, CM1 1QH;
- (2) **Braintree District Council**, whose administrative offices are at Causeway House, Bocking End, Braintree, Essex, CM7 9HB;
- (3) **Castle Point District Council**, whose administrative offices are at Kiln Road, Thundersley, Benfleet, Essex, SS7 1TF
- (4) **Epping Forest Borough Council**, whose administrative offices are at Civic Offices, 323 High Street, Epping, CM16 4BZ
- (5) **Tendring District Council**, who administrative offices are at Town Hall, Station Road, Clacton-on-sea, Essex, CO15 1SE

Each a Party and together the Parties

## **BACKGROUND**

- (A) The Parties to this Agreement have decided to work collaboratively together, as Essex Procurement Partnership, to pool resources to deliver day-to-day procurement activities and wider specialist procurement advice and support on behalf of each other. The Parties will be governed by the terms and conditions of this Agreement.
- (B) Through this collaboration service, the Parties will create common procurement documentation including a common strategy. The Parties will adopt the Essex Procurement Partnership Procurement Rules where they are not in conflict with the Constitution of each Party. The Parties agree with the objective of moving to formal joint procurement rules to be embedded within their organisations over the period of the partnership.
- (C) The Parties will identify common procurement activities and work to jointly procure goods and services to the benefit of each Authority.
- (D) The Lead Party will operate the procurement function on behalf of the Parties, with oversight by the Strategic Officer Group
- (E) This Agreement governs the Parties collaboration in relation to that Service.
- (F) This Agreement is therefore made pursuant to the Local Authority (Goods and Services) Act 1970, Sections 101 and 113 of the Local Government Act 1972, Section 9EA of the Local Government Act 2000 together with the Local Authorities (Arrangements for the discharge of functions) Regulations 2012 and all other enabling powers.

## **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following expressions have the meaning set opposite:

**Agreement:** means this Agreement, including its Schedules, as amended from time to time in accordance with clause 10.8;

<b>Announcement:</b>	any public announcement, communication or circular in relation to this collaboration or the Agreement;
<b>Background:</b>	any information, data, techniques, Know-how, inventions, software, discoveries and materials (regardless of the form or medium in which they are disclosed or stored) that are provided by one Party to another Party for use in the Service (whether belonging to that Party or to a third party, and whether before or after the date of this Agreement),, except any Result;
<b>Business Day:</b>	Monday to Friday (inclusive) except bank or public holidays in England;
<b>Chair</b>	The Chair who has been nominated by the Strategic Officer Group to oversee the operation of the Strategic Officer Group and ensure it has the information required to assess the effective operation of the Essex Procurement Partnership
<b>Chartered Institute of Procurement and Supply</b>	A <a href="#">professional body</a> working for the procurement and supply profession promoting best practice
<b>Commencement Date:</b>	1 <sup>st</sup> April 2025
<b>Confidential Information:</b>	each Party's confidential information is: any Background disclosed by that Party to any of the other Parties for use in the Service and identified as confidential before or at the time of disclosure; and any of the Results [in which that Party owns the Intellectual Property Rights] <b>OR</b> [in relation to which it has an exclusive licence]; and any other information disclosed by that Party to any of the other Parties for use in the Service or under this Agreement and identified as confidential before or at the time of disclosure or which, by its nature or from the circumstances of its disclosure, should reasonably be presumed to be confidential including but not limited to the sourcing Services
<b>Data Protection Legislation:</b>	means all applicable data and privacy legislation in force from time to time in the UK including without limitation: <ul style="list-style-type: none"> <li>(i) the UK GDPR;</li> <li>(ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy;</li> <li>(iii) the Privacy and Electronic Communications Regulations 2003(SI2003/2426) as amended; and</li> <li>(iv) the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and which are applicable to a party;</li> </ul>
<b>Essex Procurement Partnership:</b>	The name of the collaborative service as set out in this Collaboration Agreement

<b>Financial Contribution:</b>	the financial contribution to be made by a Party to the Service, as set out in Schedule 1.
<b>Intellectual Property Rights:</b>	patents, rights to inventions, trade marks, service marks, registered designs, copyrights, database rights, design rights, rights to use and protect confidential information, in each case whether registered or unregistered, including rights to apply for and be granted and applications for any of the above, and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;
<b>the Key Personnel:</b>	in the case of : Essex County Council: Melanie Evans Braintree District Council: Suzanne Bennett Castle Point District Council: Lance Wosko Epping Forest District Council: Samantha Preston Tendring District Council: Lisa Hastings
<b>Know-how:</b>	unpatented technical information (including information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) which is not in the public domain;
<b>the Lead Party:</b>	is Essex County Council as agreed between the Parties. The Lead Party will also act as the Service manager; with all staff operating the service employed or seconded to the lead party, with the lead party undertaking the services as defined in schedule 2 the service plan.
<b>Location:</b>	the location(s) at which the Service will be carried out as set out in the Service Plan;
<b>Procurement Act:</b>	the relevant legislation applying to UK public procurement and sourcing activity by the Authorities in force from time to time, including secondary regulations, statutory guidance and national policy.
<b>Service:</b>	the Service to undertake sourcing activity on behalf of each party as set out in the Service Plan;
<b>Service Manager</b>	the service manager who is an authorised representative of the Lead Party will have responsibility for the operation of the sourcing activity as described with schedule 2 and the general operation of the collaboration
<b>Service Period:</b>	the period described in clause 2.1;
<b>Service Plan:</b>	the Service plan annexed to this Agreement as Schedule 2, as varied from time to time under the terms of this Agreement;

<b>Results:</b>	all information, data, techniques, Know-how, results, inventions, discoveries, software and materials (regardless of the form or medium in which they are disclosed or stored) identified or first reduced to practice or writing in the course of the Service including but not limited to;
<b>Staff</b>	means all persons employed or engaged by a Party to this Agreement including servants, agents, suppliers and sub-contractors, with terms and conditions of hosting or secondment arrangements being confirmed in writing in accordance with section 113 of the Local Government Act 1972;
<b>Strategic Officer Group:</b>	the individuals nominated by each of the Parties in accordance with clause 2.12 to supervise the carrying out of the Service;
<b>Variation Agreement:</b>	a written agreement signed by or on behalf of the Parties and any proposed new party to this Agreement; and
<b>VAT:</b>	value added tax chargeable under the Value Added Tax Act 1994, or any tax replacing that tax.

- 1.2 The headings in this Agreement are for ease of reference only; they do not affect its construction or interpretation.
- 1.3 References in this Agreement to **a person** include a natural person, corporate or unincorporated body (whether or not it has a separate legal personality).
- 1.4 A reference in this Agreement to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 A reference in this Agreement to **writing** or **written** includes email.
- 1.6 A reference in this Agreement to any other agreement or document is a reference to that other agreement or document as varied or novated (in each case, unless in breach of this Agreement) from time to time.
- 1.7 References in this Agreement to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.8 Any words in this Agreement following the expression **including, include or in particular**, or any similar expression are to be construed as illustrative and do not limit the sense of the words preceding that expression.
- 1.9 The acts and omissions of any agent, contractor, sub-contractor, or employee acting on behalf of the Party are deemed to be within the control of the relevant Party by which they were appointed.

## **2. THE SERVICE**

- 2.1 The Service will begin on the Commencement Date and will continue for a period of 3 years from the Commencement Date or until any later date agreed in writing between the Parties. If this Agreement is entered into after the Commencement Date, it will apply retrospectively to work done in relation to the Service on or after the Commencement Date. This Agreement

will remain in full force and effect for the duration of the Service, but a Party may withdraw or may be deemed to have withdrawn from the Service in accordance with clause 8 or 10.

- 2.2 Each of the Parties will carry out the tasks allotted to it in the Service Plan, and will provide the human and other resources, Financial Contributions, Background, materials, facilities and equipment which are designated as its responsibility in the Service Plan. The Service will be carried out under the direction and supervision of the Lead Party as guided by the Strategic Officer Group.
- 2.3 Each of the Parties will obtain and maintain all regulatory and ethical licences, consents and approvals including each Parties internal approvals/governance (as per clause 2.6) necessary to allow it to carry out the tasks allotted to it in the Service Plan and will carry out the Service in accordance with all laws and regulations which apply to its activities under or pursuant to this Agreement.
- 2.4 Each of the Parties will ensure that any Staff involved in the Service, observe the conditions attaching to any regulatory and ethical licences, consents and approvals; keep complete and accurate records of all research, development and other work carried out in connection with the Service and of all Results.
- 2.5 Each of the Parties will ensure that any Staff involved in the Service, when working on or visiting the other Party's premises, comply with the other Party's health and safety and security policies and procedures and, when accessing or using the other Party's information systems, comply with the other Party's information security policies and procedures.
- 2.6 Each Party warrants to the other Parties that it has full power and authority under its constitution, and has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into and perform this Agreement.
- 2.7 There will be a Strategic Officer Group and a Members Advisory Group made up of one representative nominated by each of the Parties. A Director, or equivalent, will sit on the Strategic Officer Group and an elected representative of the partner Authority will sit on the Member Advisory Group. The Service Manager is the authorised representative of the Lead Party on the Strategic Officer Group and responsible for leading the operation of the Services as set out in Schedule 2 and reporting on that activity to the Strategic Officer Group and Members Advisory Group.. The terms of reference of the Strategic Officer Group are set out in Schedule 4 with the terms of reference for the Members Advisory Group in Schedule 5. The Strategic Officer Group and Members Advisory Group have not been provided delegated authority to amend the terms of this Agreement except as may be expressly set out in those terms of reference.
- 2.8 Any member of the Strategic Officer Group or Member Advisory Group may participate in the relevant meetings by tele-conference, video-conference or any other technology that enables everyone participating in the meeting to communicate interactively and simultaneously with each other. The quorum for a meeting of the Strategic Officer Group and Members Advisory Group will be one representative of at least 75% of the Parties,
- 2.9 The Chair of Strategic Officer Group or, in his absence, any other individual the members of the Strategic Officer Group may from time to time agree, will chair meetings of the Strategic Officer Group. The Chair will ensure effective operation of the Strategic Officer Group and oversee the development of the collaboration arrangements in line with the procurement strategy agreed by the Strategic Officer Group.
- 2.10 The Chair of Members Advisory Group or, in his absence, any other individual the members of the Members Advisory Group may from time to time agree, will chair meetings of the Members Advisory Group. The Chair will ensure effective operation of the Member Advisory Group and oversee the development of the collaboration arrangements in line with the procurement strategy agreed by the Members Advisory Group

- 2.10 The Parties will ensure that the Strategic Officer Group meets at least every 3 months at venues to be agreed, and in default of agreement at Causeway House, Braintree District or at any other time at the request of any of the Parties. Meetings of the Strategic Officer Group will be convened with at least 21 days written notice in advance. That notice must include an agenda. Actions from the Strategic Officer Group will be prepared by the chair of the meeting and sent to each of the Parties within 14 days after each meeting.
- 2.11 The Parties will ensure that the Members Advisory Group meets every 6 months at venues to be agreed with representation from elected members, ideally the relevant Cabinet member responsible for the procurement function within the Council, to review the performance of the Essex Procurement Partnership, in oversight of the Strategic Officer Group, and to promote the approach of shared working to support growth and deliver efficiencies. Meetings of the Members Advisory Group will be convened with at least 21 days written notice in advance. That notice must include an agenda. Actions from the Member Advisory Group will be prepared by the Service Manager and approved by the Chair of the meeting and sent to each of the Parties within 14 days after each meeting
- 2.12 Neither the Strategic Officer Group nor the Member Advisory Group has delegated authority or decision making through the Essex Procurement Partnership and consequently the Parties should ensure that their own internal governance procedures are followed for any decisions required.
- 2.13 The Service Manager will provide quarterly reports summarising the progress of the Service and the Results, and the Lead Party will ensure that all the Parties are informed about the progress of the Service and the Results are circulated to each member of the Strategic Officer Group with the written notice for the relevant meeting.
- 2.14 Each Party will, through its representative or his alternate, have one vote in the Strategic Officer Group and Members Advisory Group. Decisions will be taken by a simple majority except where a decision necessitates a change to the Service Plan or a change to the allocation of any funding. In either of those cases, any decision must be unanimous. The Chair will not have a casting vote. Where a unanimous decision cannot be reached, this will be escalated to the Chief Executives (Strategic Officers Group) or Leaders (Members Advisory Group) of each party with agreement on the way forward.
- 2.15 The Lead Party will:
- 2.15.1 be responsible to the Strategic Officer Group for the day-to-day management of the Service;
  - 2.15.2 be responsible for the financial administration of the Service
  - 2.15.3 be responsible for implementing decisions taken by the Strategic Officer Group;
  - 2.15.4 prepare progress reports and
  - 2.15.5 monitor the progress of the Service.
- 2.16 Each Party will
- 2.16.1 ensure a suitable representative from each Party attends the Strategic Officer Group and engages in discussion to enable the Strategic Officer Group to effectively define the way forward of the collaboration support the Lead Party to deliver in line with Schedule 2 the Service Plan by providing all necessary data and access to Staff
  - 2.16.2 ensure all procurements above tender threshold as defined within the Procurement Rules of each party for the life of the proposed contract are allocated to the collaboration, with an agreed deminimus as agreed annually at the Strategic Officer Group.

- 2.16.3 undertake all reasonable steps to support the collaboration deliver in line with this Agreement and the procurement strategy agreed by the Strategic Officer Group,
- 2.17 No additional organisation may become a party to this Agreement without the written agreement of all of the existing parties to this Agreement and following such agreement the existing Parties will execute a Variation Agreement together with the additional organisation.

### **3. FINANCIAL CONTRIBUTION AND PAYMENT PLAN**

- 3.1 Each Party will pay its Financial Contribution to the Lead Party in accordance with Schedule 1 within 30 days after its receipt of an annual invoice to be issue on or around 1<sup>st</sup> October . The Financial Contribution will cover the Staff costs and overheads associate with those Staff, detailed of which are set out within Schedule 1. Where any Financial Contribution is being claimed against costs and expenses incurred by a Party, each invoice must be accompanied by a statement certified by an authorised officer of that Party.
- 3.2 Unless any VAT exemption applies, all amounts are exclusive of VAT which the Party making the Financial Contribution will pay at the rate from time to time prescribed by law.
- 3.3 If any Party fails to make any payment due to another Party under this Agreement, without prejudice to any other right or remedy available to that other Party, that other Party may charge interest (both before and after any judgement) on the amount outstanding, on a daily basis in accordance with the Late Payments of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2013. That interest will be calculated from the date of last date for payment to the actual date of payment, both dates inclusive, and will be compounded quarterly. The Party which is late paying will pay that interest on demand.
- 3.4 Where the Party does not pay at all the matter will be escalated to the Strategic Officer Group and if no resolution is found it is to be escalated to the Chief Executives for the Lead Party and late paying Party. Non-payment can result in the late paying Party being excluded from the collaboration and this Agreement, as agreed by the Strategic Officer Group, with the other Parties required to share these costs equally between them until the costs can be reduced to reflect the reduction in operating costs of the Services.
- 3.5 Except as set out in the Service Plan each Party shall:
- 3.5.1 not be entitled to charge the other Party for the provision of anything it provides in connection with each Service and this Agreement; and
- 3.5.2 be otherwise responsible for its own costs incurred in connection with each Service and this Agreement, including all Inputs it provides.
- 3.6 The Financial arrangements for the Service will be overseen by the Strategic Officer Group
- 3.7 The Lead Party will prepare and submit an account and financial forecast of all income and expenditure in connection with the Service every 6 months in September and March to the Strategic Officer Group and the Members Advisory Group.
- 3.8 The Lead Party will ensure adequate accounts and records are maintained of all income and expenditure under this Agreement and that the Party is allowed to examine the accounts and records of the Lead Party relating to the Service provided. 3.8.1 at least 14 days written notice is given in advance to the Lead Party;
- 3.8.1 the inspection or examination takes place during the Lead Party's normal working hours; and
- 3.8.2 the Party appointing the accountant and the accountant will keep confidential any information which it may acquire in the exercise of its rights under this clause 3.10.



3.9 Rebate income is currently received and split according to the following proportions to Braintree District Council (50%), Epping Forest District Council (30%) and Castle Point Borough Council (20%) from the following frameworks:

- Playground, Gym and Urban Play
- Footpaths and Road Repairs
- In-Cab technology and Waste Services Consultancy
- Refused Supplies
- Construction Consultancy
- Webcasting Services
- Street Sweepings Arisings
- Cleaning and Hygiene Supplies
- Sweepers

The rebate income from these frameworks and any descendents of these frameworks will be reserved to these Councils in the same proportions for the duration of the trial period.

#### 4. **USE AND EXPLOITATION OF INTELLECTUAL PROPERTY RIGHTS**

4.1 This Agreement does not affect the ownership of any Intellectual Property Rights in any Background or in any other technology, design, work, invention, software, data, technique, know-how, or materials which are not Results. The Intellectual Property Rights in them will remain the property of the Party which contributed them to the Service (or its licensors). No licence to use any Intellectual Property Rights is granted or implied by this Agreement except the rights expressly set out in this Agreement.

4.2 Each Party grants each of the other Parties a royalty-free, non-exclusive licence to use its intellectual property developed during the course of performing the Services or for the purpose of carrying out the Service.

4.3 For the avoidance of doubt the Parties hereby confirm and acknowledge that any Intellectual Property Rights or use through a non-exclusive licence, that exist or arise from the Results of the collaboration through the Essex Procurement Partnership, including but not limited to any reports or conclusions drawn from the Service, shall belong exclusively to the Parties, whilst they remain Parties to this Agreement.

4.4 The Strategic Officer Group will direct how to utilise and dispose of any Intellectual Property Rights or non-exclusive licence, as they see fit, including but not limited to commercialisation of the Results of the Service. The Lead Party may take such steps as it may decide from time to time, at the Lead Party's expense, to register and maintain any protection for those Intellectual Property Rights, including filing and prosecuting patent applications for any of the Results, and taking any reasonable action in respect of any alleged or actual infringement of those Intellectual Property Rights.

4.5 Each of the other Parties will ensure that any Staff involved in the creation of the Results gives the Lead Party such assistance (except financial assistance) as the Lead Party may reasonably request in connection with the registration and protection of the Intellectual Property Rights in the Results, including filing and prosecuting patent applications for any of

the Results, and taking any action in respect of any alleged or actual infringement of those Intellectual Property Rights.

- 4.6 Where any third party (such as a contractor) is involved in the Service, the Party engaging that third party will ensure that that third party has assigned to the Lead Party any Intellectual Property Rights (including making a prospective assignment where appropriate) which that third party has in the Results in order to be able to give effect to the provisions of this clause 4.
- 4.7 The Lead Party grants each of the other Parties a royalty free, non-exclusive licence to use the Results for the purpose of carrying out the Service None of the Parties (except the Lead Party under the instruction of the Strategic Officer Group) may grant any sub-licence to use any of the Results except that any Commercial Party may allow any of its Group Company and any person working for or on behalf of the Commercial Party or any of its Group Companies to use the Results for the purpose of carrying out the Service

## 5. PUBLICATION

- 5.1 Subject to clause 5.2, no Party shall make, or permit any person to make, any Announcement concerning the existence, subject matter or terms of this Agreement, the Service, or the relationship between the Parties, without the prior written consent of the Lead Party (such consent not to be unreasonably withheld or delayed). The Parties shall consult with the Lead Party regarding the timing, contents and manner of release of any Announcement.
- 5.2 Where an Announcement is required by law or any governmental or regulatory authority or by any court or other authority of competent jurisdiction, the Party required to make the announcement shall promptly notify the other Parties. The Party concerned shall make all reasonable attempts to agree the contents of the Announcement before making it.

## 6. CONFIDENTIALITY

- 6.1 Subject to clause 5, none of the Parties will either during the Service Period or for 10 years after the end of the Service Period disclose to any third party nor use for any purpose, except as expressly permitted by this Agreement, any other Party's Confidential Information.
- 6.2 None of the Parties (**the Recipient**) will be in breach of any obligation to keep any Background, Results or other information confidential or not to disclose it to any third party to the extent that:
- 6.2.1 if it is received from another Party, it is known to the Recipient (demonstrable by written records) before its receipt from another Party, and it is not already subject to any obligation of confidentiality to another Party;
  - 6.2.2 it is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;
  - 6.2.3 it has been obtained by the Recipient from a third party in circumstances where the Recipient has no reason to believe that there has been a breach of an obligation of confidentiality to another Party;
  - 6.2.4 it has been developed by the Recipient without reference to another Party's Confidential Information; or
  - 6.2.5 it is disclosed pursuant to the requirement of any law or regulation (provided, in the case of a disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, none of the exceptions to that Act or those Regulations (as the case may be) applies to the information disclosed) or pursuant to the order of any Court of competent jurisdiction or the requirement of any competent regulatory

authority and that, in each case where the law permits, and the Party required to make that disclosure has informed the Party whose information it is, within a reasonable time after being required to make the disclosure, of the requirement to make the disclosure and the information required to be disclosed; or

6.2.6 it is approved for release in writing by an authorised representative of the Party whose information it is.

6.3 None of the Parties will be in breach of any obligation to keep another Party's Background, or any of the Results or other information, confidential or not to disclose them to any third party, , who needs to know the same in order to exercise the rights granted to it in this Agreement, provided they are not used except as expressly permitted by this Agreement and the recipient undertakes to keep that Background, those Results or that information confidential.

## 7 FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004

7.1 All Parties are subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and should any Party receive a request under that Act or those Regulations to disclose any information which, under this Agreement, is the Confidential Information of another Party or within the terms of this Agreement, it will notify the Parties to undertake prompt consultation ,before making any disclosure under that Act or those Regulations.

7.2 The Party in receipt of the request under the Freedom of Information Act 2000 or Environmental Regulations 2004 will take legal advice regarding the availability and applicability of any exemptions and any other options available and will notify the other Parties of the intended response to that request. The Parties will respond to the Party which received the request within 10 days after receiving the notice if that notice requests that other Parties to provide information to assist the Party which received the request to determine whether or not an exemption to the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 applies to the information requested under that Act or those Regulations. The Parties may make representations in relation to that request and the proposed response and may request amendments to the proposed response.

7.3 At the request of another Party, except in order to comply with any court order or any decision of the Information Commissioner's Office or the Information Tribunal, the Party which received the request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 (**the Disclosing Party**) will not disclose any information which, under this Agreement, is that other Party's Confidential Information in response to a request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 provided that:

7.3.1 that other Party makes that request in writing within 10 days after receiving notice from the Disclosing Party under this clause; and

7.3.2 that other Party provides the Disclosing Party and its Staff dealing with the request reasons in accordance with the Information Commissioner Office guidance relating to the Act and Regulations, applying the Public Interest Test where required..

7.4 None of the Parties will use another Party's name or the name of any of the Key Personnel provided by another Party, or another Party's logo in any press release or product advertising, or for any other promotional purpose, without first obtaining that other Party's written consent.

## 8 LIMITATION OF LIABILITY

8.1 The Lead Party providing professional advice for the service has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims not exceeding £10,000,000 per claim. The limits and exclusions in this clause reflect the annual insurance

cover arranged (the Cap) and the other Parties are responsible for making its own arrangements for the insurance of any excess liability.

- 8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 None of the Parties may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 8.4 All Parties acknowledge through this Agreement that the decision with regards to the specification details, procurement route, evaluation of the tenders, awards of contract rest with the individual Parties, as contracting authorities.
- 8.5 Nothing in this clause 8 shall limit the Authority's financial contributions under this Agreement.
- 8.6 Nothing in this agreement limits any liability which cannot legally be limited, including for fraud or fraudulent misrepresentation.
- 8.7 The Lead Party's total aggregate liability to the Parties:
- 8.7.1 For loss arising from the Lead Party's failure to comply with its data processing obligations under schedule 6 shall not exceed **£[AMOUNT]**;
- 8.7.2 In respect of all other claims, losses or damages arising in each financial year, shall not exceed the Cap.
- 8.8 Types of direct loss and specific losses not excluded:
- 8.8.1 Wasted expenditure and losses incurred by the Contracting Authority arising out of or in connection with any third party claim against the Contracting Authority which has been caused by the negligence or omission of Lead Party. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings. For loss arising from the Lead Party's failure to comply with
- 8.9 The Parties shall indemnify and hold harmless the Lead Party and its Staff with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the negligent actions and/or omissions of the other Parties in relation to the Service, the non-fulfilment of obligations of the Parties under this Agreement or their obligations to third parties.
- 8.10 The liability of each Party to the Lead Party under clause 7.1 in respect of any direct loss shall not exceed an amount equal **xxxxx**. The Parties shall not in any event be liable to the Lead Party, whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect, consequential, or special damages including without limitation any loss of business, revenue, profit, anticipated savings or goodwill (whether direct or indirect).
- 8.11 The express undertakings and warranties given by the Parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

## **9 FORCE MAJEURE**

- 9.1 If the performance by the Party of any of its obligations under this Agreement (except a payment obligation) is delayed or prevented by circumstances beyond its reasonable control, then that Party will not be in breach of this Agreement due to that delay in their performance. However, if the delay in performance lasts for more than 6 months, the other Parties may, if

they unanimously agree to do so, give that Party notice treating it as having withdrawn from the Service and the provisions of clauses 11.4 - 11.9 (inclusive) will apply.

## **10. JOINING THE COLLABORATION**

- 10.1 It is anticipated that through the term of this collaboration agreement further Local Authorities will wish to become a party to this agreement. Any prospective member must issue a letter from their Chief Executive to the current Chair of the Strategic Officer Group requesting to join the Essex Procurement Partnership. This will be considered by the Strategic Officer Group within a formal meeting.
- 10.2 On receipt of the letter a meeting of the Strategic Officer Group will be held to consider the request to join the collaboration and vary this Collaboration Agreement. On unanimous agreement confirmed in writing the new party will be able to join the Collaboration through the execution of a Variation Agreement of this Agreement indicating acceptance to the terms contained herein and Procurement Strategy.

## **11 TERMINATION AND WITHDRAWAL**

- 11.1 Any party may independently withdraw from the Collaboration and so this Agreement by providing 6 months notice.
- 11.2 All parties can agree by unanimous decision to dissolve the collaboration ahead of its expiry date. In such case the IP rights to documentation used by the parties where not otherwise indicated as belonging to a Party, will be shared between the parties to the collaboration at the time of dissolution in accordance with Clause 4 above.
- 11.3 Each of the Parties will notify the Lead Party promptly if at any time any of the Key Personnel appointed by that Party is unable or unwilling to continue to be involved in the Service. Within 1 month after the date of that notice, the Party which originally appointed that member of the Key Personnel will nominate a successor. The other Parties will not unreasonably refuse to accept the nominated successor, but if the successor is not acceptable this will be escalated in line with 10.11 below escalation).
- 11.4 If a Party withdraws or is treated as having withdrawn from the Service, the other Parties will use reasonable endeavours to reallocate the obligations of that Party under this Agreement amongst themselves or to a third party acceptable to the remaining Parties, provided that that third party agrees to be bound by the terms of this Agreement.
- 11.5 If a Party withdraws or is treated as having withdrawn from the Service, the withdrawing Party will be required to pay to the Lead Party any expense incurred by the Lead Party as a result of the Party withdrawing this includes but is not limited to costs incurred from reduction of the workforce, licence cost. Such reasonable costs will be paid within 30 days of an invoice being issued by the Lead Party.
- 11.6 Clauses 1, 3, 4 (subject to the provisions of this clause 11) 5, 6, 7, 8, 11.4, 11.5, 11.6, 11.7, 11.8, 11.9 and 12, will survive the completion or termination of the Service, the expiry of this Agreement, or the withdrawal or deemed withdrawal of any Party for any reason and will continue in force indefinitely or, in the case of clause 6, in accordance with clause 6.1.
- 11.7 Rights in respect of its Background granted under this Agreement by a Party which withdraws or is treated as having withdrawn will continue indefinitely and will be extended to any new party to this Agreement.
- 11.8 Rights in respect of its Results granted under this Agreement by a Party which withdraws or is treated as having withdrawn will continue indefinitely and will be extended to any new party to this Agreement.

11.9 All rights to use any other Party's Intellectual Property Rights granted under this Agreement to a Party which withdraws or is treated as having withdrawn will cease immediately on the expiry of the withdrawal notice given by or to that Party.

## 12. PREVENTION OF BRIBERY

12.1 The Parties shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will comply with Schedule 5.

## 13. GENERAL

13.1 **Assignment etc:** None of the Parties may assign or transfer this Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of all of the other Parties. No Party will unreasonably withhold or delay its consent.

13.2 **Illegal/unenforceable provisions:** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.

13.3 **Waiver of rights:** If a Party fails to enforce or delays in enforcing an obligation of any other Party, or fails to exercise or delays in exercising a right under this Agreement, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver by a Party of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.

13.4 **No agency etc:** Nothing in this Agreement creates, implies or evidences any Parties or joint venture between the Parties, or the relationship between them of principal and agent. None of the Parties has any authority to make any representation or commitment, or incur any liability, on behalf of any other Party.

13.5 **Entire agreement:** This Agreement constitutes the entire agreement between the Parties relating to its subject matter. Each Party acknowledges that it has not entered into this Agreement on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in this Agreement]. Each Party waives any claim for breach of this Agreement, or any right to rescind this Agreement in respect of any representation which is not an express provision of this Agreement]. However, this clause does not exclude any liability which any Party may have to any other (or any right which any Party may have to rescind this Agreement) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of this Agreement.

13.6 **Formalities:** Each Party will take any action and execute any document reasonably requested by any other Party to give effect to any of its rights under this Agreement, or to enable their registration in any relevant territory provided the requesting Party pays the other Party's reasonable expenses of doing so.

- 13.7 **Amendments:** No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each Party's representative with the relevant internal governance providing the necessary authority.
- 13.8 **Third parties:** No one except a Party has any right to prevent the amendment of this Agreement or its termination, and no one except a Party may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise, except that each Indemnified Party will have the benefit of the relevant indemnity and Key Personnel will have the benefit of clause 6.7, in each case under the Contracts (Rights of Third Parties) Act 1999.
- 13.9 **Governing law:** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by, and this Agreement is to be construed in accordance with, English law. The English Courts will have exclusive jurisdiction to deal with any dispute (including any non-contractual claim or dispute) which has arisen or may arise out of or in connection with this Agreement, except that a Party may bring proceedings to protect its Intellectual Property Rights or Confidential Information in any jurisdiction.
- 13.10 **Escalation:** If the Parties are unable to reach agreement on any issue concerning this Agreement or the Service within 30 days after one party has notified the Lead Party of that issue, they will refer the matter to the Strategic Officer Group in an attempt to resolve the issue within 30 days after the referral.

- 13.11 **Data Protection:** Each Party will comply with the provisions set out in Schedule 6.

Each party shall, at its own expense, ensure that it complies with and assists the other parties to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

- 13.12 **Counterparts:** This Agreement may be executed in any number of counterparts. Once it has been executed and each Party has executed at least one counterpart, each counterpart will constitute a duplicate original copy of this Agreement. All the counterparts together will constitute a single agreement. The transmission of an executed counterpart of this Agreement (but not just a signature page) by e-mail (such as in PDF or JPEG) will take effect as the delivery of an executed original counterpart of this Agreement. If that method of delivery is used, each Party will provide the other Party with the original of the executed counterpart as soon as possible.

**SIGNED** for and on behalf of **Essex County Council**

**SIGNED** for and on behalf of **Braintree District Council**

Name

Name

Position

Position

Signature

Signature

**SIGNED** for and on behalf of **Castle Point Borough Council**

**SIGNED** for and on behalf of **Epping Forest District Council**

Name

Name

Position

Position

Signature

Signature



**SIGNED** for and on behalf of **Tendring District Council**

Name

Position

Signature



## SCHEDULE 1

### The Financial Contributions

#### 1. Finance Contributions

- 1.1. The current financial contributions from each party are set out below in Table A below. Contributions are based on the cost of usage, with current costs set as baseline with the addition of oncosts of the Accountable Body.
- 1.2. Usage is based on 202 working days per year (252 working days with additional 30 days for leave). Time recording will be undertaken to assess resource time per Authority and presented at each Strategic Officer Group Meeting. Where usage differs from this baseline level, this will be discussed at Strategic Officer Group every 6 months, with consideration given to the reason for this change and whether this is a temporary or long last change. This will inform the decision of the Strategic Officer Group about how to alter resource to reflect the change in usage.

Table A:

Model	Braintree District Council			Castle Point Borough Council			Essex County Council			Epping Forest District Council			Tendring District Council			Total Staff Costs	ECC Staff Overhead Cost
	Staffing	Overheads	Total	Staffing	Overheads	Total	Staffing	Overheads	Total	Staffing	Overheads	Total	Staffing	Overheads	Total		
1 - Payment by Staff Member (based on current model)	99,345	10,915	110,260	39,738	4,366	44,104	89,960	9,883	99,843	59,607	6,549	66,156	116,758	12,828	129,586	405,408	44,540

## SCHEDULE 2 “The Service Plan”

### 1. Service Objectives

- 1.1. The collaboration has been formed with the aim to enable best in class procurement, maximizing the value for every pound spent by local authorities across Essex to the benefit of local residents.
- 1.2. The Collaboration, through the Lead Party, will ensure sourcing activity is delivered in line with the requirements of the Procurement Act 2023 and work to ensure sourcing practice is delivered in line with the National Procurement Strategy for Local Government
- 1.3. The Parties will work collaboratively to pool resources to deliver the day-to-day procurement activities and wider specialist procurement advice and support relating to policy development, category management, market management and sourcing.
- 1.4. The Service has the following specific objectives:
  - a. **Contract Liquidity** – To develop a clear contract register and forward plan to enable members to understand third party commitments and proactive procurement
  - b. **RFQ Process** – Provide the necessary template documentation and training to allow member authority staff to effectively undertake sourcing activity under the Party’s tender threshold
  - c. **Sourcing Activity** – Undertake all procurement for the members authority’s above the Party’s tender threshold where placed on the pipeline 6 months ahead of requirement, with the exception of ECC where projects will be allocated by the Service Manager. This sourcing activity to be undertaken in line with the prioritisation approach set out in schedule 3. Where projects are identified less than 6 months before needing to be procured the Lead party will use best endeavours to undertake this procurement to support the requesting party.
  - d. **Category Management** – Identify key categories of spend across member authorities and undertake review of this spend to identify savings opportunities, with the creation of a category strategy
  - e. **Collaboration** – Identify through category strategies and general procurement activity opportunities for collaborative procurement, create a plan for these projects and undertake sourcing activity to deliver benefits from this.
  - f. **Frameworks** – Critically assess existing frameworks to understand income vs. effort and expertise to create. Focus on increasing income from existing frameworks and identifying new frameworks to increase income
  - g. **Social Value** – Introduce a common approach to social value/ climate agenda to sourcing activity for members.
  - h. **Knowledge** – Provide business Parties and a supporting procurement team with the right knowledge and capabilities to deliver an effective and professional sourcing service to each member
  - i. **Development** – Undertake an assessment of procurement maturity and support in developing this level of maturity in line with the National Procurement Strategy.
  - j. **Network** – enable access to wider expertise within the ECC team and wider authority network where resource is available

## 2. Rationale for the Collaboration

- 2.1. The Collaboration has been formed because, following careful consideration, each of the Parties have concluded that it will enable them collectively to achieve these aims and objectives more effectively than by each of them acting independently or by some other means. In particular, by collaborating, this will...
- a. **Create Resilience** - Increasing the core team supporting the Parties, enabling the team to flex to demand. This resilience is increased further through access to support from the wider Lead Party team.
  - b. **Increase Expertise** – A larger team enabling focus on specific categories of spend, so understanding these markets and enabling better value. Access to the wider Lead Authority team, will also enable access to significant category knowledge and skills.
  - c. **Enable Collaborative savings** – By working together the Parties will be better able to access procurement forward plans and contract registers, analysing this across multiple organisations and identifying where procurement and supplier management opportunities exist.
  - d. **Increase Market influence** – With a greater collaborative spend the Parties will have more market influence to achieve value. As a collaboration of five authorities, the collaborative procurement team will have a strong foothold as a collaborative function with the ability to grow. This also avoids the alternative i.e. competition between the two collaborative functions, leading to higher costs.
  - e. **Reduce duplication** – Both in terms of procurement activities but also in documentation and adherence to procurement rules, allowing the Parties to focus on additional cost saving activity. This will also provide benefit to the entire supplier community, particularly Small to Medium Enterprises and Voluntary sector organisations, reducing the time to understand bid documents.
  - f. **Staff Retention** – With access to a greater range of opportunities and links with the wider procurement team of the Lead Party, this should aid staff retention and attractiveness to candidates.

## 3. Core Values

- 3.1. The Parties affirm that, in their work within and for the Collaboration, they, and individuals acting on their behalf, will uphold the following values:
- a. work to build trust and understanding between the Parties;
  - b. actively work for and promote the aims of the Shared service.
  - c. abide by the terms of this Agreement
- ;

## 4. Principles

- 4.1. By signing this Agreement the Parties agree to
- a. Commit resource, financial contributions or a combination of the two to the value provided within schedule 1 to sit within the structure of the Lead Party and work across the member organisations as directed by the Lead Party under the guidance of the Strategic Officer Group
  - b. Share spend/ contract data and commit to identify and deliver shared sourcing activity to the benefit of the Essex resident

- c. Ensure all procurement activity over the Authority's tender threshold for the life of the proposed contract is undertaken by the Lead Party in an order determined by the Prioritisation approach as set out in schedule 3, with all procurement resource for the Collaboration to sit within the Lead Party (with the exception of Essex County Council who will work with the Parties to consider how best to integrate on the basis of category, spend and complexity)
- d. Commit to commonality of documentation including but not limited to common tender documents, a shared set of procurement rules and procurement strategy.
- e. Commit to active participation in each group and by staff working with Collaboration as if working with internal service.

## **5. Location**

- 5.1. The Service will be performed remotely with staff attending the premises of each party as required to deliver the service.

## **6. Project Pipeline Management and Monitoring**

- 6.1. To enable resource requirements to be determined and planned for in advance, at the start of each financial year, each party will ensure their staff engage with the Essex Procurement Partnership to provide projects for that financial year in to the Shared Service forward plan. Enough information should be provided to populate all elements of the forward plan.
- 6.2. The Lead Party, with the Parties support, will ensure this forward plan is kept up to date. Where issues are experienced with this, this will be escalated to the Strategic Officer Group.
- 6.3. Projects will be undertaken in line with the Prioritisation approach as defined in Schedule 3.
- 6.4. The Parties will throughout this Agreement work collaboratively together to ensure delivery of the public procurement function across members and keep each other informed through regular communication, with the method and frequency to be agreed on each project, adopting a 'one team' approach
- 6.5. Overall monitoring of this Agreement will be discussed at the Strategic Officer Group. Where improvements can be made on ways of working these will be discussed in a constructive manner for the benefit of each Party, achieving value for money and effectiveness of service for both Parties.

## **7. Core Service**

- 7.1. The Collaboration will be working to offer comprehensive sourcing service with capability across category management, market shaping and sourcing.
- 7.2. Working with the Parties and within the Financial Contributions agreed in schedule 1, The Lead Party will:
  - 7.2.1. Provide a central professional procurement resource who
    - Are members of or studying to become a member of the Chartered Institute of Purchasing and Supply
    - Maintain procurement knowledge, understanding the latest procurement skills and techniques and able to articulate and implement this with Parties.
    - Effectively engage with all member authorities and have the right knowledge to deliver effective procurement support.

7.2.2. Develop and maintain a good understanding of partner spend and contractual commitment through

- Supporting each Party to develop a contracts register , working to ensure this is representative of each Party's spend and that details are published as necessary in line with legal commitments.
- Creation of one procurement forward plan, with requirements from each partner represented with this and delivery priority informed by the Strategic Officer Group
- Undertaking of analysis of spend as provided by each Party against the contracts register and other financial data to identify where procurement is necessary to manage uncontracted spend and protect the authority from unauthorised/non-compliant expenditure and risk.
- Benchmarking of party contracts against contracts held by other Parties and external sources where possible.
- Identifying key categories of spend for all Parties, defining opportunities to join up this spend and, where possible, deliver savings.

7.2.3. Develop a good understanding of the sourcing markets for key categories of spend for the parties through the undertaking of market analysis for sourcing projects where sufficient time has been given by each party

7.2.4. Deliver effective sourcing support to each party through:

- Providing front line procurement advice and support to all partner employees, including for self service request for quotations.
- Creation of quality tender documentation and undertaking of the sourcing process for requirements above the Party's tender threshold (total cost of the contract) using a defined e sourcing portal.
- Managing the liaison with external stakeholders such as suppliers, procurement framework organisations and Central Government on all procurement matters.
- Meeting and negotiating with suppliers' representatives as required and permitted

7.2.5. Creation of mature procurement processes, procedures and approaches which deliver value to the Parties and the communities they represent, through:

- Creation and implementation of common sourcing strategy, as agreed with Parties, setting out the Shared Service's approach to sourcing within partner authorities.
- Creation of common procurement policies, procedures and documentation, working with Parties to ensure their use across partner authorities to drive better value and improve access for SME and Voluntary Sector organisations
- Undertaking interpretation and implementation of technical procurement guidance, advice and legislation.
- Delivery of training to Parties on procurement process
- Introducing appropriate reporting processes and delivery of reports as required by the governance groups including the measurement and reporting of procurement risk.

**8. Resources, facilities and equipment each Party is to provide**

8.1. The following Staff will be seconded to the Lead Party by the Parties as set out in the table below for the duration of the agreement.

Authority	Human Resource
Braintree District Council	1 x Senior Procurement Consultant 1 x Procurement Consultant 1 x Procurement Officer

8.2 The Lead party will facilitate access to its IT systems for all seconded Staff.

8.3 Each party will ensure suitable work facilities for members of the shared service to utilise when work from that party's facilities including suitable internet access and parking where this is offered to existing staff.



### **SCHEDULE 3**

#### **Prioritisation Approach**

- 1.1. Projects will be evaluated in line with the Prioritisation Tool embedded within this Schedule 3 as object 1 as follows:
  - a. Projects graded A-E will be placed on the forward plan.
  - b. Projects with time limited funding or where the contract will expire will be prioritised in line with the parameters set out in sourcing grading tool.
  - c. All other projects will be scheduled on the forward plan considering when the contract is required and in order of the grading i.e. Grade A first
  
- 1.2. Where a project not on the forward plan requires immediate resource, the grading will be assessed against projects currently being undertaken and where there is an opportunity to pause an existing project this will be done to enable the urgent project to be undertaken.
  
- 1.3. Where a project cannot go ahead due to resource not being available, discussions will be held with the member Authority affected to consider options for example a short exemption to enable a procurement to be undertaken. The Officer Operations Group will be notified immediately of this. The Partners Working Group will be updated as part of the monthly reporting cycle.

#### **Object 1**



Prioritisation  
Approach

## **SCHEDULE 4**

### **Terms of Reference – Strategic Officer Group**

#### **1. Purpose**

- 1.1. The Strategic Officer Group supports each Party by providing operational support and strategic direction for the collaboration work in accordance with the strategic aims and objectives as determined.
- 1.2. The Strategic Officer Group will support and challenge the Lead Party in the delivery of the collaboration work.

#### **2. Responsibilities**

2.1. The Strategic Officer Group is responsible for:

- Setting the strategic direction of the collaboration, ensuring the service meets the defined service objectives as set out in Schedule 2
- Agree the priorities of the collaboration within the resources available and supports the process for ensuring sufficient resources are provided by each Party to enable the objectives to be delivered.
- Monitoring the performance of the service delivered by the Lead Party to ensure it is working effectively and in line with the work plan agreed by the parties.
- Agreeing to the growth of the collaboration with new Local Authorities joining in accordance with the direction of the MAG.

2.2. The Strategic Officer Group will be supported by:

2.2.1. An Officer Operational Group (OOG) – This group will meet every two weeks. This supports day to day operation of shared service by...

- Reviewing Staff workloads
- Agreeing the prioritisation of projects in the forward plan
- Ensuring the strategic aims of the Strategic Officer Group are undertaken.

2.2.2. A Partner Working Group (PWG) – Chaired by the Lead Party and with representation from each party.

- Ensuring member authority compliance with procurement rules and principles of Parties agreement
- Ensuring procurement activity is being undertaken appropriately by the team, providing necessary assurance to member Authorities.
- Monitoring risks and issues.

2.3. The Strategic Officer Group will support the Members Advisory Group (MAG), with terms of reference provided as Schedule 5, consisting of representation from elected members for each shared service, will meet every six months, to:

- Review the performance of the Parties
- Promote approach to shared working to support growth

#### **3. Agendas**

- 3.1 All meetings of the Strategic Officer Group will have a written agenda that has been agreed by the Partner Working Group and circulated in advance to all Committee Members.

3.2 Any Parties may request the inclusion of an item on the Agenda for a Meeting of the Group. Such items may be included on the Agenda of the next available meeting, or deferred to the following meeting, at the Chair's discretion.

#### **4. Records of Decisions**

4.1. Minutes shall be kept of the Strategic Officer Group and shall include:

- details of the date, time and place of the meeting;
- the names of all Committee members, their substitutes present for all or part of the meeting;
- apologies given for absence;
- a list of the items on the agenda for the meeting;
- brief details of any written or oral report made under each item;
- the decision taken and whether it was taken unanimously or by a vote, in which case the numbers voting for, against and abstaining will be recorded.

#### **5. Authority to act**

5.1. The Authority for the actions of Strategic Officer Group derives from the Senior Leadership Teams of each Party and all officers within the Strategic Officer group must have the necessary internal approvals for their responsibilities within the Group.

#### **6. Composition**

6.1. The Strategic Officer Group consists of

- Chair – As agreed by the Strategic Officer Group
- Shared Service Lead – The allocated lead by the Lead Party
- Representative of each party – a senior management representative from each party.

#### **7. Performance Management**

7.1. At each Annual Meeting, the Strategic Officer Group shall agree the key targets that the Parties will set itself in the coming year and the actions planned to achieve them. The targets should contribute to the achievement of the Parties's aims and objectives.

7.2. Throughout the year the Strategic Officer Group shall regularly review actual achievement against the adopted targets and decide any corrective action needed.

7.3. The Parties's Annual Report shall include a section describing how actual achievement compared with the adopted targets for the year concerned.

7.4. The Strategic Officer Group will carry out a general review of the Parties's purposes and effectiveness at least once a year and make any recommendations they consider necessary to the Parties, including any proposals to modify the terms of this Agreement.

7.5. In undertaking such general reviews, the Strategic Officer Group will consider:

- all relevant contextual developments, including changes in legislation, financial circumstances, and technical and operational methods;

- the extent to which the Parties's aims and objectives remain relevant to this changing context; and are being achieved.
- the nature and extent of opportunities for further development of the Parties's activities and funding
- any need to reduce the scope or scale of the Parties's activities.

## **8. Quorum**

8.1. The Strategic Officer Group is quorate with the following members present:

- the chair (or a member nominated by the chair to act as chair) and
- at least three other members.

## **9. Information requirements**

9.1. The Strategic Officer Group should ensure that arrangements are in place to enable it to discharge its responsibilities effectively, including the timely provision of information in an appropriate form and quality.

## **10. Budget**

10.1. The Strategic Officer Group has no budget but plays an oversight and decision-making role in relation to the budget held by the Lead Party for the operation of the Essex Procurement Partnership

## **11. Frequency of Meetings**

The Strategic Officer Group should meet at least every three months

## SCHEDULE 5

### Terms of Reference – Members Advisory Group

#### 1. Role

- 1.1 The Member Advisory Group (MAG), consisting of an elected member from each Local Authority Partner, will provide member oversight of the Essex Procurement Partnership (EPP) acting as both a critical friend and champion of the partnership.

#### 2. Term

- 2.1 The MAG was formally established following the first meeting of the group on the 26<sup>th</sup> September 2023 and will continue until the end of the trial period of EPP as defined within the collaboration agreement, unless extended or the MAG agrees to disband the group by unanimous decision.

#### 3. Membership

- 3.1 The MAG is a Member Group supported by Officers. The Board consists of elected Members put forward by and representing their respective partner councils.
- 3.2 The Chair of MAG will serve for one year, with that Chair chosen and agreed by MAG
- 3.3 If a new organisation is invited to join the partnership, an elected member representing that organisation will be invited by the Chair to join the MAG at the next available meeting following the signing by the new partner of the partnership agreement.
- 3.4 The Officer representative of the Strategic Officer Group will service the MAG and attend meetings in an advisory capacity.
- 3.5 Other Officers will be invited to attend as appropriate for specific items, as confirmed with the Chair.

#### 4. Responsibilities

- 4.1 The MAG is an advisory group and therefore decision making powers are not devolved from each Partner Authority.
- 4.2 The MAG will hold responsibility for reviewing the performance of the partnership, providing insight and challenge to the delivery by EPP of its core objectives over the life of the partnership.
- 4.3 The core objectives of EPP, in priority order, are as follows:
- **To understand contract liquidity** – Through development of a clear contract register and forward plan enabling partners to understand third party commitments, providing transparency in line with legal requirements.
  - **Undertake sourcing activity** – Undertake all procurement for the members authority's above the tender threshold of that Authority, meeting legal obligations and delivering value for money.
  - **Introduce category management** – Identifying key categories of spend across member authorities and undertaking review of this spend to identify collaborative procurement and savings opportunities.
  - **Create frameworks** – Creating robust and effective frameworks to support partners in delivery of services whilst also creating income opportunities through the introduction of rebates.

- **Develop the professionalism of procurement in each partner** – Undertake an assessment of procurement maturity and support in developing this level of maturity in line with the National Procurement Strategy.
- **Grow procurement and market knowledge** – Provide business partners and a supporting procurement team with the right knowledge and capabilities to deliver an effective and professional sourcing service to each member.
- **Support robust contract management** – Introduce a new contract management approach for partner authorities to embed with guidance to enable consistent and effective management of contracts and suppliers across partners.
- **Develop social value** – Introduce a common approach to social value/ climate agenda to sourcing activity for members.

4.4 The MAG will hold further responsibility for promotion of the EPP. Through member networks the MAG will champion the shared approach to procurement being undertaken by EPP with the purpose of supporting the sustainable growth of the partnership.

4.5 The MAG will work closely with the Strategic Officer Group (SOG) with information flows between the two Groups enabled by senior officers. The SOG Consisting of senior management representation from partner authorities holds responsibility to

- Set the strategic direction of the partnership
- Agree the priorities of the shared service
- Monitor performance of the partnership

4.6 The agenda and information for the MAG meetings will be considered and put forward by the SOG.

## 5. Meetings

5.1 The MAG will meet once every six months as standard. Additional meetings may be called by the Chair as appropriate. Reports and supporting documentation will be circulated at least five working days in advance of the meeting.

## SCHEDULE 6

### Data Protection

#### Part 1

Where one or more Parties Processes any Personal Data for the purpose of the Service on behalf of any other Party, the provisions of Part 1 this Schedule will apply to them.

1. The Parties will determine the purpose(s) of the Processing of the Personal Data Processed for the purposes of the Service (the Service Personal Data) and each of them will be **the Controller**, and each Party will be **the Processor**.
2. The Appendix to this Schedule lists the subject matter of the Processing, the duration of the Processing, the nature and purpose of the Processing, the types of Personal Data Processed and the categories of Data Subjects to whom the Service Personal Data relate.
3. Each Party's obligations under this Schedule are in addition to, and do not relieve, remove or replace, its obligations under the Data Protection Legislation.
4. Each Party will, where required by the Data Protection Legislation, appoint a Data Protection Officer, provide details of that person to the other Party and notify the other Party as soon as reasonably possible of any changes in that person or his or her details.
5. The Processor will:
  - 5.1 Process the Service Personal Data only in accordance with the Controller's written instructions from time to time, including with regard to transfers of the Service Personal Data to a country outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) or to an International Organisation, unless required to do so by any law to which the Processor is subject; in such a case, the Processor will inform the Controller of that legal requirement before Processing the relevant Service Personal Data, unless that law prohibits such information on important grounds of public interest;
  - 5.2 as soon as reasonably possible inform the Controller if the Processor thinks that any instruction to hand information to the Controller is in breach of the Data Protection Legislation;
  - 5.3 Process the Service Personal Data only for the purpose of carrying out the Service;
  - 5.4 ensure that all persons authorised by it to Process the Service Personal Data, before they have access to the Service Personal Data, have received appropriate training in relation to data protection and the protection and use of Personal Data and have committed themselves to keep the Service Personal Data confidential (at least to the same standard of confidentiality as is required by this Agreement) or are under an appropriate statutory obligation of confidentiality;
  - 5.5 maintain a written record of all categories of Processing activities carried out on behalf of the Controller, containing:
    - 5.5.1 the name and contact details of the Processor and its Subprocessors and of the Controller, and, where applicable, of the Processor's and its Subprocessors' Data Protection Officers and any Representative;
    - 5.5.2 the categories of Processing of Personal Data carried out on behalf of the Controller;

- 5.5.3 where applicable, transfers of any of the Service Personal Data outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) or to an International Organisation, including the identification of that country or International Organisation and documentation of suitable safeguards adopted in connection with that transfer; and
    - 5.5.4 a general description of the technical and organisational security measures taken in respect of the Service Personal Data.
  - 5.6 provide the Controller, on request, with a copy of the records referred to in paragraph 5.5;
  - 5.7 make the records referred to in paragraph 5.5 available to any competent Supervisory Authority on request and will, as soon as reasonably possible, notify the Controller that it has done so; and
  - 5.8 all other respects, comply with all the duties and obligations imposed from time to time on Processors by the Data Protection Legislation.
6. Without prejudice to paragraph 5, the Processor will take appropriate technical and organisational measures:
- 6.1 in such a way that the Processing of the Service Personal Data will meet the requirements of the Data Protection Legislation and will ensure the protection of the rights of Data Subjects and allow the Controller to fulfil its obligations to Data Subjects, including the Controller's obligations to respond to requests by Data Subjects to exercise their rights of access, rectification or erasure, to restrict or object to the processing of their Personal Data, or to data portability;
  - 6.2 to ensure a level of security appropriate to the risk, including amongst other things, as appropriate:
    - 6.2.1 the encryption of the Service Personal Data;
    - 6.2.2 the ability to ensure the on-going confidentiality, integrity, availability and resilience of systems and services Processing the Service Personal Data;
    - 6.2.3 the ability to restore the availability and access to the Service Personal Data in a timely manner in the event of a physical or technical incident;
    - 6.2.4 having and implementing a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing of the Service Personal Data; and
  - 6.3 to ensure the security of the Service Personal Data and the reliability of the Processor's personnel who may have access to, or be involved in, the Processing of the Service Personal Data, including by carrying out appropriate verification checks.
7. Without prejudice to the provisions of paragraph 6, the Processor will keep all of the Service Personal Data secure from any unauthorised or accidental use, access, disclosure, damage, loss or destruction.
8. The Processor will take steps to ensure that any natural person acting under its authority who has access to any of the Service Personal Data does not Process them except on instructions from the Controller, unless he or she is required to do so by applicable law.
9. The Processor will not transfer any of the Service Personal Data outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) or to an International Organisation, even if in response to a legal



requirement outside Europe without first obtaining the written consent of the Controller and, notwithstanding the Controller giving any such consent, the Processor will not make any such transfer except in accordance with the Data Protection Legislation.

10. Without prejudice to paragraph 9:

10.1 if the Processor Processes any of the Service Personal Data in, or transfers any of it to, a country or territory outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) which does not ensure an adequate level of protection for the rights and freedoms of Data Subjects in relation to the Processing of Personal Data, the Processor will first enter into the standard contractual clauses for the transfer of personal data from the EU to third countries (controller-to-processor transfers) contained in the Annex to the Commission Decision of 5 February 2010 (Decision 2010/87/EU) amending Decision 2002/16/EC (or any standard or model clauses or agreement replacing the same) **(the Standard Contractual Clauses)** with the Controller; and

10.2 without prejudice to paragraph 10.1, if the Processor is in the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) but will use a Subprocessor in, or will transfer any of the Service Personal Data to a Subprocessor in, a country or territory outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) which does not ensure an adequate level of protection for the rights and freedoms of Data Subjects in relation to the Processing of Personal Data, the Processor will first enter into the Standard Contractual Clauses with that Subprocessor on behalf of, and in the name of, the Controller.

11. The Processor will, on the Controller's request:

11.1 comply with any request from the Controller to amend, rectify, transfer, block or destroy any of the Service Personal Data;

11.2 securely destroy and permanently delete from the Processor's and its Subprocessors' systems (including back-up and archive systems) all copies of any of the Service Personal Data held by the Processor or any of its Subprocessors and in any case on the termination or expiry of this Agreement (except any of the Service Personal Data which any law to which the Processor is subject requires the Processor to continue to store that Personal Data);

11.3 provide the Controller with such information about the Processor's and its Subprocessors' Processing of the Service Personal Data and such assistance as the Controller may request from time to time to allow the Controller to meet its obligations under the Data Protection Legislation, including the Controller's obligations to Data Subjects and in relation to data security and Data Protection Impact Assessments, and to allow the Controller to be able to demonstrate compliance with the Data Protection Legislation;

11.4 take such other action or refrain from taking any action necessary to comply with, or to allow the Controller to comply with, the Data Protection Legislation or the order of any competent Supervisory Authority or court of competent jurisdiction; and

11.5 co-operate with any competent Supervisory Authority.

12. The Processor will notify the Controller as soon as reasonably possible if the Processor becomes aware of any of the following: any breach of this Schedule, any breach of any of the Data Protection Legislation, and any Personal Data Breach. That notice must (at least):

12.1 describe the nature and facts of the breach including, where possible, the categories and approximate number of Data Subjects (if any) concerned and the categories and approximate number of data records concerned;

- 12.2 communicate the name and contact details of the Data Protection Officer or other contact point where more information can be obtained;
  - 12.3 describe the likely consequences of the breach; and
  - 12.4 describe the measures taken or proposed to be taken by the Supplier to address and remedy the breach, including, where appropriate, to mitigate its possible adverse effects.
13. The Processor will give written notice to the Controller, as soon as reasonably possible, should the Processor or any Subprocessor receive any request, complaint, notice, order or communication which relates directly or indirectly to the Processing of the Service Personal Data or to compliance with the Data Protection Legislation and, at the same time, will forward that request, complaint, notice, order or communication to the Controller. The Processor will co-operate with the Controller and give it such information and assistance as the Controller may reasonably require in relation to that request, complaint, notice or communication to enable the Controller to respond to the same in accordance with any deadline and any requirement to provide information. The Processor will not act on any such request, complaint, notice, order or communication without first obtaining the Controller's written consent.
14. The Processor will allow the Controller (or its representatives) at reasonable times and from time to time, to inspect and review the Processor's and its Subprocessors compliance with this Schedule and the Data Protection Legislation and the Processor will give the Controller any assistance which the Controller may reasonably require in connection with that inspection and review. The Processor will ensure that its Subprocessors will give the Controller any assistance the Controller reasonably requires to carry out that inspection and review.
15. The Processor will, as quickly as possible, rectify any and all security weaknesses and vulnerabilities reported to it by the Controller and will confirm to the Controller in writing when this has been done.
16. In the event of an unexpected even which affects the Processor's ability to process the Service Personal Data in accordance with this Schedule, including any storm, fire, flood, telecommunications failures, IT systems failures and breaches of security, the Processor will invoke and implement a recovery plan so that the Processor is still able to provide and does Process the Service Data in accordance with this Schedule.
17. The Processor will comply with [BS ISO/IEC 27001:2013, the Information Security Management System Standard published by the International Organization for Standardization and 27002:2014, the Code of Practice for Information security Controls, each as amended from time to time or, in each case, any higher standard published from time to time by the relevant authority (ISO 27001)] and will provide to the Controller, at least once every 12 months, a report or certificate by an independent third party qualified to give that report or certificate of the Processor's and its Subprocessors' compliance with this Schedule and [ISO 27001]. [The Processor will neither do, nor omit to do, anything which places the Controller in breach of ISO 27001. The Processor will promptly supply any and all information and will complete any and all questionnaires which the Controller reasonably requests to allow the Controller to obtain or maintain certification under ISO 27001 and to allow the Controller to comply with ISO 27001.]
18. The Processor will not appoint any Subprocessor without first obtaining the Controller's written consent. Notwithstanding the Controller giving any consent to the Processor appointing any Subprocessor, Processor will:
  - 18.1 impose on each Subprocessor obligations equivalent to or at least as onerous as those imposed on the Processor in this Schedule;

- 18.2 monitor each Subprocessor's compliance with those obligations and ensure that each Subprocessor complies with those obligations; and
  - 18.3 be liable to the Controller for the acts and omissions of the Processor's Subprocessors as though they were the Processor's own acts and omissions.
19. This Schedule will, at the request of either Party, be amended from time to time insofar as is necessary or desirable to achieve any or all of the following:
  - 19.1 to bring this Schedule or either Party's or both Parties' obligations in respect of the Service Personal Data into line with the Data Protection Legislation; or
  - 19.2 to allow either Party or both Parties to comply with the Data Protection Legislation and the requirements and recommendations of any competent Supervisory Authority.
20. The Controller will comply with all the duties and obligations imposed from time to time on Controllers by the Data Protection Legislation and, without prejudice to the foregoing, the Controller will:
  - 20.1 establish and document the legal basis or bases on which the Controller Processes any and all of the Service Personal Data;
  - 20.2 where any Special Category Personal Data is Processed, establish and document the condition which justifies the Processing of that Special Category Personal Data for the purposes of the Service;
  - 20.3 provide Data Subjects with all information necessary to, and obtain any and all Consents from Data Subjects necessary to, allow the Controller to: Process their Personal Data in accordance with this Schedule; transfer their Personal Data to the Processor; and have the Processor Process their Personal Data in accordance with this Schedule, including (without limitation) any automated decision making or profiling carried out by the Processor on the Controller's instructions or at the Controller's request;
  - 20.4 at the Processor's request, provide the Processor with details of the legal basis on which any the Service Personal Data are Processed and the condition which justifies the Processing of any Special Category Personal Data, and with copies of any Consent obtained from any Data Subject;
  - 20.5 if the legal basis for Processing any of the Service Personal Data or the condition to be met to justify the Processing of any Special Category Personal Data for the purposes of the Service is the Data Subject's Consent, and that Consent is withdrawn, or if any Data Subject objects to any Processing of his or her Personal Data carried out by the Processor for the Controller or exercises his or her right to erasure or restriction or any other right under the Data Protection Legislation, as soon as possible, give notice of that withdrawal, objection or the exercise of that right and of the Service Personal Data affected to the Processor. (The Processor may stop Processing that Service Personal Data and delete it from its systems unless the Controller demonstrates that there is another legal basis for Processing that Service Personal Data, or that the Processing meets any other condition which justifies the Processing of Special Category Personal Data for the purposes of the Service, or that there are compelling legitimate grounds for the Processing which override the interests, rights and freedoms of the Data Subject, or that the Processing is necessary for the establishment, exercise or defence of legal claims.);
  - 20.6 provide the Processor with such instructions regarding the Processing of the Service Personal Data as may be necessary to allow the processor to Process the Service Personal Data for the purposes of the Service and not give the Processor any unlawful instruction;

- 20.7 not instruct the Processor to transfer any of the Service Personal Data outside the European Union (including for these purposes the UK, even though the UK may have ceased to be a member state of the European Union) or to an International Organisation unless: i) the European Commission has made a Decision of Adequacy; or ii) the Controller has provided appropriate safeguards and has provided the Processor with details of any safeguards which the Controller has implemented to ensure that the transfer is not in breach of the Data Protection Legislation;
- 20.8 carry out any Data Protection Impact Assessments in respect of the Processing of the Service Personal Data necessary to comply with the Data Protection Legislation
21. All expressions used in this Schedule beginning with a capital letter (and not defined in this Schedule or elsewhere in this Agreement) have the meaning given to them in the Data Protection Legislation.
22. The provisions of this Schedule will continue in full force and effect for so long as the Processor Processes any Personal Data on behalf of the Controller, notwithstanding the termination of this Agreement or the completion of the Service.
23. The Processor will indemnify the Controller and keep the Controller fully and effectively indemnified on demand against any and all costs, claims, demands, damages, expenses and liabilities of any nature and against any and all fines and penalties arising out of or in connection with any breach by the Processor or any of its Subprocessors of this Schedule. This paragraph will survive the termination of this Agreement, the completion of all Processing of the Service Personal Data by the Processor and its Subprocessors and the completion of the Service, and will continue in force without limit in time.

### The Appendix

The Subject Matter of the Processing  
[insert details]

The Duration of the Processing  
[insert details]

The Nature and Purpose of the Processing  
[insert details]

The Types of Personal Data Processed  
[insert details]

The Categories of Data Subjects to whom the Service Personal Data relate  
[insert details]

### Part 2

Where more than one of the Parties determine the purpose of the Processing in respect of any Personal Data which is Processed for the purpose of the Service, the provisions of Part 2 of this Schedule will apply to them.

1. The Parties (**the Controllers**) will be a Controller in relation to Personal Data Processed for the purposes of the Service (**the Service Personal Data**).
2. The Appendix to this Schedule lists the subject matter of the Processing, the duration of the Processing, the nature and purpose of the Processing, the types of Personal Data Processed, the categories of Data Subjects to whom the Service Personal Data relate, and the retention periods for the Service Personal Data.

3. Each Controller's obligations under this Schedule are in addition to, and do not relieve, remove or replace, its obligations under the Data Protection Legislation.
4. Each Controller will, where required by the Data Protection Legislation, appoint a Data Protection Officer, provide details of that person to the other Controller(s) and notify the other Controller(s), as soon as reasonably possible, of any changes in that person or his or her details.
5. Each Controller will:
  - 5.1 Process the Service Personal Data only for the purpose of carrying out the Service;
  - 5.2 ensure that all persons authorised by it to Process the Service Personal Data, before they have access to the Service Personal Data, have received appropriate training in relation to data protection and the protection and use of Personal Data and have committed themselves to keep the Service Personal Data confidential (at least to the same standard of confidentiality as is required by this Agreement) or are under an appropriate statutory obligation of confidentiality;
  - 5.3 maintain a written record of all categories of Processing activities carried out by it, containing:
    - 5.3.1 the name and contact details of any Processor (which for the purposes of this Schedule includes, where the context permits, any Subprocessor) used by it to Process any of the Service Personal Data and, where applicable, of the any Processors' Data Protection Officers and any Representative;
    - 5.3.2 the categories of Processing of Personal Data carried out by it or any Processor used by it to Process any of the Service Personal Data;
    - 5.3.3 where applicable, transfers of the Service Personal Data outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) or to an International Organisation, including the identification of that country or International Organisation and documentation of suitable safeguards adopted in connection with that transfer; and
    - 5.3.4 a general description of the technical and organisational security measures taken in respect of any of the Service Personal Data.
  - 5.4 provide the other Controller(s), on request, with a copy of the records referred to in paragraph 5.3; and
  - 5.5 make the records referred to in paragraph 5.3 available to any competent Supervisory Authority on request and will, as soon as reasonably possible, notify the other Controller(s) that it has done so.
6. Without prejudice to paragraph 5, each Controller will take appropriate technical and organisational measures:
  - 6.1 in such a way that its Processing of the Service Personal Data will meet the requirements of the Data Protection Legislation and will ensure the protection of the rights of Data Subjects and allow it and the other Controller(s) to fulfil its obligations to Data Subjects;
  - 6.2 to ensure a level of security appropriate to the risk, including amongst other things, as appropriate:
    - 6.2.1 the encryption of the Service Personal Data;

- 6.2.2 the ability to ensure the on-going confidentiality, integrity, availability and resilience of systems and services Processing the Service Personal Data;
  - 6.2.3 the ability to restore the availability and access to the Service Personal Data in a timely manner in the event of a physical or technical incident;
  - 6.2.4 having and implementing a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing of the Service Personal Data; and
- 6.3 to ensure the security of the Service Personal Data and the reliability of its personnel who may have access to, or be involved in, the Processing of the Service Personal Data, including by carrying out appropriate verification checks.
- 7. Without prejudice to the provisions of paragraph 6, each Controller will keep all of the Service Personal Data secure from any unauthorised or accidental use, access, disclosure, damage, loss or destruction.
- 8. Each Controller will take steps to ensure that any natural person acting under its authority who has access to any of the Service Personal Data does not Process them except on its instructions, unless he or she is required to do so by applicable law.
- 9. No Controller will transfer any of the Service Personal Data outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) or to an International Organisation, even if in response to a legal requirement outside Europe without first obtaining the written consent of the other Controller(s) and, notwithstanding any other Controller giving any such consent, the Controller(s) will make any such transfer except in accordance with the Data Protection Legislation.
- 10. Without prejudice to paragraph 9:
  - 10.1 if any Controller Processes any of the Service Personal Data in, or transfers any of it to, a country or territory outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) which does not ensure an adequate level of protection for the rights and freedoms of Data Subjects in relation to the Processing of Personal Data, it will first enter into the standard contractual clauses for the transfer of personal data from the EU to third countries (controller-to-controller transfers) contained in the Annex to the Commission Decision of 27 December 2004 (Decision 2004/915/EU) amending Decision 2001/497/EC (or any standard or model clauses or agreement replacing the same) with the other Controller(s); and
  - 10.2 without prejudice to paragraph 10.1, if any Controller is in the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) but will use a Processor in, or will transfer any of the Service Personal Data to a Processor in, a country or territory outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) which does not ensure an adequate level of protection for the rights and freedoms of Data Subjects in relation to the Processing of Personal Data, it will first enter into the standard contractual clauses for the transfer of personal data from the EU to third countries (controller-to-processor transfers) contained in the Annex to the Commission Decision of 5 February 2010 (Decision 2010/87/EU) amending Decision 2002/16/EC (or any standard or model clauses or agreement replacing the same) with that Processor on its own behalf and on behalf of, and in the name of, the other Controller(s).
- 11. Each Controller will, on the request of any other Controller:

- 11.1 comply with any request from that other Controller to amend, rectify, transfer, block or destroy any of the Service Personal Data;
  - 11.2 provide the other Controller(s) with such information about its and its Processors' Processing of the Service Personal Data and such assistance as any other Controller may request from time to time to allow each of the other Controller(s) to meet its obligations under the Data Protection Legislation, including the other Controller's obligations to Data Subjects and in relation to data security and Data Protection Impact Assessments, and to allow the other Controller to be able to demonstrate compliance with the Data Protection Legislation;
  - 11.3 take such other action or refrain from taking any action necessary to comply with, or to allow the other Controller(s) to comply with, the Data Protection Legislation or the order of any competent Supervisory Authority or court of competent jurisdiction; and
  - 11.4 co-operate with any competent Supervisory Authority.
12. Each Controller will notify the other Controller(s) as soon as reasonably possible if it becomes aware of any of the following: any breach of this Schedule, any breach of any of the Data Protection Legislation, and any Personal Data Breach. That notice must (at least):
  - 12.1 describe the nature and facts of the breach including, where possible, the categories and approximate number of Data Subjects (if any) concerned and the categories and approximate number of data records concerned;
  - 12.2 communicate the name and contact details of the Data Protection Officer or other contact point where more information can be obtained;
  - 12.3 describe the likely consequences of the breach; and
  - 12.4 describe the measures taken or proposed to be taken by the Controller(s) to address and remedy the breach, including, where appropriate, to mitigate its possible adverse effects.
13. Each Controller will give written notice to the other Controller(s), as soon as reasonably possible, should it or any of its Processors receive any request, complaint, notice, order or communication which relates directly or indirectly to the Processing of the Service Personal Data or to compliance with the Data Protection Legislation and, at the same time, will forward a copy of that request, complaint, notice, order or communication to the other Controller(s). Each Controller will co-operate with the other Controller(s) and give them such information and assistance as any other Controller may reasonably require in relation to that request, complaint, notice or communication to enable the other Controller(s) to respond to the same in accordance with any deadline and any requirement to provide information. None of the Controllers will act on any such request, complaint, notice, order or communication without first consulting the other Controller(s).
14. Each Controller will allow any other Controller (or its representatives) at reasonable times and from time to time, to inspect and review its and its Processors' compliance with this Schedule and the Data Protection Legislation and will give any other Controller any assistance which it may reasonably require in connection with that inspection and review. Each Controller will ensure that its Processors will, give any other Controller any assistance the other Controller reasonably requires to carry out that inspection and review.
15. Each Controller will, as quickly as possible, rectify any and all security weaknesses and vulnerabilities reported to it by any other Controller and will confirm to the other Controller(s) in writing when this has been done.
16. In the event of an unexpected event which affects any Controller's ability to process the Service Personal Data in accordance with this Schedule, including any storm, fire, flood, telecommunications failures, IT systems failures and breaches of security, that Controller will

invoke and implement a recovery plan so that it is still able to provide and does Process the Service Data in accordance with this Schedule.

17. Each Controller will comply with [BS ISO/IEC 27001:2013, the Information Security Management System Standard published by the International Organization for Standardization and 27002:2014, the Code of Practice for Information security Controls, each as amended from time to time or, in each case, any higher standard published from time to time by the relevant authority (ISO 27001)] and will provide to the other Controller(s), at least once every 12 months, a report or certificate by an independent third party qualified to give that report or certificate of its and its Processors' compliance with this Schedule and [ISO 27001]. [No Controller will do, nor omit to do, anything which places any other Controller in breach of ISO 27001. Each Controller will promptly supply any and all information and will complete any and all questionnaires which any other Controller reasonably requests to allow that other Controller to obtain or maintain certification under ISO 27001 and to allow that other Controller to comply with ISO 27001.]
18. No Controller will appoint any Processor without first obtaining the written consent of the other Controller(s). Notwithstanding any other Controller giving any consent to the appointment of any Processor, each Controller will (as a minimum):
  - 18.1 impose on each Processor those obligations which Controllers are obliged to impose on Processors under the Data Protection Legislation;
  - 18.2 monitor each Processor's compliance with those obligations and ensure that each Processor complies with those obligations; and
  - 18.3 be liable to the other Controller(s) for the acts and omissions of its Processors as though they were its own acts and omissions.
19. This Schedule will, at the request of any Controller, be amended from time to time insofar as is necessary or desirable to achieve any or all of the following:
  - 19.1 to bring this Schedule or any Controller's obligations in respect of the Service Personal Data into line with the Data Protection Legislation; or
  - 19.2 to allow any Controller to comply with the Data Protection Legislation and the requirements and recommendations of any competent Supervisory Authority.
20. Each Controller will comply with all the duties and obligations imposed from time to time on Controllers by the Data Protection Legislation and, without prejudice to the foregoing, each Controller will:
  - 20.1 establish and document the legal basis or bases on which it Processes the Service Personal Data;
  - 20.2 where any Special Category Personal Data is Processed, establish and document the condition which justifies the Processing of that Special Category Personal Data for the purposes of the Service;
  - 20.3 provide Data Subjects with all information necessary to, and obtain any and all Consents from Data Subjects necessary to, allow it: to Process their Personal Data in accordance with this Schedule; transfer their Personal Data to the other Controller(s); and allow the other Controller(s) to Process their Personal Data in accordance with this Schedule, including (without limitation) any automated decision making or profiling;
  - 20.4 at the request of any other Controller, provide the other Controller's with details of the legal basis on which any the Service Personal Data are Processed and the condition which justifies the Processing of any Special Category Personal Data, and with copies of any Consent obtained from any Data Subject;



- 20.5 if the legal basis for Processing any of the Service Personal Data or the condition to be met to justify the Processing of any Special Category Personal Data for the purposes of the Service is the Data Subject's Consent, and that Consent is withdrawn, or if any Data Subject objects to any Processing of his or her Personal Data carried out for the purposes of the Service or exercises his or her right to erasure or restriction or any other right under the Data Protection Legislation, as soon as possible, give notice of that withdrawal, objection or the exercise of that right and of the Service Personal Data affected to the other Controller(s). (The other Controller(s) may stop Processing that Service Personal Data and delete it from its systems unless there is another legal basis for Processing that Service Personal Data, or the Processing meets any other condition which justifies the Processing of Special Category Personal Data for the purposes of the Service, or there are compelling legitimate grounds for the Processing which override the interests, rights and freedoms of the Data Subject, or the Processing is necessary for the establishment, exercise or defence of legal claims.);
- 20.6 carry out any Data Protection Impact Assessments in respect of the Processing of the Service Personal Data necessary to comply with the Data Protection Legislation.
21. All expressions used in this Schedule beginning with a capital letter (and not defined in this Schedule or elsewhere in this Agreement) have the meaning given to them in the Data Protection Legislation.
22. The provisions of this Schedule will continue in full force and effect for so long as any of the Service Personal Data is Processed, notwithstanding the termination of this Agreement or the completion of the Service.
23. Each Controller will indemnify the other Controller(s) and keep them fully and effectively indemnified on demand against any and all costs, claims, demands, damages, expenses and liabilities of any nature and against any and all fines and penalties arising out of or in connection with any breach by it or any of its Processors of this Schedule. This paragraph will survive the termination of this Agreement, the completion of all Processing of the Service Personal Data and the completion of the Service, and will continue in force without limit in time.
24. The Parties will [securely destroy and permanently delete from its and its Processors' systems (including back-up and archive systems)] all copies of any of the Service Personal Data held by it or any of its Processors at the end of the relevant retention period in the Annex to this Schedule and in any case on the termination or expiry of this Agreement (except any of the Service Personal Data which any law to which the parties is subject requires it to continue to store the Service Personal Data).

## **The Appendix**

The Subject Matter of the Processing  
[insert details]

The Duration of the Processing  
[insert details]

The Nature and Purpose of the Processing  
[insert details]

The Types of Personal Data Processed  
[insert details]

The Categories of Data Subjects to whom the Service Personal Data relate  
[insert details]

The Retention Periods  
[insert details]