

**DATED**

**2022**

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**(1) BRENTWOOD BOROUGH COUNCIL**

**AND**

**(2) ROCHFORD DISTRICT COUNCIL**

**INTER-AUTHORITY JOINT WORKING  
AGREEMENT UNDER S.113 LOCAL GOVERNMENT ACT 1972**



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**THIS AGREEMENT** is made on the                      day of                      2022

## **PARTIES**

- (1)        **BRENTWOOD BOROUGH COUNCIL** of Town Hall, Ingrave Road, Brentwood, CM15 8AY (**BBC**); and
- (2)        **ROCHFORD DISTRICT COUNCIL** of the Council Offices, South Street, Rochford SS4 1BW (**RDC**).

## **BACKGROUND**

- (A) Following a decision by Rochford District Council (RDC) on 20 July 2021 and a reciprocal decision by Brentwood Borough Council (BBC) on 28 July 2021 a Joint Chief Executive/Managing Director was appointed for both Parties. At their respective Council meetings in January 2022, the Councils resolved to enter into an agreement setting out how the Parties will work together.
- (B) To provide more cost effective services and to ensure that the Parties have access to the widest possible expertise, the Parties have agreed to enter into a strategic working arrangement as set out in this Agreement (**Arrangements**).
- (C) The Parties have created a shared understanding of what they want to achieve together and how they want to achieve it. The Parties wish to realise efficiencies of its service provision by working closely together and by each authority placing staff at the disposal of the other.
- (D) This Agreement includes the exercise of powers contained in Section 112 and 113 of the 1972 Act, together with the general power within section 2 of the Local Government Act 2000 (“LGA 2000”) and section 1 of the Localism Act 2011 (“LA 2011”), and section 3 of the Local Government Act 1999 (duty to secure best value).
- (E) The Parties agree pursuant to s113 of the 1972 Act that officers of each authority are made available to the other for the purposes of performing functions as an officer of the other authority in order to further integrate the future delivery of the services of the Councils under the terms of this Agreement.

(F) The Arrangements may be further developed by the parties and supplemented and further schedules will be inserted into this Agreement. .

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, except where the context otherwise implies or allows, the following words shall have the meanings given to them:

<b>1972 Act</b>	the Local Government Act 1972;
<b>Agreed Business Case</b>	A Business Case shall for the purposes of this Agreement be agreed by the Parties and come into effect when it has been approved by each party in accordance with its own internal governance processes and signed by both Parties;
<b>Agreement</b>	this agreement and the Schedules annexed to it as may be varied from time to time;
<b>Apportionment</b>	The various apportionments set out in the Financial Protocol;
<b>Apportionment Payment</b>	The sum payable in respect of an Apportionment
<b>Arrangements</b>	the arrangements made by the Parties through the Transformation Programme for Shared Services pursuant to this Agreement, including the arrangements listed in clause 4;
<b>Board</b>	The One Team Transformation Strategic Partnership Board as described in Schedule 1;
<b>Business Case</b>	The business case for change as detailed in the Methodology including the matter set out at Schedule 5 as amended from time to time;
<b>CEDR</b>	Centre for Effective Dispute Resolution;

<b>Commercially Sensitive Information</b>	the information listed identified in an Agreed Business Case or otherwise in writing from one Party to the other comprising the information of a commercially sensitive nature including financial information, intellectual property rights of operations which one party has indicated to the other that, if disclosed would cause that party significant commercial disadvantage or material financial loss-;
<b>Commencement Date</b>	the date at the beginning of this Agreement;
<b>Confidential Information</b>	<p>all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Agreement, including but not limited to:</p> <p>(a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;</p> <p>(b) any information developed by the parties in the course of carrying out this agreement;</p> <p>(c) Personal Data;</p> <p>and</p> <p>(d) any Commercially Sensitive Information-;</p>
<b>Conflicts Schedule</b>	Schedule 11;
<b>Costs Review</b>	The costs review set out in Schedule 5;
<b>Data Protection Legislation</b>	the UK GDPR and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);.
<b>Deputy</b>	Such appropriate strategic director or director as will deputise for the Joint Chief Executive from time to time-;

<b>Dispute Resolution Procedure</b>	the procedure set out in Clause 24;
<b>Employees</b>	individuals employed by either party in accordance with their Employment Contract;
<b>Employee Duties</b>	the duties which a Post Holder performs on behalf of the Employing Party as determined in accordance with their Employment Contract;

**Employee liabilities**

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- unfair, wrongful or constructive dismissal compensation;
- compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- compensation for less favourable treatment of part-time workers or fixed term employees;
- outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;

employment claims whether in tort, contract or statute or otherwise; and any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation.

**Employing Party**

in respect of each individual Post Holder the Party that employs that Post Holder. Subject to the subsequent operation of TUPE, the Parties shall agree which Party shall be the Employing Party in accordance with the HR Protocol;



<b>Employment Contract</b>	the contract of employment between the Post Holder and the Employing Party;
<b>Exit Plan</b>	the exit plan at schedule 9;
<b>Financial Protocol</b>	the financial protocol included at Schedule 4 as amended or replaced by the Parties from time to time;
<b>FOIA</b>	the Freedom of Information Act 2000;
<b>HR</b>	human resources;
<b>HR Protocol</b>	the document entitled “HR and Management Protocol for Establishing and Working in Combined Teams” included at Schedule 3 as amended or replaced by the Parties from time to time;
<b>Indirect Loss</b>	loss of profits, loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or any other basis;
<b>Information Sharing Protocol</b>	[definition required]
<b>Input</b>	the services, resources, Employees or other tangibles or intangibles that a party provides in accordance with this Agreement in relation to the Transformation Programme and/or a Transformation Project
<b>Intellectual Property Rights</b>	or <b>IPR</b> all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

<b>Internal Governance Documents</b>	each Party's internal governance documents which includes its constitution, maintained pursuant to s.37 of the Local Government Act 2000, standing orders and procedure rules;
<b>Joint Chief Executive Officer</b>	the Parties' joint Head of Paid Services designated pursuant to s.4 of the Local Government & Housing Act 1989;
<b>Law</b>	<p>(1) the laws of England and Wales and any other law or regulations, regulatory policies, guidelines or industry codes of practice which apply to the Arrangements;</p> <p>(3) any applicable guidance, direction or determination with which the Parties are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to it by the other Party; and</p> <p>(4) any applicable judgement of a relevant court of law which is a binding precedent in England;</p> <p>in each case in force in England.</p>
<b>Leader</b>	the individual appointed as such for each Party;
<b>Loss</b>	all damage, loss, liabilities, claims, actions, costs, expenses (including reasonable costs of legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law;
<b>Methodology</b>	The method by which the Transformation Programme will be achieved as agreed by the parties from time to time including the preparation of Business Cases;
<b>Monitoring Officer</b>	The officer appoint by each party respectively under section 5 Local Government and Housing Act 1989 <sup>2</sup> ;
<b>Non-Employing Party</b>	in respect of each individual Post Holder the Party that is not the Employing Party;
<b>Ombudsman</b>	the Local Government Commissioner for England (or any successor to their functions);
<b>Operational Matters</b>	Matters arising out of or in connection with the day to day operation of a Shared Service;

<b>Party</b>	each of the parties to the Agreement;
<b>Payment Mechanism</b>	The payment mechanism set out in Schedule 5;
<b>Personal Data</b>	as defined in the Data Protection Legislation;
<b>Post Holders</b>	individuals made available by the Parties for a Combined Team in accordance with the HR Protocol;
<b>Programme Documentation</b>	The documentation agreed by the parties in respect of the Transformation Programme, including the Methodology, and the ToR
<b>Project Team</b>	A team of Employees known as the one team project team which is a forum integral to the Transformation Programme which oversees the delivery of the work underpinning it; ;
<b>Relevant Transfer</b>	a transfer of employment to which TUPE applies;;
<b>Relevant Transfer Date</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>Representatives</b>	means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors;;
<b>Service</b>	A service area of each party as identified and defined by each Party respectively from time to time.
<b>Shared Service</b>	a joint working arrangement in respect of a Service of each Party in accordance with an Agreed Business Case.
<b>Shared Service Commencement Date</b>	The date identified as the date upon which the Shared Service shall commence as identified in the Agreed Business Case;
<b>S113 Duties</b>	those duties which a Post Holder will perform for and on behalf of the Non-Employing Party being the duties identified in the documentation establishing the Combined Team under the HR Protocol (subject to such variations as may be agreed between the Parties (and, where appropriate, the Post Holder) from time to time);

<b>S151 Officer</b>	Officer appointed by each party respectively under s151 Local Government Act 1972;
<b>Sovereignty Principles</b>	the principles agreed by the Parties as set out in Part 2 of Schedule 1;
<b>Term</b>	the duration of the Agreement in accordance with Clause 3;
<b>Termination Date</b>	the date on which the Parties agree to cease combining and integrating the Services pursuant to the terms of this Agreement;
<b>ToR</b>	the terms of reference respectively for the Project Board at Schedule 2 and the Project Team set out at Schedule 7;
<b>TUPE</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;
<b>Transferee Party</b>	the Party to whom, subject to Regulations 4 (7) and 4 (9) of TUPE, a Post Holder's employment contract transfers, or a Post Holder contends that their employment contract transfers, due to a Relevant Transfer;
<b>Transferor Party</b>	the Party who immediately before the Relevant Transfer was the employer of a Post Holder whose contract of employment, subject to Regulations 4 (7) and 4 (9) of TUPE, is subject to a Relevant Transfer or of a Post Holder who contends that, subject to Regulations 4 (7) and 4 (9) of TUPE, their contract of employment is subject to a Relevant Transfer;
<b>Transformation Project</b>	a project in respect of a Service to deliver part of the Transformation Programme in accordance with the Methodology and including the delivery of a Business Case to create a Shared Service;
<b>Transformation Programme</b>	the programme of transformation to facilitate combined working across the Parties known as the #OneTeam Transformation Programme and which includes a number of workstreams delivered through a number of Transformation Projects;

<b>Transition Plan</b>	a plan in an Agreed Business Case which set out the arrangements for transitioning a Service to a Shared Service;
<b>SRO</b>	The Transformation Programme Senior Responsible Officer being the senior officer designated by one or both of the parties in respect of the Transformation Programme;
<b>UK GDPR</b>	Has the meaning given to it in s 3(1)(as supplemented by section 205(4) of the Data Protection Act 2018
<b>Working Day</b>	any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

1.2 In this Agreement, except where the context otherwise implies or allows:

- 1.2.1 References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted (whether before or after the Commencement Date) from time to time.
- 1.2.2 The headings of the Clauses in this Agreement are for reference purposes only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant clauses to which they relate.
- 1.2.3 References to Clauses, Sections and Schedules are references to the clauses, sections and schedules to this Agreement respectively and a reference to a Paragraph is a reference to the paragraph in the Schedule containing such reference.
- 1.2.4 References to a person or body shall not be restricted to natural persons and shall include a company corporation or organisation.
- 1.2.5 Words importing the one gender only shall include the other genders and words importing the singular number only shall include the plural.
- 1.2.6 References to the Parties shall include any statutory successors to those local authorities.

## 2. NOT USED

### **3. DURATION OF THE AGREEMENT**

This Agreement shall commence on the Commencement Date and shall continue in force until it is terminated in accordance with Clause 26.

### **4. COLLABORATIVE WORKING**

4.1 The Parties agree that Schedule 1 sets out the:

4.1.1 aims, benefits and intended outcomes of the Parties in entering into the Arrangements;

4.1.2 overarching principles to which the Parties agree to work to in the performance of their obligations under this Agreement; and

4.1.3 the Parties agree that Schedule 1 is not intended to give rise to legally binding rights and obligations between the Parties.

4.2 Subject to and in accordance with the terms of this Agreement and with effect from the Commencement Date, the Parties have agreed to implement the Arrangements, including but not limited to the arrangements set out in clauses 6 - 11.

4.3 The parties may implement the Transformation Programme and Transformation Projects.

4.4 Each Party warrants to the other that it has the power and authority to enter into, observe and perform the terms and obligations on its part to be observed and performed by it under this Agreement and has taken all necessary action and has obtained all relevant consents and approvals (statutory or otherwise) to authorise the execution and delivery of this Agreement.

### **5. DELEGATION OF FUNCTIONS**

5.1 Nothing in this Agreement has (or is intended to have) the effect of transferring statutory functions from one Party to another. This means that the performance by a Post Holder of their S113 Duties is done in their capacity as an officer of the Non-Employing Party. That Post Holder is not exercising functions delegated by the Non-Employing Party to the Employing Party.

5.2 The Parties may only delegate their statutory functions to each other in exercise of the powers contained in S101 of the Local Government Act 1972 and S17 of the Local Government Act 2000. In the event that the Parties agree to enter into such an arrangement it will be recorded in a separate agreement.

## **6. SHARING EMPLOYEES**

- 6.1 With effect from the Commencement Date, it is agreed that, in exercise of the powers contained in Section 113 of the 1972 Act and in accordance with the HR Protocol the Parties will seek through the Transformation Programme including Transformation Projects to make the Post Holders identified in each and any Agreed Business Case, available to the other Party for the purposes of enabling each Post Holder to provide S113 Duties for the benefit of the other Party, in accordance with their individual agreement, and their S113 Duties.
- 6.2 The Parties acknowledge and accept that, in order to bring into effect the process of sharing and combining S113 Duties, including in respect of the Transformation Programme, a process of consultation with Employees in accordance with the relevant Law will be required in order to seek the Employees' agreement to vary their Employment Contract enabling them to act as a Post Holder.
- 6.3 The Parties agree that they shall use their best endeavours to ensure that Post Holders shall comply with arrangements set out in the Agreed Business Case.

## **7. TRANSFORMATION PROGRAMME AND PROJECTS**

- 7.1 The Parties agree to collaborate and shall co-operate in relation to this Agreement and in relation to the Transformation Programme and any Transformation Projects, and the Parties:
- 7.1.1 shall comply with the ToR including the Board ToR and the Project Team ToR;
  - 7.1.2 engage the other in planning discussions in relation to the Transformation Programme and Transformation Projects from time to time; and
  - 7.1.3 facilitate regular discussions between Employees and/or Post Holders in relation to the Transformation Programme and each Transformation Project
- 7.2 Each Party shall:
- 7.2.1 supply to the other Party any information documentation and assistance reasonably requested by in relation to the Transformation Programme and Transformation Projects to enable the Parties to perform their own obligations in relation to the Transformation Programme and Transformation Projects;

- 7.2.2 review documentation, including Business Cases or other technical documentation, for use when performing its obligations in relation to the Transformation Programme or Transformation Project, as soon as reasonably practicable
  - 7.2.3 supply to the other such support services and access to such accommodation and assets and on such terms as may be agreed and identified from time to time by the parties including in the Methodology and the Business Plan ; and
  - 7.2.4 ensure that approved Programme Documents are stored centrally with access for all Parties.
- 7.3 The Parties shall have a joint obligation to deliver the Transformation Programme, including Transformation Projects and shall:
- 7.3.1 perform such obligations, including by providing the Inputs in accordance with timeframes or milestones (if any) specified in the Programme Documents;
  - 7.3.2 ensure that the Inputs it provides conform with descriptions and specifications (if any) set out in the Methodology or as otherwise agreed by the Parties;
  - 7.3.3 collaborate in implementing any Methodology for delivering Transformation Projects devised by the Parties from time to time;
  - 7.3.4 comply with the Methodology;
  - 7.3.5 prepare and ensure that each Business Case is prepared in accordance with the Methodology and the terms of this Agreement and such Business Case shall unless otherwise agreed by the Parties:
    - 7.3.5.1 contain at a minimum the information set out in Schedule 5; and
    - 7.3.5.2 comply with the Financial Protocol;
  - 7.3.6 comply with the terms of each Agreed Business Case as amended from time to time;
- 7.4 The Parties Shall;
- 7.4.1 use reasonable care and skill in performing such obligations;



- 7.4.2 comply with good industry practice;
- 7.4.3 comply with all Laws applicable to it;
- 7.4.4 obtain and maintain consents, licences and permissions (statutory, regulatory, contractual or otherwise) that are necessary to enable it to comply with such obligations; and
- 7.4.5 if on the other party's premises, comply with that party's health and safety and site regulations made known to it.

## **8. ACCOUNTABILITY**

- 8.1 For the purposes of these Arrangements, the Post Holder will be accountable to:
  - 8.1.1 the Non-Employing Party for the performance of their S113 Duties; and
  - 8.1.2 the Employing Party for the performance of their Employee Duties

## **9. GOVERNANCE**

- 9.1 The Parties acknowledge that each Party has its own governance and decision making structures independent of this Agreement and the Sovereignty Principles are set out at Schedule 1.
- 9.2 Each Party will be responsible for ensuring that the Arrangements comply with all statutory requirements, national and local and other guidance and probity and good corporate governance.

### *The Board*

- 9.3 The Parties agree that for the purposes of this Agreement the Joint Chief Executive and the Board shall administer the operation of this Agreement.
- 9.4 The ToR for the Board are at Schedule 2 and the ToR shall be reviewed at least annually by the Strategic Partnership Board.
- 9.5 The Board shall meet at least quarterly and meetings may take place by video conference.
- 9.6 In respect of each meeting of the Board:
  - 9.6.1 an agenda will be produced by the Joint Chief Executive Officer (in consultation with the-SRO and circulated to all members of the Board no later than five (5) working days before the scheduled date of the meeting;

9.6.2 meetings shall be chaired by the Joint Chief Executive Officer and in their absence a Deputy ; and

9.6.3 minutes of such meetings will be taken and circulated within ten (10) working days after the date of such meeting.

#### *Transformation Project Team*

9.7 The ToR for the Project Team are at Schedule 7.

9.8 The Parties shall each designate Employees to the Project Team as agreed from time to time. The Project Team shall facilitate the Transformation Programme and Transformation Projects in accordance with the terms of this Agreement and the Project Board ToR or as otherwise agreed by the parties in writing from time to time.

9.9 The Parties agree the Employees designated to the initial Project Team as identified in the Methodology.

9.10 The Project Team shall report to the Board at such times and with such frequency as directed by the Board.

#### *Reporting*

Each Council shall be responsible for ensuring that regular reporting as to the operation of this Agreement is integrated into its own corporate governance processes. The Parties agree that the Board will facilitate regular reporting on the progress of this Agreement, the Transformation Programme and any Transformation Project into each Council's respective governance processes.

#### *Annual Review*

9.11 The Joint Chief Executive, Monitoring Officer and Section 151 Officer shall carry out an annual review of the Arrangements for the purpose of evaluating:

9.11.1 performance of the Arrangements against the targets, priorities and outcomes specified in this Agreement (or such other targets, priorities and outcomes as may be agreed between the Parties in writing from time to time); and

9.11.2 the operation and effectiveness of the Arrangements and any recommendations for improvement.

9.12 Following a review held in accordance with Clause 9.11 , any recommendations in respect of this Agreement shall be referred to the Board and then to the Overview and Scrutiny committee of each Party for further recommendations. .

9.13 The Parties will consider the recommendations made pursuant to Clause 9.12 and any variations to this agreement shall be made in accordance with clause 27.

## **10. FINANCIAL ARRANGEMENTS FOR SHARED SERVICES**

10.1 As part of the Parties' wider commitment to the Transformation Programme, the Parties have developed a Financial Protocol set out in Schedule 3 that establishes the principles of their financial relationship in respect of the Transformation Programme and ongoing Joint Working with effect from the Commencement Date.

10.2 The Parties agree to be bound by the terms of the Financial Protocol and to fulfil their respective obligations thereunder.

10.3 The Parties may agree to vary the Financial Protocol from time to time in accordance with Clause 24.

10.4 In respect of each Post Holder, the Employing Party shall be responsible for the payment (subject to the Financial Protocol) of all sums due and payable to that Post Holder in accordance with their Employment Contract, including (without limitation) all tax, national insurance and pension contributions.

10.5 The costs associated with and in respect of the Transformation Programme and the Shared Services shall be determined in accordance with the Financial Protocol.

10.6 Any Apportionment Payment shall be calculated in accordance with the Financial Protocol and when any Apportionment Payment fall due and payable from one Party to the other under the Payment Mechanism the paying Party shall make such payment within 28 days of its falling due.

10.7 The Parties shall conduct the Costs Review at least 6 monthly in accordance with the Financial Protocol.

10.8 The Parties acknowledge and agree that neither Party is permitted by this Agreement to subsidise the activities of the other.

## **11. HUMAN RESOURCES (HR) PROTOCOL**

11.1 The Parties have jointly developed the HR Protocol set out in Schedule 4 for the Transformation Programme and the ongoing management of the Shared Services arising out of or in relation to the Transformation Programme and the Arrangements. This protocol is designed to support the Arrangements and to set out some overarching guidelines but is not intended to be (and, unless the Parties expressly agree otherwise in writing, will not have the effect of being) a substitute for a Party's

existing HR policies and procedures and neither is it intended to create legally binding rights, obligations and/or entitlements between the Parties and their Post Holders.

11.2 The Parties agree to be bound by the terms of the HR Protocol and to fulfil their respective obligations there under.

11.3 The Parties may agree to vary the HR Protocol in accordance with Clause 24.

## **12. INDEMNITIES, LIABILITIES AND INSURANCE**

12.1 Each Party shall indemnify the other Party against any Loss (excluding Indirect Loss) suffered or incurred by the indemnified arising out of or in connection with:

12.1.1 the indemnifying Party's negligence or breach of contract; and

12.1.2 any claim made by a third party arising out of or in connection with the indemnifying Party's negligence or breach of contract,

in each case in connection with the performance or failure of performance of the indemnifying Party's obligations under this Agreement, except to the extent that such Loss has been caused by any negligence, act or omission by, or on the part of, or in accordance with the instructions of the other Party.

12.2 Subject to clause 12.3 the Parties agree that they will be responsible for the activities of a Post Holder as follows:

12.2.1 the Non-Employing Party will be responsible for the acts or omissions of any Post Holder when performing their S113 Duties or otherwise acting in their capacity as an officer of the Non- Employing Party; and

12.2.2 the Employing Party will be responsible for the acts or omissions of any Post Holder when performing their Employee Duties or otherwise acting in their capacity as an officer of the Employing Party.

12.3 Subject to Clauses 12.4 to 12.6, any Loss incurred in relation to or arising from a Post Holder's employment whether or not following termination of employment of a Post Holder or termination of this Agreement including any award by a court or tribunal shall be the responsibility of the Employing Party. As between the Parties to this Agreement, the Non-Employing Party shall have no liability in respect of such Loss and the Employing Party agrees to indemnify the Non-Employing Party against any such Loss.

12.4 Where any Employee Liabilities arise partly as a result of any act or omission of the Transferee Party and partly as a result of any act or omission of the Transferor Party whether before on or after the date of the Relevant Transfer, the Parties shall

indemnify each other against only such part of the Employee Liabilities sustained by the other Party as is reasonably attributable to the act or omission of that Party.

- 12.5 It is the Parties' view that TUPE is not anticipated to apply either on the commencement of this Agreement, during the course of the Agreement and/or on the expiry or termination of this Agreement (or any part of it). However, the Parties acknowledge that it may be that, the commencement of the Agreement, the way in which the Services are provided during the course of the Agreement and/or the termination of this Agreement (or any part of it) may result in a Relevant Transfer. The provisions relating to this potential transfer or these potential transfers are set out in Schedule 8 to this Agreement.
- 12.6 In relation to the indemnities of this Clause 12 and to those set out in Schedule 8 to this Agreement, the Parties agree to co-operate with each other and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

### **13. INSURANCE**

- 13.1 Each Party shall obtain and maintain throughout the Term sufficient policies of insurance in respect of all potential liabilities arising from these Arrangements (as outlined in the Financial Protocol). A decision not to insure does not relieve a Party of its responsibilities under this Agreement.
- 13.2 Each Party agrees to ensure that:
- 13.2.1 where they are the Non-Employing Party, the insurance policies maintained pursuant to Clause 13.1 cover liabilities that may be incurred through the performance, by a Post Holder-, of their S113 Duties;
  - 13.2.2 where they are the Employing Party, the insurance policies maintained pursuant to Clause 13.1 cover liabilities that may be incurred through the performance, by a Post Holder, of their Employee Duties.
- 13.3 The insurance policies maintained pursuant to clause 13.1 shall include at a minimum:
- 13.3.1 Public Liability insurance cover of [£]
  - 13.3.2 Employer liability Insurance of [£]; and
  - 13.3.3 Professional indemnity insurance of [£].

## **14. STANDARDS OF CONDUCT**

- 14.1 The Parties will comply and will ensure the Arrangements comply with all statutory requirements national and local and other guidance on conduct and probity and good corporate governance (including the Parties' respective Constitutions and Standing Orders).
- 14.2 The Parties will review and, where permitted and appropriate, amend their Constitution including but not limited to Standing Orders, Financial Standing Orders Schemes of Delegation, Banking Mandates and other relevant documents as necessary to ensure compliance with their obligations under this Agreement and to enable the Arrangement to operate as smoothly and efficiently as practicable. Nothing in this clause shall require a Party to make amendments which in its reasonable belief would be inconsistent with the Sovereignty Principles.

## **15. CONFLICT OF INTEREST**

- 15.1 The Parties shall agree the Conflicts Schedule within the period of 6 months commencing on the Commencement Date.
- 15.2 The Parties agree to comply with the Conflicts Schedule as amended from time to time.

## **16. COMPLAINTS**

- 16.1 Subject to Clause 15, complaints by third parties arising out of or in connection with these Arrangements will be dealt with in accordance with the complaints policy of the appropriate Party in force from time to time.
- 16.2 Subject to all relevant Law and guidance, the Parties reserve the right to agree a combined complaints procedure(s). Any such procedure(s) shall be documented in writing and signed by the Parties.
- 16.3 The Parties will co-operate with each other in respect of the investigation, resolution and handling of complaints in relation to this Agreement including the Arrangements.

## **17. OMBUDSMAN AND PROCEEDINGS AND AUDIT**

- 17.1 The Parties will co-operate with investigations undertaken by the Ombudsman.
- 17.2 Each Party shall co-operate fully with the other in respect of all hearings, proceedings, enquiries and investigations relating to the Arrangements and shall permit access to

the records of the other for this purpose. Each Party shall permit and ensure the full co-operation of its Employees in any hearing, proceedings, enquiry or investigation.

17.3 The Councils shall co-operate fully with:

17.3.1 any investigation by a Local Commissioner following a complaint by or on behalf of a member of the public in accordance with the provisions of s.26 Local Government Act 1974, and

17.3.2 all enquiries and investigations initiated by the other Party's internal or external auditors.

## **18. INTELLECTUAL PROPERTY**

18.1 The Parties shall to the extent permissible by law grant to each other a licence to use the other Party's relevant IPR solely and exclusively for the purposes of and in connection with this Agreement and the Arrangements.

18.2 Subject to Clauses 18.1 and 18.3, neither Party shall acquire from the other Party any rights to that other Party's IPR.

18.3 If any IPR is created, brought into existence or acquired in relation to anything jointly developed by the Parties in relation to the Agreement, the Parties shall negotiate in good faith and use all reasonable endeavours to agree the rights that each Party shall have in relation to such IPR. Following any such agreement the Parties shall to the extent permissible by law do all things and execute all documents necessary to give full effect to the agreement. If the Parties are unable to reach agreement the matter shall be referred to the Dispute Resolution Procedure.

## **19. CONFIDENTIALITY & DATA PROTECTION**

19.1 The Parties shall at all times each comply with the Data Protection Legislation and shall in connection with this Agreement enter into a Data Protection Agreement.

19.2 Subject to clause 19.3, each Party shall keep the other Party's Confidential Information confidential and shall not:

19.2.1 use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or

19.2.2 disclose such Confidential Information in whole or in part to any third Party, except as expressly permitted by this clause 19.

19.3 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

- 19.3.1 which the other Party confirms in writing is not required to be treated as Confidential Information;
  - 19.3.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - 19.3.3 which a Party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Applicable Law, including the FOIA or the EIRs;
  - 19.3.4 which is in or enters the public domain other than through any disclosure prohibited by this Agreement;
  - 19.3.5 which a Party can demonstrate was lawfully in its possession prior to receipt from the other Party; or
  - 19.3.6 which is disclosed by the Parties on a confidential basis to any central government or regulatory body.
- 19.4 A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the Party's obligations under this agreement, provided that:
- 19.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure;
  - 19.4.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a Party to this Agreement; and
  - 19.4.3 and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 19.4.
- 19.5 The provisions of this clause 21 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
- 19.6 Neither Party shall enter into issue any media release publicity concerning or affecting matters under this Agreement unless previously agreed in advance with the other at Strategic Director level or above.
- 19.7 Subject to clause 19.8 any formal statements or communications to Employees and/or members of the Parties concerning matters under this Agreement shall be agreed between the Parties in advance.



19.8 Clause 19.7 does not apply to the circulation of minutes, the routine reporting of decisions or requests for information or action to be taken.

## **20. FREEDOM OF INFORMATION**

20.1 The Parties will each comply with their respective obligations pursuant to the FOIA but, without prejudice to this general obligation, will consult the other Parties prior to the disclosure of any information relating to these Arrangements.

20.2 Each Party will co-operate fully with the other Party for the purposes of enabling that other Party to properly fulfil its obligations under the FOIA.

20.3 The Parties acknowledge that they may be obliged, on request, to provide or consider the provision of information to third parties where that information constitutes or may constitute Confidential Information.

20.4 Where a Party receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of the other in relation to matters under this Agreement, it shall;

20.4.1 transfer the request for information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;

20.4.2 provide the other Party with a copy of all information in its possession or power in the form that the other Party requires within ten Working Days (or such longer period as the other Party may specify); and

20.4.3 provide all necessary assistance as reasonably requested by the other Party to enable that Party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

20.5 Where a Party receives a request under FOIA or EIR which relates to matters under this Agreement (the "Receiving Party") it shall notify the other Party ("the Assisting Party") and afford them an opportunity to make any comments or representations in respect of the information sought. The Assisting Party shall respond within five working days or receipt of this notification, and the Receiving Party shall in good faith consider the comments or representations made by the Assisting Party. The Receiving Party's decision as to the disclosure of otherwise of any information under the FOIA or EIR under this clause 20.5 shall be final and binding on the Parties.

## 21. **DEFAULT**

21.1 In the event of a Party (the **Defaulting Party**) being, in the reasonable opinion of the either or both Parties (the **Other Party**), in breach of its obligations under this Agreement and such breach being capable of remedy, the following procedure will apply:

21.1.1 the Other Party may request a meeting with the Defaulting Party by giving five (5) Working Day's written notice to that effect. The meeting will include the **[OFFICER]** of each Party;

21.1.2 following such a meeting, the Parties will discuss and agree an action plan under which the Defaulting Party will be given a reasonable period of time to remedy the default to the satisfaction of the other Party (the **Remedial Action Plan**);

21.1.3 Where an Other Party is not reasonably satisfied that the Defaulting Party has complied with the Remedial Action Plan, the Other Party will have the right, at its discretion, either to initiate the Dispute Resolution Procedure in clause 22 or to exercise its right to terminate this Agreement in accordance with Clause 23.6.

## 22. **DISPUTES**

### Operational matters

22.1 In the event of a dispute concerning the construction or effect of this Agreement or that a Local Authority has failed to comply with any obligation under this Agreement the matter will be raised with the Monitoring Officer unless the matter concerns the Monitoring Officer in which case the matter will be raised with the Chief Executive.

22.2 If the matter cannot be resolved to the satisfaction of the Local Authorities by the Monitoring Officer (or Chief Executive) within 14 days the matter will be referred to an independent arbitrator from a professional body appropriate to the matter in dispute.

22.3 The arbitrator shall be appointed with the agreement of the Local Authorities or in the event that agreement cannot be reached, by the President or chief officer of the appropriate profession.

22.4 For the avoidance of doubt this Clause remains in place after the termination of this Agreement to confer powers on the Local Authorities to resolve matters in dispute.

## **23. RESOLUTION OF BREACHES AND DISPUTES**

- 23.1 In the event of a dispute concerning the construction or effect of this Agreement or that an Authority has failed to comply with any obligation under this Agreement the matter will be raised with the relevant Strategic Director unless the matter concerns the Strategic Director in which case the matter will be raised with the Chief Executive.
- 23.2 If the matter cannot be resolved to the satisfaction of the Local Authorities by the Strategic Director (or Chief Executive) within 14 days the matter will be referred to the Chief Executive.
- 23.3 If the Chief Executive cannot resolve the matter to the satisfaction of the Local Authorities within 14 days the matter will be referred to the next Board meeting (which must take place within 28 days).
- 23.4 If the Board is able to resolve the matter it will be referred to the Scrutiny/A&S Committee for formal agreement.
- 23.5 If the matter cannot be resolved by the Board to the satisfaction of the Local Authorities the matter will be referred to an independent arbitrator from a professional body appropriate to the matter in dispute.
- 23.6 The arbitrator shall be appointed with the agreement of the Local Authorities or in the event that agreement cannot be reached, by the President or chief officer of the appropriate profession.
- 23.7 For the avoidance of doubt this clause remains in effect after the termination of this Agreement to confer powers on the Local Authorities to resolve matters in dispute

## **24. TERMINATION**

### *General*

- 24.1 This Agreement may be terminated (in whole or in part) at any time by either Party giving to the other a minimum of twelve (12) calendar month's prior written notice.
- 24.2 This Agreement may be terminated (in whole or in part) at any time by written agreement between the Parties.
- 24.3 This Agreement may be terminated immediately at any time in respect of any or all of the Post Holders by written agreement between the Parties.
- 24.4 This Agreement, in respect of any individual Post Holder, will terminate forthwith in respect of that particular Post Holder upon the dismissal or resignation of the Post Holder from their Employing Party or upon the Post Holder withdrawing their consent to being made available pursuant to these Arrangements where applicable.

24.5 This Agreement will terminate in respect of any individual Post Holder upon any reorganisation or reconstruction affecting any Party whereby the Post Holder no longer holds office with their Employing Party.

24.6 A Party may at any time by notice in writing to another Party terminate this Agreement upon service of 20 Working Days written notice if:

24.6.1 the other Party commits a material breach of any of its obligations hereunder which is not capable of remedy; or

24.6.2 the other Party commits a material breach of any of its obligations hereunder which is capable of remedy but has not been remedied in accordance with Clause 22. .

24.7 A Party may by written notice to another Party in accordance with Clause 23.8 terminate this Agreement if:

24.7.1 as a result of any change in law or legislation it is unable to fulfil its obligations under this Agreement;

24.7.2 its fulfilment of its obligations hereunder would be in contravention of any guidance from any Secretary of State issued after the Commencement Date;

24.7.3 its fulfilment of its obligations would be ultra vires or otherwise unlawful, and the Parties shall be unable to agree a modification or variation to this Agreement (which may include termination in part only) so as to enable the Parties to fulfil its obligations in accordance with law and guidance.

24.8 In the case of notice pursuant to Clause 23.7.1 or 23.7.2, the Agreement shall terminate after such reasonable period as shall be specified in the notice having regard to the nature of the change referred to in Clause 23.7.1 or the guidance referred to in Clause 23.7.2 as the case may be. In the case of notice pursuant to Clause 23.7.3, the Agreement shall terminate with immediate effect.

24.9 Notices served pursuant to Clause 23.6 or 23.7 will result in termination of the whole of the Agreement unless the Parties agree otherwise in writing.

*Consequences of Termination and Exit*

24.10 The Parties shall agree an Exit Plan in accordance with Schedule 9 within 6 months of the Commencement Date. The Parties shall thereafter review the Exit Plan annually during the Term. Where the Parties agree amendments to the Exit Plan then such amended Exit Plan shall be the Exit Plan for the purposes of this Agreement when it is signed by both of the Parties.

- 24.11 Termination of this Agreement in whole or in part (whether by effluxion of time or otherwise) shall be without prejudice to the Parties' rights in respect of any antecedent breach and the provisions of this Clause 23 and Clause 1(interpretation), Clause 12 (indemnities), Clause 13 (Insurance), Clause 20 (FOI), Clause 17 (Ombudsman, Proceedings and Audit), Clause 19 (confidentiality and Data), shall continue in full force and effect.
- 24.12 In the event of termination of this whole Agreement (whether by effluxion of time or otherwise) the Parties shall following the Exit Plan.
- 24.13 In the event that this Agreement is terminated in part only, the Parties will agree appropriate variations to the Agreement. Such variations will be documented in writing and signed by all Parties.
- 24.14 Where the Agreement is terminated in part, then except for that part of the Agreement that has been terminated, this Agreement shall continue in full force and effect.

## **25. CHANGE AND VARIATIONS**

- 25.1 The Parties may agree to vary the Agreement including for the avoidance of doubt its Schedules from time to time in accordance with this Clause 24.

### *General*

- 25.2 Either Party may propose a variation to this Agreement and the Parties shall use reasonable endeavours to agree the variation. In the event of any disagreement in relation to the variation any Party may refer the matter to the Dispute Resolution Procedure.
- 25.3 Any variation of the Agreement including its Schedules, must be in writing and signed by, or on behalf of, each of the Parties.

### *Changes to Shared Services and Business Cases*

- 25.4 Each Shared Service shall be delivered in accordance with an Agreed Business Case. Either or both parties may request a change to an Agreed Business Case or part thereof in writing to the other, and if a change is requested the Parties shall together prepare a revised Business Case in accordance with the Financial Protocol.
- 25.5 Each Party shall be responsible for obtaining consent to a revised Business Case in accordance with its own internal governance structures.
- 25.6 A change to an Agreed Business Case shall be effective from the date that a revised Agreed Business Case is signed or executed as a deed (as necessary) by both Parties.

25.7 Where a change to an Approved Business Case must necessarily be made by deed to take legal effect, each Party shall use its best endeavours to prepare, agree and execute such deed to effect the change.

25.8 An Agreed Business Case may set out a change procedure for the Parties to follow in respect of a Change to part only of that Agreed Business Case (Agreed Change) in which case where the terms of the Agreed Business Case and this terms of this Agreement are in conflict:

25.8.1 the terms of the Agreed Business Case shall prevail in respect of the Agreed Change; and

25.8.2 the parties shall follow any procedure set out in the Agreed Business Case in respect of that Agreed Change

## 26. NOTICES

26.1 Any notice of communication shall be in writing.

Any notice or communication to the relevant Party shall be deemed effectively served if sent by registered post or delivered by hand at an address set out in Clause -25.4.1 and marked for the Representative or to such other addressee and address notified from time to time to the other Parties.

26.2 Any notice served by hand delivery shall be deemed to have been served on the date it is delivered to the addressee if delivered before 15.00hrs on a Working Day. Hand delivery after 15.00 and or on a weekend or English public holiday shall be deemed served on the next Working Day. Where notice is posted it shall be sufficient to prove that the notice was properly addressed and posted and the addressee shall be deemed to have been served with the notice 48 hours after the time it was posted.

26.3 For the purposes of this Clause 25.4 , the addresses at which notice must be served are, unless either Party is notified otherwise in writing as follows:

26.3.1 CEO and DIRECTOR OF PEOPLE AND GOVERNANCE

Brentwood Borough Council

Town Hall

Ingrave Road

Brentwood

CM15 8AY

26.3.2 CEO and DIRECTOR OF PEOPLE AND GOVERNANCE

Rochford District Council

Council Offices

South Street

Rochford

SS4 1BW

**27. WAIVERS**

27.1 The failure of any Party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed to be a waiver of any such provision and shall not in any way affect the right of that Party thereafter to enforce such provision.

27.2 No waiver in any one or more instances of a breach of any provision hereof shall be deemed to be a further or continuing waiver of such provision in other instances.

**28. SEVERANCE**

If any provision of this Agreement becomes or is declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such unenforceability shall in no way impair or affect any other provision of this Agreement all of which will remain in full force and effect.

**29. TRANSFERS**

A Party may not assign, mortgage, transfer, sub-contract or dispose of this Agreement or any benefits and obligations hereunder without the prior written consent of the other Parties except to any statutory successor in title to the appropriate statutory functions.

**30. NO PARTNERSHIP**

30.1 Nothing in this Agreement shall create or be deemed to create a legal Partnership or the relationship of employer and employee between the Parties or render any Party directly liable to any third party for the debts, liabilities or obligations of another party.

30.2 Save as specifically authorised under the terms of this Agreement no Party shall hold itself out as the agent of another party.

### **31. ENTIRE AGREEMENT**

- 31.1 The terms contained in this Agreement together with the contents of the Schedules and Appendices constitute the complete agreement between the Parties with respect to the Arrangements and supersede all previous communications, representations, understandings and agreement and any representation, promise or condition not incorporated herein shall not be binding on any Party.
- 31.2 No agreement or understanding varying or extending any of the terms or provisions hereof shall be binding upon a Party unless in writing and signed by a duly authorised officer or representative of each Party.

### **32. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **33. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English law and, without prejudice to Clause 32 shall be subject to the exclusive jurisdiction of the English courts.



**IN WITNESS** whereof this Agreement has been executed by the Parties on  
the date of this Agreement

**EXECUTED BY  
BRENTWOOD BOROUGH COUNCIL**

by:

Signed (Authorised Officer):.....

Name/Position: .....

Signed (Authorised Officer):.....

Name Position: .....

**EXECUTED BY  
ROCHFORD DISTRICT COUNCIL**

by:

Signed (Authorised Officer):.....

Name/Position: .....

## SCHEDULE 1

### AIMS, INTENDED OUTCOMES AND PRINCIPLES

[SIGNED MOU TO BE APPENDED BEFORE COMPLETION]

#### PART 2 - SOVEREIGNTY PRINCIPLES

Both Parties are committed to continuing to represent the needs, priorities and ambitions of local people in their neighbourhoods. They are exploring reducing costs by working together.

Commissioning or delivering services together is not designed to change how residents experience services but is done to increase efficiency and capacity.

#### To safeguard local autonomy the Parties confirm:

1. Local residents will continue to elect the same number of councillors to each Council.
2. Each Council will retain its own constitution, setting out how it makes decisions, organises scrutiny and delegates authority.
3. Each Council will continue to set its own council tax and publish its own budget and accounts.
4. Each Council will continue to be able to set out its own spending priorities.
5. No Council can be required by the other to adopt a policy, accept a cost or change a priority that its decision makers are not willing to support.
6. There will be no change in the name of any either Council.
7. The costs of changes and the benefits achieved from change will be fairly attributed and shared to the satisfaction of both Council's, if necessary using mediation.
8. No Council will be obliged to break an existing contract.
9. The boundaries of the areas for which each Council is responsible will not change. Each Council will continue to speak up for its own residents, even where there is an apparent conflict of interest between the boroughs.
10. Each Council will be able to set its own policy for how services are delivered.
11. The Councils can commission service from contractors, voluntary bodies and others together, but can also decide to commission, or grant aid, on their own.
12. Nothing in these proposals is intended to stop Councils developing local ideas about how to support their local communities.

## **A commitment to shared learning, innovation and value for money**

13. The Councils will share what works in service delivery and encourage their neighbours to learn from successful innovation.
14. The Councils will adopt common specifications where these are compatible with each Council's policy objectives and budget preferences and where these are likely to give best value to taxpayers.
15. The Councils commit to a continuing process of exploring how working together might lower costs; be a better platform for developed responsibilities from Government and/or improve the quality of service delivery.
16. The Councils will commit to exploring how by working together, councillors can enhance the ways in which their Councils deliver their responsibilities.
17. The Councils will expect to keep these arrangements under review, in order to ensure they remain fit for purpose.
18. Any of the arrangements that constitute agreements between the Councils can be ended on notice, though any Council withdrawing will be responsible for its own consequent costs. Any joint external contracts will be covered by the same legal considerations as now.
19. Where shared services arrangements are brought to an end then the notice period will be twelve months, unless a shorter period is expressly agreed by the other parties and the costs arising from termination will be fairly shared between the Councils in a pre-agreed manner.



## SCHEDULE 2 BOARD ToR



### *#OneTeam Transformation Programme;*

#### **Programme Governance**

#### **#OneTeam Transformation Programme; Board**

#### **Terms of Reference (April 2022)**

### **1. PURPOSE**

- 1.1 The #OneTeam Transformation Programme Board is ultimately responsible for the delivery of all aspects of the #OneTeam Transformation Programme and its governance

### **2. RESPONSIBILITIES**

- 2.1 Promote, endorse and support the Programme and its objectives;
- 2.2 Communicate information about the Programme to agreed stakeholders;
- 2.3 Review and consider presented #OneTeam business cases within the Programme;
- 2.4 Decision making (#OneTeam business cases) –
  - 2.4.1 Approve business case(s) to move to implementation, should no further programme governance be required (see 2.4.3)
  - 2.4.2 Request business case(s) be returned to Tier 3 lead for further work/more information and return to the Board
  - 2.4.3 Approve business case(s) for consideration and any further governance, to include Exec/PRED and Full Council as determined by the Programme Senior Responsible Officer (SRO)

### **3. CHAIR, SECRETARIAT & MEETING FREQUENCY**

- 3.1 Meetings will be chaired by the Programme Sponsor;
- 3.2 Notes of meetings will be taken by Corporate Services and circulated within ten (10) Working Days of the meeting- to all Board members and those attending the relevant meeting(s) as a guest;
- 3.3 An agenda will be produced by the Programme's SRO (in consultation with the Programme Manager) and circulated to all members of the Programme Board no later than five (5) Working Days before the scheduled date of the meeting-;
- 3.4 Unless the Programme Board Members otherwise agree, the Programme Board shall hold at least one meeting in each quarter;
- 3.5 Meetings to take place in person and default to video conference- should circumstances require;

3.6 Additional meetings may be arranged should there be a need;

#### **4. REPORTING**

4.1 The Programme Board shall receive reports and/or verbal updates identified by the Programme SRO (prepared in consultation with the Programme Manager and Programme Workstream leads);

4.2 Core reports/verbal updates to include the following, detailing any anticipated exceptions and emerging risks and their mitigation:

4.1.1 Programme and Service Delivery Workstream

4.1.2 Comms & Engagement Workstream

4.1.3 HR & Workforce Development Workstream

#### **5. MEMBERSHIP & EXPECTATIONS OF MEMBERS**

5.1 The Programme SRO shall appoint up to six Programme Board Members, in addition to those listed within the Membership table below (Section 9);

5.2 Additional members and/or guests may be invited to meetings of the Programme Board on either a regular or ad hoc basis and with the prior consent of the Programme's SRO

#### **6. QUORACY**

6.1 Meetings would require at least the following Programme Board members to be in attendance:

- Programme Sponsor
- Programme SRO
- Programme Member Sponsor (Rochford District Council)
- Programme Member Sponsor (Brentwood Borough Council)

#### **7. REMOVAL OF #OneTeam TRANSFORMATION PROGRAMME BOARD MEMBERS**

7.1 The Programme SRO shall be entitled to remove and replace the Programme Board Members (or any of them) appointed by it. Any removal of a Programme Board Member shall be effected by notice in writing and shall take effect when served (subject to any contrary intention expressed in the notice);

7.2 Notwithstanding any other term of this Agreement, the Programme SRO shall forthwith remove a Programme Board Member (in accordance with paragraph 7.1) where:

- The Programme Board Member is convicted of any offence of fraud or dishonesty; or
- The Programme Board Member ceases to be employed by the Council or an elected member of the Council; or
- The Programme Board Member ceases to be formally engaged or commissioned by the Council

7.3 If a member of the Programme Board is removed for any of the above reasons, the Programme SRO shall appoint the successor to sit on the Programme Board as a replacement member of the board

## 8. REVIEW OF TERMS OF REFERENCE

8.1 The Terms of Reference for the Programme Board shall be reviewed by the Programme SRO on a six monthly basis

## 9. MEMBERSHIP

<b>Member</b>	<b>Role in Organisation</b>	<b>Role on Programme</b>
Jonathan Stephenson	Chief Executive Officer	#OneTeam Programme Sponsor & Programme Board Chair
Angela Hutchings	Strategic Director	#OneTeam Programme SRO
Cllr Simon Wootton	Leader of Rochford District Council	#OneTeam Programme Member Sponsor
Cllr Chris Hossack	Leader of Brentwood Borough Council	#OneTeam Programme Member Sponsor

**SCHEDULE 3**  
**HR Protocol**



**HR Protocol for Establishing and Working in Integrated Teams**

**In terms of employment legislation the procedure is for guidance only and does not form part of an employee's contractual rights.**

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**The contents may be subject to revision as required.**

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## **1. PURPOSE OF THE PROTOCOL**

### **1.1 Guiding principles are:**

- To protect the rights and duties of our staff under their contract of employment
- To ensure staff within integrated teams are treated fairly and equitably
- To resolve any difficulties and other issues as far as is practicable at local management level
- To develop a shared set of working standards
- To ensure managers receive clear guidance and advice from the respective Human Resource Departments on how to apply HR policies and procedures appropriately.

## **2. CLARITY IN THE CONTRACTUAL RELATIONSHIP**

### **2.1 The HR policies, procedures and terms and conditions of staff and the statutory obligations of the partner organisations are unchanged by this protocol. Staff employed in integrated teams will continue to be contracted to their current employer on the same terms and conditions provided under the respective individual and organisations contract of employment. Plus:**

- The employing organisation remains responsible for exercising the rights and duties of the employer;
- The HR Protocol requires parties to liaise with each other regarding the contracts of employment of those they manage and to take advice from HR staff of the employing organisation where interpretation or formal action under the contract of employment is required; and
- Existing and established posts that have become part of an integrated team arrangement should normally be filled on the same and continuing basis unless otherwise agreed between the partners.

## **3. THE STATUS OF THE PROTOCOL**

### **3.1 This protocol :**

- will complement, but not replace, the HR Policies and Procedures of the partner organisations. However, where any conflict/disagreement occurs between the protocol and any HR Policies/Procedures, then the HR Policy/Procedure will take precedence;

- In no way affects the statutory obligations of the Partner organisations;
- In no way affects the contracts of employment or terms and conditions of the staff of the Partner organisations; and
- Is designed to support those working in joint or integrated teams.

#### **4. WHAT IS AN INTEGRATED TEAM?**

4.1 For the purposes of building a partnership between the Councils, an integrated team will usually be based on a mix of Councils' staff who:

- Will retain their employment role and status with no material changes to their terms and conditions, which means that employees of BBC and RDC will work alongside each other on the different terms and conditions of each organisation;
- Will be managed by the [ ], whom is employed by [ ];
- May be co-located with the rest of the team;
- May include colleagues from other partnership organisations;
- Will be part of an identified Team who report through to a designated Director, Executive Director or Chief Executive;
- Will share team goals and objectives but will continue to be subject to the staff / individual performance review process relating to the organisation that employs them;
- Work within a team that can be integrated as part of an organisational restructuring; and
- Can be part of organisation under a joint budgeting agreement.
- Will work under a S113 arrangement agreed between the Councils

4.2 An integrated team at this point in time will not usually be:

- A team where all members are employed by the same organisation;
- A team involving TUPE processes: roles/employment will not be transferred; and
- A team made up solely of secondees.

## **5. RECORDING AGREEMENT TO CREATE AN INTEGRATED TEAM**

- 5.1 When agreement has been reached to create an integrated team, the details of such team, must be recorded using the template.
- 5.2 The template should be signed by the appropriate lead Directors of the Councils and the completed copy will be kept by the HR Departments on behalf of both Councils.
- 5.3 Any subsequent changes to the financial arrangements must be updated on the template.

## **6. RECRUITMENT TO AN INTEGRATED TEAM**

- 6.1 In all cases, whether for new posts, reorganisations or replacements the Councils agree that the terms of the employing organisation will prevail and the integrity of the terms and conditions and job evaluation processes to determine those terms will be upheld. No individual shall be subject to a hybrid set of terms and conditions.
- 6.2 Regardless of the sources of funding for posts within the team, all staff will be treated fairly and equitably and in accordance with the policies of BBC and RDC:
- In relation to the appointment of a new member of staff, managers should refer to local policies on recruitment and should work with the appropriate Human Resources team who will advise on applying the following criteria: How the vacancy is to be managed and the nature of the replacement post;
  - Job descriptions should reflect the integrated nature of the structure, the role and duties expected of the post-holder in accordance with integrated team and service requirements;
  - The evaluated salary range;
  - The process of advertising; and
  - Recruitment costs.
- 6.3 There might be a joint appointment. Where the post is a joint appointment, the contract of employment will reside with one of the Councils and should detail the role and accountabilities reflecting the integrated nature of the joint appointment.
- 6.4 The recruitment process will be in accordance with the employing Council's policies and procedures and will conform to the principles for safer recruitment.

- 6.5 The manager designated to lead the recruitment process will ensure appropriate use of employer brand, logo and internal / external vacancy circulation appropriate to the posts being advertised. Recruitment literature to reflect the joint nature of the service.
- 6.6 There are separate job evaluation schemes in place in the Councils. The employing Council will evaluate the post where appropriate.

## **7. MANAGEMENT ARRANGEMENTS**

7.1 This protocol sets out the line management arrangements for an integrated team. The manager of an integrated team:

- Shall have the right to give any reasonable instructions to staff of the Councils, who are members of the team
- Will manage staff in accordance with the expectations of the Councils (reflecting the relevant policies and procedures) in matters relating to a range of areas, including but not exclusively relating to :
  - Health and safety;
  - Training and Development;
  - Code(s) of Conduct;
  - Conflict of Interests/Confidentiality;
  - Communications;
  - Performance Management & Appraisal;
  - Recruitment and selection;
  - Sickness Management;
  - Annual leave;
  - Grievance and discipline;
  - Whistle-blowing;
  - Bullying and harassment;
  - Work life balance/Improving Working Lives policies;
  - Equal opportunities; and

- Staff and Trade Union Consultation.
  - It must be acknowledged that the management of integrated teams, particularly those that are not co-located, will place additional demands upon the manager of the team. Knowledge of many aspects of the Councils' HR policies and procedures will be a pre-requisite to applying staff management processes across the team. This will require training and support, with guidance from HR and line management, encouraging the development of managerial confidence and skill
  - The team manager must clarify roles and set clear outcomes for the team as a whole and ensure that there are regular meetings balanced with one to ones in order to develop team skills and coherence
  - Clear lines of accountability must be established, including responsibilities and reporting requirements.

## **8. TRAINING AND DEVELOPMENT**

The manager of the integrated team should be able to access development opportunities for staff they manage across the Councils unless exceptional circumstances prevail where funding is identified (ring fenced) for specific service areas and/or staff groups.

## **9. INDUCTION**

- 9.1 Consistent induction should be developed across integrated teams.
- 9.2 Newly appointed team members should participate in a full induction, within their employing organisation, which will be tailored to individual need, to ensure they can operate effectively within the integrated environment.
- 9.3 Managers of integrated teams must ensure that they undertake a familiarisation session with each team member based on filling in the gaps regarding the knowledge needed to function effectively in the host organisation.
- 9.4 Managers will receive appropriate induction/management development in accordance with their individual need. All existing, as well as new managers, who are managers of staff from both the Parties, must familiarise themselves with the key policies and procedures of both Parties.

## **10. PERFORMANCE APPRAISAL PROCESS**

- 10.1 Staff will be performance managed in accordance with their employing Council's contractual policies and procedures.
- 10.2 All of the staff across the Councils are subject to the annual appraisal process which should also include, at least, a mid-year review.
- 10.3 Key objectives will be set which support the aims of the team, the organisational priorities and the integrated arrangement. Individual training and development needs will be identified through the process. The Councils will provide appropriate training to supervisors to enable them to effectively undertake the relevant appraisal processes for their staff.
- 10.4 To ensure all staff are appraised according to their employing organisations' procedures, all managers of integrated teams, regardless of their own employment status, must ensure that they have good working knowledge of the appraisal procedures applicable for staff at all levels in both of the Councils..
- 10.5 This means that the manager of the integrated service/team must clarify his/her responsibilities under their own Council's appraisal scheme as well as those in the other Council. Support should be accessed through the local HR team do we mean local or employing.

## **11. POOR PERFORMANCE**

- 11.1 The capability procedure for the relevant employing Council should be used to manage any problems that arise, irrespective of the employing organisation of the line manager concerned.
- 11.2 Managers contemplating taking formal poor performance action will take advice from the employee's HR service to ensure adherence to contractual procedures.
- 11.3 Any decision to dismiss can only be taken by a senior manager, as identified within the employing organisation's HR policy, based on the recommendation and case presented by the manager of the integrated team, allow the concerned the opportunity to full representation.

## **12. GRIEVANCE**

- 12.1 Any grievance issues will be dealt with under the appropriate employing Council's grievance procedure.

- 12.2 It is essential that managers of integrated teams make themselves aware of the timescales under the procedure.
- 12.3 HR advice will be provided, from within the employing organisation on the application of the grievance procedure.
- 12.4 Where one Council employee in an integrated team submits a grievance about an employee in the other Council, HR in the two Councils will identify how the investigation and resolution process should be managed; practically applying the relevant grievance procedure
- 12.5 Collective grievances or disputes can only be raised by trade unions.
- 12.6 Pay and Terms & Conditions remains the province of the relevant Council, therefore there can be no shared dispute on these grounds.

### **13. DISCIPLINARY**

- 13.1 Any formal action against an employee will be taken under their employing Councils Disciplinary Policies and Procedures. Where these procedures state the immediate line manager, this will mean the employee's line manager, regardless of the line manager's employing organisation.
- 13.2 Appropriate HR advice from the employing organisation must be sought, but always in the following instances:
- in all cases of potential gross misconduct;
  - when there is police, fraud or safeguarding involvement;
  - where a trade union representative is involved; and
  - where there is an allegation of bullying or harassment made by an employee of one organisation against an employee of another organisation.

### **14. JOB EVALUATION**

- 14.1 The Councils use the GLPC job evaluation schemes at various levels in the separate organisations.
- 14.2 Market supplements may be paid across both Councils in line with the employing boroughs policy.

14.3 These arrangements will continue, as at present, and will therefore apply to each team member of an integrated team, as appropriate and in line with the policy of their employing organisation.

## **15. SICKNESS/ABSENCE MANAGEMENT**

15.1 Any issues arising from the sickness and/or absence of members of staff within the integrated team will be managed in accordance with the employing organisation's policies and procedures and contract of employment.

15.2 Managers will need to be mindful of the relevant trigger points for consideration, under the relevant sickness procedure, in line with the HR and Occupational Health advice available. Appropriate direction will be provided through the relevant HR function.

15.3 Line managers will have access to advice from the relevant HR Team/Occupational Health service representing the employing organisation on issues of long-term sickness line.

## **16. SMOKING AND THE CONSUMPTION OF ALCOHOL OR DRUGS**

16.1 The rules of the employing organisation must be followed with regard to the consumption of alcohol during working hours.

16.2 Smoking whilst on duty is allowed only in accordance with the employing organisation's policies and procedures and also in accordance with the policies and procedures of the organisation in whose premises staff are working.

## **17. LEAVE**

17.1 The policies of the employing organisation apply.

17.2 The immediate line manager, regardless of employing organisation, can authorise flexi/annual leave for staff. It is the immediate line manager's responsibility to ensure that this is done in a planned manner according to the exigencies of the service. It is the line manager's responsibility to keep a record of staff leave and to ensure that this information is forwarded as required to the relevant payrolls and/or HR Teams.

17.3 The immediate line manager, regardless of employing organisation, should in the first instance refer to the appropriate policy and ultimately seek guidance, from the HR team of the employing organisation, regarding Special Leave, Compassionate Leave, Maternity Leave, Paternity Leave and other forms of paid and unpaid leave.

17.4 For matters of Maternity and Paternity Leave, the integrated team manager must seek advice as soon as possible. This should be from the relevant HR section of the employer of the member of staff concerned.



- 17.5 For matters concerning Sabbaticals or employment breaks, the integrated team manager must seek advice from the relevant HR section according to the employing organisation of the member of staff concerned.

## **18. SHARED POLICIES AND PROCEDURES**

In adopting the principle of best practice in an integrated service, it is determined that some policies, procedures and protocols may be adopted jointly, regardless of their employing organisation. Individual policies and procedures will make it clear if this applies. Opportunities to integrate and harmonise policies and procedures will be maximised, as will partner organisations commitment to respond joint to new legislation and initiatives.

## **19. WHISTLEBLOWING**

The policy of the organisation employing the whistle-blower will apply. However, it is accepted that if the member of staff reveals concerns that are related to one or both of the Councils, these will be shared on a confidential 'need to know'/'need to act' basis and managed in accordance with best practice.

## **20. CODE OF CONDUCT**

- 20.1 The code of conduct of the employing organisation will apply to its own staff regardless of their place of work and their team/managerial arrangements.

- 20.2 Any local protocols as part of the integrated teams will apply.

## **21. EQUAL OPPORTUNITIES/ EQUALITIES AND DIVERSITY**

Staff will adhere to the relevant organisation's policy and comply with the requirements regarding Race/Equality Impact Assessments.

## **22. BULLYING AND HARASSMENT**

The Bullying and Harassment Policies of the relevant organisations will be used and applied in relation to the staff concerned in any bullying/harassment allegations and/or situations.

## **23. STAFF CONSULTATION**

Staff consultation processes within each organisation will continue, namely informal sessions, and formal meetings. Joint meetings will also be arranged as the HR and Integrated Managers determine, in consultation with the trade unions.

## **24. SHARING OF INFORMATION**

Information will be shared across the Parties, in relation to the effective operation of the integrated team, with due adherence to any legal requirements e.g. data protection act and any logistical/ICT restraints

## **25. NOTES**

- 25.1 Action initiated under one procedure may be changed to an alternative procedure if investigation of the circumstances indicates this would be more appropriate.
- 25.2 In applying this protocol the council will pay due regard to providing reasonable adjustments under the Equality Act 2010 to an employee who has a disability.

## **26. COMPLIANCE**

Failure to follow the procedure set out in this protocol may impact on good employee relations and the reputation of the council as a good employer. In addition, it may result in the council breaching employment legislation, incurring financial penalties and / or damage to its reputation.

## **27. IMPACT ON INDIVIDUAL COUNCIL KEY PRIORITIES**

The protocol provides the cornerstone for developing integrated teams, which will be one of the key elements in enabling the Councils to deepen and strengthen their partnership working. This underpins service provision and enables each organisation to effectively meet its key priorities.

## **28. TRAINING AND AWARENESS REQUIREMENTS**

- 28.1 Managers and employees will be informed about this policy and procedure via relevant communication channels.
- 28.2 HR will liaise with directorate management teams to establish and agree support arrangements to assist managers to carry out their responsibilities.

## **29. MONITORING**

- 29.1 HR will be notified of any cases where it is concluded that the policy was breached. The notification will indicate whether there are any changes or improvements required to the policies, procedure, training, support or any other aspect of the council's approach to dignity at work matters.

29.2 HR will monitor the effectiveness of the policy through information received via feedback from managers and employees through, for example, management team meetings, Employee Surveys and exit interviews, as well as the numbers of employees using this procedure.

### **30. REVIEW**

This document will be regularly reviewed to ensure relevance and fitness for purpose.

## **SCHEDULE 4: FINANCIAL PROTOCOL**

### **1. General**

- 1.1 As part of the Parties' agreement to enter into a Strategic Partnership, there is the requirement for a Financial Protocol that establishes the principles of how the financial relationship between the Parties will work.
- 1.2 The Parties agree to be bound by the terms of the Financial Protocol and to fulfil their respective obligations there under.
- 1.3 The principles within the Financial Protocol will need to be adhered to in each Business Case considered under the Transformation Programme.

### **2. High Level Principles**

- 2.1 Both Councils must benefit in each Business Case.
- 2.2 There must be an agreed Shared Service Commencement Date (starting date) for each Shared Service.

#### **2.3 Pre-Shared Service Commencement Date**

- 2.3.1 Savings and associated costs incurred by the Parties prior to the agreed Shared Service Commencement Date for any Service shall remain with the respective Parties, with the exception of 2.5.2.1(b)(iii) below.
- 2.3.2 Each Party shall supply to the other such financial information as is necessary to inform each Business Case and such financial information shall be based on the documented budget for the latest financial year, detailing ongoing revenue and capital costs for the Service.
- 2.3.3 The financial information supplied by each Party to the other will inform the agreement of the 'in-scope baseline costs' for each Party which will be used as a single version of the truth for pre-commencement work for the existing Services, supporting how they are presently delivered.

#### **2.4 Transition Costs**

- 2.4.1 Costs attributable to a Transformation Project (Transition Costs) shall be shared on a 50/50 basis between the Parties unless:
  - (a) otherwise specified in an Agreed Business Case in which case the terms of the Agreed Business Case shall prevail; or
  - (b) unless otherwise agreed by the Parties in writing.
- 2.4.2 The costs to be treated as Transition Costs shall be identified in the Agreed Business Case.
- 2.4.3 The costs sharing in clause 2.4.1 may result in one Party making a financial contribution to the other Party to ensure that the Transition Costs are shared on a 50/50 basis (**Transition Apportionment**).

## 2.5 POST SHARED SERVICE COMMENCEMENT DATE COSTS

### 2.5.1 SAVINGS

2.5.1.1 Savings attributed to each Party in respect of a Shared Service following a relevant Shared Service Commencement Date will be based on the following:

(a) Savings in relation to a Shared Service will be identified by comparing the agreed in-scope baseline costs of each Party, before the Shared Service Commencement Date, to their agreed share of costs from the Shared Service Commencement Date, as set out in paragraph 2.5.2. The starting point for cost sharing will be 50/50 unless agreed separately in the Agreed Business Case for a particular Shared Service.

(b) This split may result in one Party making a financial contribution to the other Party to ensure the savings of the Shared Service are in line with the Agreed Business Cases (**Savings Apportionment**).

(c) For a Savings Apportionment to fall due and payable it must be agreed in writing by the S151 Officer, Joint Head of Paid Service and Leaders of the respective Parties.

(d) All costs in respect of each Shared Service will be reviewed annually as part of the Cost Review.

### 2.5.2 SHARED SERVICE COSTS

2.5.2.1 Costs applied to each Party following a Shared Service Commencement Date will comply with the following unless otherwise specified in an Agreed Business Case in which case the terms of the Agreed Business Case shall prevail:

(a) Ongoing Staffing costs

i. Salaries, national insurance and superannuation contributions will be borne by the Party who employs the staff, with the other Party contributing to 50% of these costs, unless agreed separately in individual Business Cases

ii. Other staffing costs including travel, individual training and overtime will be borne by the Party who employs the staff, with the other Party contributing to 50% of these costs, unless agreed separately in individual Business Cases

(b) Ongoing non-Staffing direct costs

i. Direct non-staffing costs associated with delivering the Shared Service e.g. equipment, materials and subscriptions, will be shared between the Parties based on the agreed individual Business Case

ii. Any efficiencies from joint procurements for contracted services will be shared between the Parties based on the relevant tender documentation specification and agreed outputs for each Party

iii. Any sunk fixed costs for each Shared Service requiring to be written off may be shared across both Councils as agreed in individual business cases. These are costs (capital generally in nature) that have been invested in the services prior to the commencement date that are now not required and need to be written off.

2.5.2.2 The split in paragraph 2.5.1.1 may result in one Party making a financial contribution to the other Party to ensure the savings of the Shared Service are in line with the Agreed Business Cases (**Shared Service Apportionment**).

### **2.5.3 OTHER COSTS (Indirect Central costs)**

2.5.3.1 Unless otherwise agreed between the parties in writing, indirect central costs such as property/accommodation costs and centralised IT costs will not be shared between the Parties as each Party will maintain their own office base and IT infrastructure.

2.5.4.2 Any additional indirect costs arising from the Transformation Programme, which are not attributable to an individual Agreed Business Case, will be considered as part of the Costs Review as set out in Schedule 5.

2.5.4.3 Any apportionment of costs shall be made in accordance with the provisions decided at any Cost Review (**Other Costs Apportionment**).

## **2.6 INSURANCE**

2.6.1 Insurance and insurance premiums are Party specific in accordance with clause [x].

2.6.2 Severance (Redundancy Payments) will be borne by the Employing Party with the other non-employing Party contributing 50% of these costs, unless agreed separately in individual Agreed Business Cases.

## **2.7 OTHER CONSIDERATIONS**

2.7.1 Each Agreed Business Case must include an appropriate Transition Plan for the Service post Shared Service Commencement Date.

2.7.2 The Parties will ensure that the Information Sharing Protocol is referenced in the Agreed Business Case and is appropriate.

**2.8** The above principles assume there is an Agreed Business Case for each Service Area based on detailed financial information and other relevant Inputs from both Parties.

## **SCHEDULE 4**

### **COST REVIEW APPORTIONMENT AND PAYMENT MECHANISM**

#### **1. COST REVIEW**

- 1.1 The Parties will carry out a Cost Review in accordance with the Financial Protocol .
- 1.2 At the Cost Review the Parties will reconcile and agree the value of the Apportionments retrospectively for the period commencing on the date of the previous Costs Review and expiring on the date of the Costs Review.
- 1.3 At each Costs Review the Parties:
  - 1.3.1 will determine and agree the value of the Apportionments and whether an Apportionment Payment is due from one Party to the other;
  - 1.3.2 whether the Apportionments as calculated reflect the Financial Protocol; and
  - 1.3.3 the frequency of the Costs Reviews.

#### **2. PAYMENT MECHANISM**

- 2.1 An Apportionment Payment shall be calculated in accordance with the Financial Protocol at the Costs Review.
- 2.2 Following Costs Review, the S151 Officer of each Party shall within a reasonable period of time, review any Apportionment Payment in consultation with their respective Chief Executive, Resources Portfolio Holder and Leader of the Council to ensure that it has been properly calculated in accordance with the Financial Protocol.
- 2.3 The Apportionment Payment shall be agreed and fall due when the S151 Officers of each Party agree the Apportionment Payment in writing.

**SCHEDULE 6**  
**BUSINESS CASE**

1. The Parties agree that each Business Case shall at a minimum include the following:
  - 1.1 details of Posts Holders to perform S113 Duties and arrangements in relation to those Post Holders;
  - 1.2 the information required in the Financial Protocol to be included in an agreed Business case;
  - 1.3 Transition Plan;
  - 1.4 Information Sharing Protocol;
  - 1.5 KPIs;
  
  - 1.6 any matters to be agreed in relation to the Service Area which may include;
    - 1.6.1 treatment and agreement around IPRs;
    - 1.6.2 change control procedures;
    - 1.6.3 any commercially sensitive information;
    - 1.6.4 other matters applicable to the Service Area.



**ONE TEAM PROJECT TEAM TERMS OF REFERENCE**

***#OneTeam Transformation Programme***

**Programme Governance**

**#OneTeam Transformation Project Team**

**Terms of Reference v2. (April 2022)**

**1. PURPOSE**

The #OneTeam Project Team is ultimately responsible for supporting the delivery of all aspects of the #OneTeam Transformation Programme (“**The Programme**”)

**2. RESPONSIBILITIES**

2.1 Implementing the Programme vision;

2.2 Creating the Programme project plan and delivering against agreed key milestones and actions;

2.3 Ensuring the Programme is sufficiently resourced;

2.4 Developing supporting processes, procedures and templates to enable the delivery of the Programme;

2.5 Workstream leads to deliver against their key milestones -

2.5.1 Communicating information about the Programme to staff, Members, external customers and stakeholders and facilitating engagement via the Communication and Engagement Workstream lead

2.5.2 Ensuring staff are supported and developed to possess the right skills and knowledge via the HR and Workforce Development Workstream lead

2.5.3 Progressing and monitoring agreed projects, following approval of #OneTeam business cases via the Service Delivery Workstream lead to deliver benefits

9.1 Mitigation of risks associated with the Programme and those escalated from the provider of Programme Management Services/Programme Manager;

9.2 Reviewing service reviews and supporting #OneTeam business cases to check alignment with the principles and objectives of the Programme, before they are considered by the Programme Board;

9.3 Agreeing escalated items to the Programme Board and/or Programme Sponsor; and

#### 9.4 Reviewing reports and reporting to management and/or Council meetings

### **3. CHAIR, SECRETARIAT & MEETING FREQUENCY**

- 3.1 Meetings will be chaired by the Programme Senior Responsible Officer (SRO)
- 3.2 Notes of meetings will be taken by Corporate Services and circulated within ten (10) Working Days after the meeting, with the first day being the day after the meeting (this will be reviewed as the programme progresses);
- 3.3 When the Chair has approved the notes, they will be circulated by Corporate Services to all members of the #OneTeam Programme Board for information
- 3.4 An agenda will be produced by the provider of Programme Management Services/Programme Manager (in consultation with the Programme SRO as required) and circulated to all members of the Project Team no later than five (5) Working Days before the scheduled date of the meeting;
- 3.5 Unless the Project Team members otherwise agree, the Project Team shall hold at least one meeting every month;
- 3.6 Meetings to take place by video conference

### **4. REPORTING**

- 4.1 The Project Team shall receive agreed reports from the the provider of Programme Management Services/Programme Manager, identified by the Programme's SRO as being appropriate to bring to the Project Team;
- 4.2 Highlight Reporting will include the following, detailing any anticipated exceptions and emerging risks/issues and mitigation:
  - 4.2.1 Programme and Service Delivery Workstream
  - 4.2.2 Comms & Engagement Workstream
  - 4.2.3 HR & Workforce Development Workstream
- 4.3 Information from highlight reports will be reflected on the latest version of the #OneTeam Transformation Project Plan and this will be the document that outlines progress against key milestones and deliverables

### **5 MEMBERSHIP & EXPECTATIONS OF MEMBERS**

- 5.1 The Programme SRO shall appoint up to six core Project Team Members
- 5.2 Guests may be invited to meetings of the Project Team where relevant on an ad hoc basis and with the prior consent of the Programme SRO, to include Service Leads when presenting relevant business cases

### **6 QUORACY**

- 6.1 Meetings would require at least the following Project Team members to be in attendance:
  - Programme Sponsor
  - Programme SRO
  - Programme Manager or a Workstream Lead
  -

## 7 REMOVAL OF #OneTeam PROJECT TEAM MEMBERS

- 7.1 The Programme SRO shall be entitled to remove and replace the Project Team Members (or any of them) appointed by it. Any removal of a Project Team Member shall be effected by notice in writing and shall take effect when served (subject to any contrary intention expressed in the notice);
- 7.2 Notwithstanding any other term of this Agreement, the Programme SRO shall forthwith remove a Project Team Member (in accordance with paragraph 7.1) where:
- The Project Team Member is convicted of any offence of fraud or dishonesty; or
  - The Project Team Member ceases to be employed by the Council or an elected member of the Council; or
  - The Project Team Member ceases to be formally engaged or commissioned by the Council
- 7.3 If a member of the Project Team Member is removed for any of the above reasons, the Programme SRO shall appoint the successor to sit on the Project Team as a replacement member of the Team

## 8 REVIEW OF TERMS OF REFERENCE

- 8.1 The Terms of Reference for the Project Team shall be reviewed by the Programme SRO on a six monthly basis

### MEMBERSHIP

Member	Role in organisation	Role on Programme
Jonathan Stephenson	Chief Executive Officer	#OneTeam Transformation Programme Sponsor
Angela Hutchings	Strategic Director	#OneTeam Transformation Programme SRO
Nichola Mann	HR Manager	#OneTeam Transformation Programme HR & Workforce Development Workstream Lead TBC
Angela Hogg	n/a – commissioned provider of Programme Management services	#OneTeam Transformation Programme Manager
Dominic Chessum (to end July 2022)	n/a – commissioned provider of Communication and Engagement services	#OneTeam Transformation Programme Comms & Engagement Workstream Lead
TBC	Tier 3 Service Director TBC	#OneTeam Transformation Programme Service Delivery Workstream Lead

## SCHEDULE 8

### EMPLOYMENT PROVISIONS

#### 1. Definitions

In this Schedule, the following definitions shall apply:

<b>Employee Liabilities</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"><li>– redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li><li>– unfair, wrongful or constructive dismissal compensation;</li><li>– compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li><li>– compensation for less favourable treatment of part-time workers or fixed term employees;</li><li>– outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</li></ul>
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	<p>– employment claims whether in tort, contract or statute or otherwise; and any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation.</p>
<b>Final Personnel List</b>	A list provided by the Transferor Party of all Personnel who will transfer under TUPE on the Relevant Transfer Date.
<b>Personnel</b>	all directors, officers, employees, agents, consultants and contractors of a Party to this Agreement engaged in the performance of Services under this Agreement.
<b>Provisional Personnel List</b>	a list prepared by the Transferor Party of all Personnel who are wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Transferee Party.
<b>Relevant Transfer</b>	a transfer of employment to which TUPE applies.
<b>Relevant Transfer Date</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
<b>Replacement Supplier</b>	means any third party who is engaged whether directly or indirectly by either Party after the Termination Date in the discharge of functions and provision of services which are the same or similar to the Services or any part of them (or one of the Parties where it is providing these Services on its own account following a period of not having done so).
<b>Service Transfer</b>	any transfer of the Services (or any part of the Services), for whatever reason, from one Party to the other Party or to a Replacement Supplier.
<b>Service Transfer Date</b>	the date of a Service Transfer.
<b>Staffing Information</b>	in relation to all persons identified as Transferring Personnel, such information as a Transferee Party

	<p>may reasonably request (subject to all applicable provisions of the Data Protection Legislation) but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>– their ages, dates of commencement of employment or engagement and gender;</li> <li>– details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</li> <li>– the identity of the employer or relevant contracting party;</li> <li>– their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>– their wages, salaries and profit sharing arrangements as applicable;</li> <li>– details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</li> <li>– any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>– details of any such individuals on long term sickness absence,</li> </ul>
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	<p>parental leave, maternity leave or other authorised long term absence;</p> <ul style="list-style-type: none"> <li>– copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and</li> <li>– any other "employee liability information" as such term is defined in regulation 11 of TUPE.</li> </ul>
<b>Transferring Personnel</b>	Those employees of a Transferor Party who are identified as Personnel who will transfer under TUPE on a Relevant Transfer Date.

## TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

### 2. Transfer of Employees

2.1 The Parties do not consider that the Arrangements with effect from the Commencement Date will result in the transfer of employment of any Employees from either Party to the other by virtue of the operation of TUPE on the Commencement Date.

2.2 If any Employee of either Party claims, or it is determined in relation to any Employee, that their Employment Contract has been transferred from one Party (**Transferor Party**) to the other (**Transferee Party**) pursuant to TUPE or the Acquired Rights Directive then:

2.2.1 The Transferee Party shall, within five Working Days of becoming aware of that fact, give notice in writing to the Transferor Party of such fact, stating whether it has offered employment to such person and must notify the Transferor Party immediately if such an offer is accepted; and

2.2.2 If the Transferee Party does not make an offer of employment or such an offer is rejected by the person, the Transferor Party may do so within 15

Working Days of the notification by the Transferee Party or may take such other reasonable steps as the Transferor Party considers appropriate to deal with the matter (provided always that such steps are in compliance with the Law).

- 2.3 If an offer referred to in clause 2.2.2 is accepted (or if the situation has otherwise been resolved by the Transferor Party), the Transferee Party shall immediately release the person from his/her employment or alleged employment.
- 2.4 If, by the end of the 15 Working Day period specified in 2.2.2:
  - 2.4.1 no such offer of employment has been made;
  - 2.4.2 such offer has been made but not accepted; or
  - 2.4.3 the situation has not otherwise been resolved,

the Transferee Party may within five Working Days give notice to terminate the employment or alleged employment of such person.

- 3. Indemnities in relation to any transfer of Employees at the Commencement Date
  - 3.1 Subject to clause 3.1, the Transferor Party shall indemnify the Transferee Party against any Employee Liabilities arising from or as a result of any claim made by or in respect of any person employed or formerly employed by the Transferor Party as at the Commencement Date of this Agreement for whom it is alleged the Transferee Party may be liable by virtue of this Agreement and/or TUPE. The indemnities in this clause 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Transferor Party whether occurring or having its origin before, on or after any Relevant Transfer, including any Employee Liabilities arising from the Transferor Party's failure to comply with its obligations under TUPE and/or the Acquired Rights Directive.
  - 3.2 If any such person as is described in clause 2.2 is neither re-employed by the Transferee Party nor dismissed by the Transferor Party within the 15 Working Day period referred to in clause 2.4, such person shall be treated as having transferred to the Transferee Party and the Transferee Party shall comply with such obligations as may be imposed upon it under Law.
  - 3.3 Where any person remains employed by the Transferor Party pursuant to clause 3.2, all Employee Liabilities in relation to such employee shall remain with the Transferor Party and the Transferor Party shall indemnify the Transferee Party against any Employee Liabilities that the Transferee Party may incur in respect of any such employees of the Transferor Party that arise in respect of the period from the Commencement Date.



## EMPLOYMENT EXIT PROVISIONS

4. In addition to following the provisions of the Exit Plan set out in Schedule 9, the following provisions will apply in the event of termination of this whole Agreement (whether by effluxion of time or otherwise).

5. Pre-service transfer obligations

5.1 The Parties agree that within [INSERT TIME PERIOD] of the earliest of:

5.1.1 receipt of a notification from one Party to the other Party of a Service Transfer or intended Service Transfer;

5.1.2 receipt of the giving of notice of early termination or any partial termination of this Agreement;

5.1.3 the date which is 12 months before the end of the Term; and

5.1.4 receipt of a written request of either Party to the other Party at any time (provided that each Party shall only be entitled to make one such request in any 12 month period),

the Party in receipt of any such request or notification as set out at clauses 5.1.1 to 5.1.4 above shall provide in a suitably anonymised format so as to comply with Data Protection Legislation, a Provisional Personnel List, together with the Staffing Information in relation to its Provisional Personnel List and it shall provide an updated Provisional Personnel List at such intervals as are reasonably requested by the Transferee Party.

5.2 At least 28 Working Days prior to the Service Transfer Date, the Transferor Party shall provide to the Replacement Supplier:

5.2.1 the Final Personnel List, which shall identify which of the Personnel are Transferring Employees; and

5.2.2 the Staffing Information in relation to the Final Personnel List (insofar as such information has not previously been provided).

5.3 The Transferee Party shall be permitted to use and disclose information provided by the Transferor Party under clause 5.1 and clause 5.2 for the purpose of informing any prospective Replacement Supplier.

5.4 The Transferor Party warrants, for the benefit of the Replacement Supplier, that all information provided pursuant to clause 5.1 and clause 5.2 shall be true and accurate in all material respects at the time of providing the information.

5.5 From the date of the earliest event referred to in clauses 5.1.1, -5.1.2 and 5.1.3, the Transferor Party agrees that it shall not assign any person to the provision of the Services who is not listed on the Provisional Personnel List and shall not without the approval of the Transferee Party (not to be unreasonably withheld or delayed):

5.5.1 replace or re-deploy any Personnel listed on the Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

5.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Personnel (including any payments connected with the termination of employment);

5.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Personnel save for fulfilling assignments and projects previously scheduled and agreed;

5.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provisional Personnel List;

5.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Functions (or the relevant part of the Functions); or

5.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Provisional Personnel List save by due disciplinary process,

and shall promptly notify the Replacement Supplier of any notice to terminate employment given by the Transferor Party or received from any persons listed on the Provisional Personnel List regardless of when such notice takes effect.

5.6 During the Term, each Party shall provide to the other any information that such requesting Party may reasonably require relating to the manner in which the Services are organised, which shall include:

5.6.1 the numbers of employees engaged in providing the Services;

5.6.2 the percentage of time spent by each employee engaged in providing the Services; and

5.6.3 a description of the nature of the work undertaken by each employee.

5.7 The Transferor Party shall provide all reasonable cooperation and assistance to the Replacement Supplier to ensure the smooth transfer of the Transferring Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Transferor Party shall provide to the Replacement Supplier, in respect of each person on the Final Personnel List who is a Transferring Employee:

5.7.1 the most recent month's copy pay slip data;

5.7.2 details of cumulative pay for tax and pension purposes;

5.7.3 details of cumulative tax paid;

5.7.4 tax code;

5.7.5 details of any voluntary deductions from pay; and

5.7.6 bank/building society account details for payroll purposes.

6. TUPE exit provisions

6.1 The Parties acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Functions) may change (whether as a result of termination or partial termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which TUPE and/or the Acquired Rights Directive will apply. The Parties further agree that, as a result of the operation of TUPE, where a Relevant Transfer occurs, the contracts of employment between the Transferor Party and the Transferring Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and each such Transferring Employee.

6.2 The Transferor Party shall comply with all its obligations in respect of the Transferring Employees arising under TUPE in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge all its obligations in respect of all the Transferring Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension

contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) any necessary apportionments in respect of any periodic payments shall be made between the Transferor Party and the Replacement Supplier.

6.3 Subject to clause 6.4, the Transferor Party shall indemnify the Replacement Supplier against any Employee Liabilities in respect of any Transferring Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

6.3.1 any act or omission of the Transferor Party whether occurring before or on the Service Transfer Date;

6.3.2 the breach or non-observance by Basildon occurring on or before the Service Transfer Date of:

6.3.2.1 any collective agreement applicable to the Transferring Employees; and/or

6.3.2.2 any other custom or practice with a trade union or staff association in respect of any Transferring Employees which the Transferor Party is contractually bound to honour;

6.3.3 any claim by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Transferor Party to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

6.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

6.3.4.1 in relation to any Transferring Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

6.3.4.2 in relation to any employee who is not a Transferring Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer their employment from the Transferor Party to the Replacement Supplier, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

- 6.3.5 a failure of the Transferor Party to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employees in respect of the period up to (and including) the Service Transfer Date;
  - 6.3.6 any claim made by or in respect of any person employed or formerly employed by the Transferor Party other than a Transferring Employee for whom it is alleged the Replacement Supplier may be liable by virtue of this Agreement and/or TUPE and/or the Acquired Rights Directive; and
  - 6.3.7 any claim made by or in respect of a Transferring Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Employee relating to any act or omission of the Transferor Party in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Replacement Supplier to comply with regulation 13(4) of TUPE.
- 6.4 The indemnities in clause 6.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 6.4.1 arising out of the resignation of any Transferring Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier to occur in the period on or after the Service Transfer Date; or
  - 6.4.2 arising from the Replacement Supplier's failure to comply with its obligations under TUPE.
- 6.5 If any person who is not a Transferring Employee claims, or it is determined in relation to any person who is not a Transferring Employee, that their contract of employment has been transferred from the Transferor Party to the Replacement Supplier pursuant to TUPE and/or the Acquired Rights Directive, then:
- 6.5.1 the Replacement Supplier shall, within five Working Days of becoming aware of that fact, give notice in writing to the Transferor Party ; and
  - 6.5.2 the Transferor Party may offer employment to such person within 15 Working Days of the notification by the Replacement Supplier or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

6.6 If such offer is accepted, or if the situation has otherwise been resolved by the Transferor Party, the Replacement Supplier shall immediately release or procure the release of the person from his/her employment or alleged employment.

6.7 If after the 15 Working Day period specified in clause 6.5.2 has elapsed:

6.7.1 no such offer of employment has been made;

6.7.2 such offer has been made but not accepted; or

6.7.3 the situation has not otherwise been resolved;

the Replacement Supplier may, within five Working Days, give notice to terminate the employment or alleged employment of such person.

6.8 Subject to the Replacement Supplier acting in accordance with the provisions of clause 6.5 to clause 6.7, and in accordance with all applicable proper employment procedures set out in the applicable Laws, the Transferor Party shall indemnify the Replacement Supplier against all Employee Liabilities arising out of the termination pursuant to the provisions of clause 6.7 provided that the Replacement Supplier takes all reasonable steps to minimise any such Employee Liabilities.

6.9 The indemnity in clause 6.8:

6.9.1 shall not apply to:

6.9.1.1 in any case in relation to any alleged act or omission of the Replacement Supplier any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or

6.9.1.2 any claim that the termination of employment was unfair because the Replacement Supplier neglected to follow a fair dismissal procedure;

6.9.2 shall apply only where the notification referred to in clause 6.5.1 is made by the Replacement Supplier to the Transferor Party within six months of the Service Transfer Date.

6.10 If any such person as is described in clause 6.5 is neither re-employed by the Transferor Party nor dismissed by the Replacement Supplier within the time scales set out in clause 6.5 to clause 6.7, such person shall be treated as a Transferring

Employee and the Replacement Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

- 6.11 the Transferor Party shall comply with all its obligations under TUPE and shall perform and discharge all its obligations in respect of the Transferring Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Transferor Party and any Replacement Supplier.
- 6.12 the Transferor Party shall promptly provide to any Replacement Supplier in writing such information as is necessary to enable the Replacement Supplier to carry out its duties under regulation 13 of TUPE. The Transferee Party shall, and shall procure that any Replacement Supplier shall, promptly provide to the Transferor Party in writing such information as is necessary to enable the Transferor Party to carry out its duties under regulation 13 of TUPE.
- 6.13 Subject to clause 6.14, the Transferee Party shall indemnify the Transferor Party against any Employee Liabilities in respect of each Transferring Employee (or, where applicable any employee representative (as defined in TUPE) of any Transferring Employee) arising from or as a result of:
- 6.13.1 any act or omission of the Replacement Supplier;
  - 6.13.2 the breach or non-observance by the Replacement Supplier on or after the Service Transfer Date of:
    - 6.13.2.1 any collective agreement applicable to the Transferring Employees; and/or
    - 6.13.2.2 any custom or practice in respect of any Transferring Employees which the Replacement Supplier is contractually bound to honour;
  - 6.13.3 any claim by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Replacement Supplier to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 6.13.4 any proposal by the Replacement Supplier to change the terms and conditions of employment or working conditions of any Transferring Employees on or after their transfer to the Replacement Supplier (as the

case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

6.13.5 any statement communicated to or action undertaken by the Replacement Supplier to, or in respect of, any Transferring Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Transferor Party in writing;

6.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

6.13.6.1 in relation to any Transferring Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

6.13.6.2 in relation to any employee who is not a Transferring Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer their employment from the Transferor Party to the Replacement Supplier to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

6.13.7 a failure of the Replacement Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and

6.13.8 any claim made by or in respect of a Transferring Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Employee relating to any act or omission of the Replacement Supplier in relation to obligations under regulation 13 of TUPE.

6.14 The indemnities in clause 6.13\_ shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Transferor Party (as applicable) whether occurring or having its origin before, on or after the Relevant



Transfer Date, including any Employee Liabilities arising from the failure by the Transferor Party (as applicable) to comply with its obligations under TUPE.

## **SCHEDULE 9**

### **EXIT PLAN**

1. The Parties shall within 6 months of the date of the service of notice of termination agree an Exit Plan which sets out the proposed methodology for achieving an orderly transition of services and termination of the strategic partnership.
2. The Exit Plan shall contain as a minimum:
  - Contain the full establishment list for each Council
  - Set out the scope and level of support for each Council to ensure that the smooth transition of services.
  - Contain details of the Lead Officers managing the Exit Plan
  - Agree a list of any external expert advice/services
  - Timetable of any critical issues
  - List of any joint contracts/software licences
  - List of any shared assets
  - Any outstanding apportionments of expenses
3. The Exit Plan shall also contain arrangements for the termination of data sharing agreements and ensure a smooth transition of services.
4. The Parties agree that any transition of services shall have little or no impact on the residents of their district.

**SCHEDULE 10**  
**EXPERT DETERMINATION**

**Expert:** a person appointed in accordance with clause 22 to resolve an Operational Matter.

**1. Expert**

- 1.1 An Expert is a person appointed in accordance with this Schedule 10 to resolve an Operational Matter.
- 1.2 The parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of their appointment.
- 1.3 If the parties are unable to agree on an Expert or the terms of their appointment within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request [NAME OF BODY ENTITLED TO MAKE NOMINATION] to appoint an Expert [PROFESSIONAL QUALIFICATION] of repute with international experience in [TYPE OF MATTER] [and for the [NAME OF BODY ENTITLED TO MAKE NOMINATION] to agree with the Expert the terms of appointment].
- 1.4 The Expert is required to prepare a written decision [including reasons] and give notice (including a copy) of the decision to the parties within a maximum of [three] months of the matter being referred to the Expert.
- 1.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- (a) [the parties may agree OR either party may apply to [NAME OF BODY ENTITLED TO MAKE NOMINATION]] to discharge the Expert; and
  - (b) [the parties OR a party] may proceed to appoint a replacement Expert in accordance with this paragraph 1 which shall apply to the replacement Expert as if they were the first Expert to be appointed.
- 1.6 All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.
- 1.7 The parties are entitled to make submissions to the Expert [including oral submissions] and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.]

- 1.8 [To the extent not provided for by this clause, the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate [including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination].]
- 1.9 [Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause.]
- 1.10 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the Operational Dispute [which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference]. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of [manifest error or] fraud.
- 1.11 In determining the Operational Matter, the Expert shall take into account [SPECIFY BRIEFLY ANY MATTERS WHICH THE EXPERT IS TO TAKE INTO ACCOUNT].
- 1.12 [Each party shall bear its own costs in relation to the reference to the Expert **OR** The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination shall be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs]. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties [equally or in such other proportions as the Expert shall direct].
- 1.13 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 1.14 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching their determination.

**SCHEDULE 11**

**CONFLICTS SCHEDULE**

**[To be Attached when agreed]**

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**APPENDICIES**

**Index of Business Cases that have been appended to this Agreement and form part of it.**

<b>Appendix Number</b>	<b>Description</b>	<b>Date</b>

