

Subject: ICT Joint Co-operation Agreement

Report to: EMT – 26th May 2016
Policy and Resources Committee – 14th June 2016

Report by: Jane Beck – Director of Customer Services

SUBJECT MATTER/RECOMMENDATIONS

This report requests approval for the adoption of the Public Service Co-operation Agreement between Great Yarmouth Borough Council and Norfolk County Council for the provision of ICT Services.

1. INTRODUCTION/BACKGROUND

The Council in 2010 entered into a Delegation Agreement with Norfolk County Council (NCC) to deliver ICT services. At this point in time all GYBC staff transferred to NCC together with delegation of the budget to provide a comprehensive overall service.

Since the introduction of the agreement in 2010 a number of large scale projects have been successfully implemented including the installation of a new and improved telephony system, robust infrastructure connections and a large scale relocation of servers to the NCC datacenter.

The requirement for ICT has changed significantly over the 5 year period of the initial delegation agreement and has identified the need to review the existing agreement with NCC to develop a more flexible contract for the future.

2. CURRENT POSITION

In 2011 the approach to shared service by NCC identified the need to include all elements of the ICT service hence the TUPE transfer of all ICT staff across to NCC. Beneficial for both staff and the organization at the time it has been identified that this situation has led to an inability to evaluate and identify the best ICT opportunities for this Council.

In order to ensure that ICT is delivering the requirements of the organisation the ICT Strategy is currently under review and will be coming forward to a future meeting of the Policy and Resources Committee for consideration. In the short-term to ensure the Council has the most effective, flexible and adaptable agreement it is proposed that a Joint Co-operation Agreement is confirmed.

The continued move toward increased digital services for our customers will further develop the need for change. In addition the continued move toward mobile services for staff will require system development. These issues will be considered further as part of the ICT Strategy.

A number of service specific elements are now delivered direct for example: Web site hosting and services; 'My Account' functionality; online forms. The Council will continue to review not only best value but to ensure that council aspirations for digital services remain in line with the ICT Strategy.

3. FINANCIAL IMPLICATIONS

The new Co-operation Agreement identifies individual services supplied by NCC together with clear notification of costs and the ability to reduce the contracted services on an element by element basis with a maximum of six months' notice. Schedule 2 on the agreement identifies these costs in more detail and identifies the breakdown in relation to the revised contract and gives proposes cost reductions from that of the previous contract.

The agreement does offer the flexibility to change the contract however it should be noticed that a contractual commitment relating to Voice and Data services will remain for the duration of the agreement.

The development of the ICT Strategy will outline further investment and savings opportunities in addition to clarifying the best method of delivery for the Great Yarmouth ICT service.

4. RISK IMPLICATIONS

The revised agreement offers the opportunity to flex the ICT service to delivery fit for purpose solutions in the future.

Non-adoption of the agreement would lead to an immediate risk in relation to delivery of the ICT service and no short-term suitable arrangements to replace systems.

5. CONCLUSIONS

The adoption of the revised agreement from 1st July 2016 to July 2020 will enable the authority evaluate, identify and action the most appropriate service provision moving forward in addition to benefiting from dedicated on site staff dealing with GYBC issues.

6. **RECOMMENDATIONS**

Policy and Resources Committee are requested to approve the move to a Joint Co-operative Agreement (appendices attached) with Norfolk County Council for the provision of ICT services.

7. **BACKGROUND PAPERS**

Previous and revised delegation agreement

Area for consideration	Comment
Monitoring Officer Consultation:	Contract reviewed
Section 151 Officer Consultation:	Within existing budget
Existing Council Policies:	
Financial Implications:	Covered as part of the agreement
Legal Implications (including human rights):	Reviewed by Monitoring Officer
Risk Implications:	None
Equality Issues/EQIA assessment:	None
Crime & Disorder:	None
Every Child Matters:	None

DATED

Public Service Co-operation Agreement for ICT Services

between

GREAT YARMOUTH BOROUGH COUNCIL

and

THE NORFOLK COUNTY COUNCIL

PARTIES

- (1) GREAT YARMOUTH BOROUGH COUNCIL of Town Hall, Hall Plain, Great Yarmouth, Norfolk NR30 2QF (“**the Borough Council**”)
- (2) NORFOLK COUNTY COUNCIL of County Hall, Martineau Lane, Norwich, Norfolk, NR1 2DH (“**the County Council**”)

BACKGROUND

- (A) The County Council and the Borough Council wish to continue existing arrangements for public service co-operation for ICT services.
- (B) This Agreement provides a framework for the arrangements consequent upon such shared services, including transfer of budgets, equipment, contracts and staff. It also provides for the actions to be taken if and when the shared services arrangements end.
- (C) Each co-operation project within this Agreement will be agreed between the Borough Council and the County Council by completion of a Project Pro-forma.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 1 apply throughout this agreement.

Applicable Law: the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to carrying out of any Co-operation Project.

Assumed Contracts: the existing contracts for the benefit of the Borough Council (and not including any contracts that are also used by the County Council for ICT Services to the County Council or any other body) held by the County Council including contracts in respect of the Borough Council’s software as specified in the Project Pro-forma for the Co-operation Project concerned.

Background IPR: any and all Intellectual Property Rights that are owned by or licensed to either party and which are or have been developed independently of any Co-operation Project (whether prior to the Effective Date or otherwise)

Borough Council's Data: any data (including any personal data relating to the staff of the Borough Council), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to the County Council by or on behalf of the Borough Council, or which the County Council may generate, process, store or transmit pursuant to this Agreement.

Borough Council's Disaster Recovery and Business Continuity Plan: the business continuity and disaster recovery plan of the Borough Council as amended from time to time.

Borough Council's Retained Equipment: the equipment and assets listed in the Project Pro-Forma which is to be used by the County Council to carry out the Co-operation Project after the Effective Date, but which is to remain in the ownership of the Borough Council.

Borough Council's Premises: the premises identified in the Project Pro-forma and which are to be made available for use by the County Council for the carrying out of any Co-operation Project on the terms set out in this agreement or such other reasonable replacement premises as the Borough Council may provide after consultation with the County Council.

Borough Council's Representative: the person identified as such in accordance with clause 11, or any replacement person appointed by the Borough Council pursuant to clause 10, being the person responsible for managing the Borough Council's overall relationship with the County Council under this Agreement.

Borough Council's Responsibilities: the responsibilities of the Borough Council as specified in clause 18 and as supplemented in the Project Pro-forma for the Co-operation Project concerned

Borough Council's Service Environment: the premises identified in the Project Pro-Forma of the Borough Council which the County Council will carry out the Co-operation Project concerned at.

Borough Council's Software: any software which is used by, or licensed to, the Borough Council other than pursuant to this Agreement, and which may be used by the County Council for the sole purpose of carrying out the Co-operation Project concerned including those listed on the Project Pro-forma.

Change Control Procedure: the procedures as set out in clause 12.

Confidential Information: any information, however conveyed or presented, that relates to the business, affairs, operations, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how and personnel of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably to be considered to be confidential.

Consents: all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for carrying out any Co-operation Project.

Co-operation Project: any project of co-operation entered into under this Agreement by the completion of a Project Pro-forma and **Co-operation Projects** shall mean the Co-operation Projects entered into under this Agreement together

County Council's Disaster Recovery and Business Continuity Plan: the business continuity and disaster recovery plan of the County Council as amended from time to time.

County Council's Equipment: the hardware, computer and telecoms devices and equipment supplied by the County Council or its Sub-Contractors (but not hired, leased or loaned from the Borough Council) for the carrying out of any Co-operation Project.

County Council's Personnel: all employees, staff, other workers, agents and consultants of the County Council and of any Sub-Contractors who are engaged in the carrying out any Co-operation Project from time to time.

County Council's Replacement Equipment: equipment provided by the County Council to replace the Borough Council's Retained Equipment where such equipment is solely used to carry out any Co-operation Project for the Borough Council.

County Council's Representative: the person identified as such in accordance with clause 11 or any replacement person appointed by the County Council pursuant to clause 10, as the person responsible for managing the County Council's overall relationship with the Borough Council under this Agreement.

County Council's Software: the software which is owned by the County Council and which is to be used by the County Council and/or the Borough Council in the context of the carrying out of any Co-operation Project.

County Council's System: the information and communications technology system to be used by the County Council in carrying out any Co-operation Project, including the County Council's Software and the County Council's Equipment.

Current NCC Services: the ICT services provided by the County Council to the County Council's non-school staff generally.

Database: the compilation of any data supplied to the County Council by, or on behalf of, the Borough Council or generated by the County Council from any such data.

Data Controller: has the meaning set out in the Data Protection Act 1998.

Data Processor: has the meaning set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Data Subject: has the meaning set out in the Data Protection Act 1998.

Dispute: any dispute under this Agreement.

Dispute Resolution Procedure: the dispute resolution procedure set out in clause 25.

Effective Date: the commencement date for the Co-operation Project concerned, as specified in the Project Pro-forma

Employees: employees of the Borough Council or the County Council or any contractor (or sub-contractor) of either of them who are engaged in the provision of any Co-operation Project.

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006.

End Date: the date specified in the Project Pro-forma as the end date for the Co-operation Project or such earlier date as the Co-operation Project comes to an end in accordance with the terms of this Agreement.

Exit Plan: the plan for the provision of ending and transition in the event of the expiry or termination of the Co-operation Project for any reason as described in clause 24 as supplemented by each Project Pro-Forma.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the County Council or the Borough Council's personnel.

IPRs: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

IPR Claim: any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPRs used to carry out any Co-operation Project other than in respect of the Borough Council's Software.

Personal Data: has the meaning set out in the Data Protection Act 1998.

Project Budget: the funding for each Co-operation Project based on the transferring budget, operational expenditure, service improvements and a contingency sum, as amended with the agreement of the parties from time to time.

Project Pro-forma: the terms for each Co-operation Project in the form at Schedule 1.

Project-Specific IPRs: IPRs in items created by the County Council (or by a third party on behalf of the County Council) specifically for the purposes of this Agreement, including in the Specially Written Software.

Regulatory Bodies: those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any Applicable Law to supervise, regulate, investigate or influence the matters dealt with in this agreement or any other affairs of the Borough Council.

Replacement Services: any services which are identical or substantially similar to those provided under any Co-operation Project carried out by the County Council under this Agreement and which the Borough Council receives following the termination or expiry of this agreement, whether those services are provided by the Borough Council internally or by a contractor appointed by the Borough Council ("**the Replacement Provider**").

Security Policy: the security policy of the County Council as set out at Schedule 6 and as amended by the County Council from time to time.

Service Levels: The service levels applicable to the Current NCC Services as described in clause 17.2 and Schedule 3 as amended from time to time by the County Council.

Software: the County Council's software, the Specially Written Software and the Third Party Software.

Specially Written Software: any software code (excluding any background IPR) which is created by the County Council (or by a third party on behalf of the County Council) specifically for the purposes of this Agreement.

Sub-Contract: any contract between the County Council and a third party pursuant to which the County Council sources the provision of any equipment or services to carry out any Co-operation Project from that third party including both:

(a) any such contracts entered into by the County Council after that date of this Agreement ("**New Sub-Contracts**") and

(b) any contracts existing prior to the date of the Agreement which the County Council amends or extends for the carrying out of any Co-operation Project ("**Extended Sub-Contracts**").

Sub-Contract Liabilities: means both (a) any costs and other liabilities which arise under any Extended Sub-Contracts but only to the extent that such cost or liabilities arise from the amendment or extension of that contract for the carrying out of any Co-operation Project; and (b) any costs and other liabilities arising under any New Sub-Contracts.

Sub-Contractors: those persons with whom the County Council enters into a sub-contract or its or their servants or agents, and any third party with whom that third party enters into a sub-contract or its servants or agents.

Term: the period commencing on the 29 June 2015 and continuing until the later of (a) 28 June 2020; or (b) the End Date of the last remaining Co-operation Project under this Agreement and subject to earlier termination in accordance with the terms of this Agreement.

Termination Period: the six month period prior to the End Date of a Co-operation Project or where a Co-operation Project is ended by notice, the period from the date of the notice to the End Date.

Third Party Software: software which is proprietary to any third party and that is either licensed to the Borough Council or is used by the County Council in the carrying out of any Co-operation Project, excluding any of the Borough Council's Software.

Transferring Employees: those Employees whose contract of employment will be transferred to the County Council at the commencement of any Co-operation Project or the Borough Council or Replacement Provider on expiry or termination of any Co-Operation Project, as the case may be, pursuant to the Employment Regulations on expiry or termination of this Agreement.

Transition Manager: the representative of each of the County Council and the Borough Council appointed in accordance with clause 4.3.

Transition Plan: the plan for the implementation of the arrangements for the carrying out of the Co-operation Project concerned as set out in the Project Pro-Forma and described in clause 4.4.

VAT: value added tax as provided for in the Value Added Tax Act 1994.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

1.2 Words in the singular include the plural and in the plural include the singular.

1.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.4 Clause and schedule headings shall not affect the interpretation of this agreement.

- 1.5 References to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Agreement.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 If there is a conflict or ambiguity between the clauses of this Agreement and the schedules, the conflict shall be resolved in accordance with the following in order of precedence:
- (a) the clauses; and
 - (b) the schedules.
- 1.8 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies.
- 1.9 A reference to this agreement includes a reference to the schedules to this agreement.
- 1.10 A person includes a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.11 Any phrase introduced by the words **including, includes, in particular** or **for example** or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.12 **Writing** or **written** includes faxes but not email.

2 COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the 1 July 2016 and shall continue for the Term or until either party gives notice to the other party, whereupon it shall terminate upon expiry of such notice. The minimum notice which may be given is 6 months in the case of notice by the Borough Council and 12 months in the case of notice by the County Council. In either case the notice shall expire on the last day of a calendar month.
- 2.2 Termination of this Agreement will terminate all current Co-operation Projects. Each Co-operation Project will be for a specified term and be individually capable of early termination to the extent specified in the Project Pro-Forma.
- 2.3 In the event that termination of this Agreement by the Borough Council or due to the default of the Borough Council in either case leads to the early termination of any Co-operation Project, the Borough Council will be responsible for the early termination costs as specified for that Co-operation Project.

3 CO-OPERATION PROJECTS

3.1 Each new Co-operation Project shall be agreed in accordance with this clause 3. Each Co-Operation Project will meet the following criteria:

- (a) will identify the similar or complementary functions / services of both authorities that both either are involved in performing or contributing to;
- (b) In accordance with clauses 5.2 & 5.3, be implemented based solely on public interest considerations; and
- (c) will specify the measures taken and to be adhered to by the parties to ensure it does not distort competition on any open market, and, as a minimum, that the ICT activities concerned with the Co-operation Project are not performed on the open market for more 20% of the total of such activities performed by the County Council and the Borough Council.

3.2 The Borough Council and the County Council will agree a Project Pro-forma for each potential Co-operation Project under this Agreement. Once the Project Pro-forma has been signed by both parties, it will be a Co-operation Project for the purposes of this Agreement. The terms and conditions of this Agreement will apply to each Co-operation Project unless by the parties' agreement expressly varied.

3.3 The Borough Council shall comply with the Borough Council's Responsibilities in respect of each Co-operation Project.

3.4 The County Council shall carry out any Co-operation Project exercising reasonable care and skill and in accordance with the Service Levels.

4 TRANSITION

4.1 The County Council is required to ensure the orderly transition of the services provided under the Delegation of Functions Agreement that commenced on 29 June 2010 to those provided through any Co-operation Project.

4.2 The transition period will commence on the Effective Date of the Co-operation Project and end when the Transition Plan has been completed, or as otherwise indicated in the Transition Plan.

4.3 The County Council and the Borough Council will each appoint a Transition Manager and provide written notification of such appointment to each other. The County Council will ensure that its Transition Manager has the requisite authority to arrange and procure any resources of the County Council as are reasonably necessary to enable the County Council to fulfil its obligations under this Agreement. The Transition Managers will liaise with one another in good faith and on a timely basis in relation to all issues relevant to the transition of services including the production and implementation of the Transition Plan.

4.4 The Transition Plan will include details of those services which will transfer between the County Council and the Borough Council including details of processes and documentation relating to the Borough Council's software and maintenance licences which will be novated from the County Council to the Borough Council.

4.5 The County Council will be responsible for carrying out the Transition Plan for each Co-operation Project subject to the Borough Council carrying out the Borough Council's Responsibilities.

5 TRANSFER OF BUDGET AND COST SHARING

5.1 The Borough Council will pay the Project Budget for each Cooperation Project to the County Council as set out in Schedule 2 (Finance) together with any other payments specified in this Agreement.

5.2 The Borough Council agree that the financial arrangements for the Co-operation Projects shall be underpinned by the following principles:

- (a) save where an exception to this is expressly set out in the Co-operation Project concerned, that the County Council should be overall no better and no worse off as a result of any Co-operation Project; and
- (b) that both parties wish to drive efficiencies and resulting reductions in expenditure where possible, and will do so in accordance with clause 5.3.

5.3 Either party may suggest to the other party potential efficiency savings in any Co-operation Project either based on the Co-operation Project itself or how either party interacts with the Co-operation Project. Any such efficiency savings will be reported to the Borough Council's Representative or the County Council's Representative (as the case may be) by the other party for consideration and, if agreed, adopted via the Change Control Procedure. Each party will be under an obligation to use all reasonable endeavours (but not to itself incur further costs) to implement any agreed efficiency saving.

5.4 The County Council shall notify the Borough Council of any efficiencies or benefits the County Council may be entitled to further to any Sub-Contracts that may provide efficiency savings to the Borough Council in relation to services provided through this Agreement. The Borough Council may then suggest these as potential efficiency savings in accordance with clause 5.3.

5.5 Where the County Council has the benefit of warranties or indemnities under the Sub-Contracts relevant to Co-Operation Projects, to the extent that it has the contractual right to do so the County Council will enforce such Sub-Contracts to obtain the benefit for the Borough Council of such warranties and indemnities.

5.6 Where VAT is payable on any payments made in accordance with clause 5.1 above or elsewhere under this Agreement, this shall be added at the prevailing rate as applicable and paid by the Borough Council following delivery of a valid VAT invoice.

6 TRANSFER OF ASSUMED CONTRACTS

- 6.1 The Borough Council and the County Council will, following the execution of this Agreement, and then at each Effective Date, use their reasonable endeavours to transfer the County Council's interest in the Assumed Contracts to the Borough Council unless it is agreed it is not appropriate to do so on a case by case basis.
- 6.2 The Borough Council will, with effect from each Effective Date, assume the obligations of the County Council and become entitled to the benefits of the County Council under the Assumed Contracts.
- 6.3 The County Council hereby assigns to the Borough Council with effect from each Effective Date all its rights, title and interest under or pursuant to all the Assumed Contracts which are capable of assignment without the consent of other parties.
- 6.4 Insofar as an Assumed Contract cannot be transferred without the consent of a third party or a novation agreement:-
- 6.4.1 this Agreement does not constitute an assignment or an attempted assignment of the assumed contract if such assignment or attempted assignment would constitute a breach of the Assumed Contract;
- 6.4.2 the County Council will, as requested by the Borough Council, use reasonable endeavours (with the co-operation of the Borough Council) to procure such consent or novation except where the Borough Council and the County Council agree it is not appropriate to do so.
- 6.5 Unless and until such consent or novation is obtained (or where the Borough Council and the County Council have agreed it is not appropriate to obtain such consent or novation):-
- 6.5.1 the County Council will hold the benefit of such Assumed Contracts upon trust for the Borough Council absolutely and will account to the Borough Council for any sums or any other benefits received by the County Council in relation thereto without any deduction or withholding of any kind;
- 6.5.2 the County Council will, as the Borough Council's agent, and at its cost perform all the obligations of the County Council under such Assumed Contract including the payment of any sums due (which shall be reimbursed by the County Council save to the extent any sums due arise from the breach of any licence or other term of any Assumed Contract by the County Council, in which case the responsibility as to payment of such sums shall remain with the County Council); and
- 6.5.3 the County Council will do each act or thing reasonably requested of it by the Borough Council to enable performance of the Assumed Contract by the Borough Council and to provide for the Borough Council the benefits of the Assumed Contract (including its rights to enforcement).

6.6 The Borough Council's Retained Equipment will be made available by the Borough Council for use by the County Council in carrying out the Co-operation Project. When no longer required by the County Council for carrying out the Co-operation Project the Borough Council's Retained Equipment may be disposed of in such manner as the Borough Council may decide and direct and the proceeds of disposal shall belong to the Borough Council. The Borough Council shall reimburse the County Council any costs incurred in the disposal of such equipment.

7 STAFF MATTERS

7.1 The Borough Council and the County Council have agreed the terms and conditions which shall apply in relation to any Transferring Employees in Schedule 5 for each Co-operation Project and both parties shall comply with the provisions of that Schedule 5

8 COUNTY COUNCIL'S PROPERTY

8.1 All of the County Council's property located on the Borough Council's premises, including all elements of the County Council's system, shall remain at the sole risk and responsibility of the County Council, except that the Borough Council shall be liable for the loss of or damage to any of the County Council's property located on any Borough Council's premises which is due to the negligent act or omission of the Borough Council.

9 SUPPLY CHAIN

9.1 In each case that the County Council enters into a Sub-Contract pursuant to a Co-operation Project, it shall use its reasonable endeavours to minimise any Sub-Contract Liabilities to the Borough Council after the End Date.

9.2 Other than in respect of those Sub-Contracts listed in the Project Pro-forma or any successor or replacements to these contracts, in respect of any Sub-Contracts the County Council enters into which will give rise to Sub-Contract Liabilities after the End Date then:

- (a) where the proposed Sub-Contract is a New Sub-Contract:
 - (i) for the benefit of the Borough Council only, the prior written consent of the Borough Council will be obtained before the proposed Sub-Contract is entered into and the County Council will use its reasonable endeavours to secure a right to novate the Sub-Contract to the Borough Council upon termination of this Agreement;
 - (ii) for the benefit of the County Council also, then the County Council will obtain the prior written consent of the Borough Council before the New Sub-Contract is utilised in respect of any Co-operation Project;

(b) where the proposed Sub-Contract is an Extended Sub-Contract then the prior written consent of the Borough Council will be obtained before the proposed Sub-Contract is extended or amended (as the case may be).

9.3 Where the Borough Council does not give its consent under clause 9.2(a)(ii) or 9.2(b) to a proposed Sub-Contract within 20 working days of being requested to do so then the definition of the term “Current NCC Services” shall be thereafter interpreted so as to exclude that element of it to which the proposed New Sub-Contract or Extended Sub-Contract was to have provided.

10 GOVERNANCE PROCEDURE

10.1 The parties agree to manage this Agreement through the County Council Representative and the Borough Council Representative.

10.2 The County Council shall appoint the County Council Representative and notify the Borough Council of the identity of the County Council Representative. The County Council Representative and their nominated deputy shall be as initially set out in clause 11 below.

10.3 The Borough Council shall appoint the Borough Council Representative and notify the County Council of the identity of the Borough Council Representative. The Borough Council Representative and their nominated deputy shall be as initially set out in clause 11 below.

11 KEY CONTACTS

Norfolk County Council Representative (1st contact)	Great Yarmouth Borough Council Representative (1st contact)
Suzanne Sowter	Miranda Lee
Portfolio Lead (Places)	Group Manager Customer Services
Suzanne.sowter@norfolk.gov.uk	Miranda.Lee@great-yarmouth.gov.uk
01603 223917	01493 846536

Norfolk County Council Representative Deputy (2nd contact)	Great Yarmouth Borough Council Representative Deputy (2nd contact)
Rob Price	David Jarrel
Service Delivery Manager	ICT Manager
Rob.price@norfolk.gov.uk	david.jarrel@great-yarmouth.gov.uk
01603 475625	01493 846293

12 CHANGE CONTROL PROCEDURE

- 12.1 Changes may only be made to this Agreement or any existing Co-operation Project in accordance with this clause 12.
- 12.2 Either the County Council Representative or the Borough Council Representative (or their deputies) may propose to the other changes to this Agreement or any Co-operation Project. Any such request for change must be in writing.
- 12.3 Any such changes shall only be agreed once they are recorded in a change control note which shall:
- (a) be signed by both the County Council Representative and the Borough Council Representative (or their deputies); and
 - (b) contain written confirmation from both the County Council Representative and the Borough Council Representative (or their deputies) that they have the appropriate authorisation from the County Council and the Borough Council respectively to agree the change.

13 INTELLECTUAL PROPERTY RIGHTS (IPRs)

13.1 It is agreed that:

- (a) the Borough Council shall not acquire any right, title or interest in or to the IPRs of the County Council or its licensors, including:
 - (i) the IPRs relating to the County Council's Software;
 - (ii) the IPRs relating to the Third Party Software; and
 - (iii) the County Council's Background IPRs; and
- (b) the County Council shall not acquire any right, title or interest in or to the IPRs of the Borough Council or its licensors, including:
 - (i) the IPRs relating to the Borough Council's Software;
 - (ii) the IPRs relating to the Borough Council's documentation, processes and procedures;
 - (iii) the IPRs relating to the Borough Council's know-how;
 - (iv) the IPRs relating to the Borough Council's Data;
 - (v) the IPRs relating to the Database; and
 - (vi) the Borough Council's Background IPRs

- (c) the County Council will own any Project Specific IPRs and any IPRs relating to Specially Written Software.
- (d) the Borough Council shall not acquire any right, title or interest in any Project Specific IPRs and IPRs relating to Specially Written Software save that the County Council shall grant to the Borough Council (in so far as it has the power to do so without further cost to the County Council) a non-exclusive royalty free perpetual licence to alter, adapt and use for whatever purposes the Borough Council chooses any Project Specific IPRs and IPRs relating to Specially Written Software. The County Council and the Borough Council agree to enter into such further documentation as may be necessary to give effect to the aforementioned licence.

13.2 Where either party acquires, by operation of law, title to IPRs of the other referred to in clause 13.1, and this acquisition is inconsistent with the allocation of title set out in that clause 13.1, such IPRs shall be assigned by it to the other party on the request of the other party, whenever that request is made.

13.3 Where the County Council has the benefit of warranties or indemnities in respect of IPR under the Sub-Contracts, the County Council will enforce such Sub-Contracts to obtain the benefit of such warranties or indemnities to the Borough Council, to the extent it has the contractual right to do so.

14 BOROUGH COUNCIL'S DATA

14.1 The County Council acknowledges that the Borough Council's Data is the property of the Borough Council and the Borough Council reserves all IPRs which may, at any time, subsist in Borough Council's Data. To the extent that any IPRs in any of the Borough Council by operation of law, such IPRs shall be assigned by the County Council to the Borough Council by operation of this clause 14 immediately upon the creation of such Borough Council's Data.

14.2 The County Council shall:

- (a) not delete or remove any proprietary notices or other notices contained within or relating to the Borough Council's Data;
- (b) not alter, store, copy, disclose or use the Borough Council's Data, except as necessary for the performance by the County Council of its obligations under this Agreement or as otherwise expressly authorised by this Agreement in compliance with the provisions of this Agreement;
- (c) preserve, so far as possible, the integrity of the Borough Council's Data and prevent any loss, disclosure, theft, manipulation or interception of the Borough Council's Data save

where this occurs due to the fault of the Borough Council or their personnel;

(d) make secure back-up copies of the Borough Council's Data on such regular basis as is reasonable for the particular data concerned as required by the County Council's Disaster Recovery and Business Continuity Plan or as otherwise agreed with the Borough Council ; and

(e) immediately notify the Borough Council if any of the Borough Council's Data is lost, becomes corrupted, is damaged or is deleted accidentally.

14.3 The Borough Council hereby grants to the County Council, for the Term, a non-exclusive, non-transferable, royalty-free licence to use the Borough Council's Data solely for the purpose of carrying out the Co-operation Project. The County Council shall not:

(a) modify, amend, alter, remove, delete or enhance the Borough Council's Data without the prior written consent of the Borough Council; or

(b) make any copies of the Borough Council's Data without the prior written permission of the Borough Council.

14.4 To the extent that any Borough Council's Data is held or processed by the County Council, the County Council shall supply such Borough Council's Data to the Borough Council as may be requested by the Borough Council from time to time in the format reasonably specified by the Borough Council.

14.5 On receipt or creation by the County Council of any Borough Council's Data and during collection, processing, storage and transmission by the County Council or any Borough Council's Data, the County Council shall take, and shall procure that each of the County Council's Personnel shall take, all precautions necessary to preserve the security and integrity of the Borough Council's Data and to prevent any corruption or loss of the Borough Council's Data.

15 DATA PROTECTION

15.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Borough Council is the Data Controller and that the County Council is the Data Processor.

15.2 The County Council shall in respect of any Personal Data within the Borough Council's Data:

(a) process the Personal Data only on behalf of the Borough Council (or, if so directed by the Borough Council) only for the purposes of performing this Agreement and only in accordance with instructions contained in this Agreement or received from the Borough Council from time to time;

(b) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised in writing by the Borough Council;

(c) at all times comply with the provisions of the Seventh Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 and, in doing so, provide a written description of the technical and organisational methods employed by the County Council for processing personal data (within the timescales required by the Borough Council) and implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;

(d) take reasonable steps to ensure the reliability of any of the County Council's Personnel who have access to the Personal Data;

(e) obtain prior written consent from the Borough Council before transferring the Personal Data to any Sub-Contractors in connection with the carrying out of the Co-operation Project;

(f) ensure that only those of the County Council's Personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of this Agreement and all of the County Council's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 15;

(g) not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself) unless directed to do so in writing by the Borough Council;

(h) notify the Borough Council (within five Working Days) if it receives:

(i) a request from a Data Subject to have access to that person's Personal Data; or

(ii) a complaint or request relating to the Borough Council's obligations under the Data Protection Legislation; or

- (iii) any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement;
- (i) provide the Borough Council with full co-operation and assistance in relation to any complaint or request made in respect of any Personal Data, including by:
 - (i) providing the Borough Council with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation but strictly in accordance with the Borough Council's instructions;
 - (iii) providing the Borough Council with any Personal Data it holds in relation to a Data Subject making a complaint or request within the timescales required by the Borough Council; and
 - (iv) providing the Borough Council with any information requested by the Borough Council;
- (j) permit the Borough Council or its external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the County Council's data processing activities and those of its agents, subsidiaries and sub-contractors and comply with all reasonable requests or directions by the Borough Council to enable the Borough Council to verify and procure that the County Council is in full compliance with its obligations under this Agreement; and
- (k) not transfer Personal Data outside the European Economic Area without the prior written consent of the Borough Council and, where the Borough Council consents to such transfer, to comply with:
 - (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (ii) any reasonable instructions notified to it by the Borough Council.

15.3 The Borough Council acknowledges that the County Council is reliant on the Borough Council alone for direction as to the extent the County Council is entitled to use and process the Personal Data. Consequently, the County Council shall be entitled to relief from liability in circumstances where a Data Subject makes a

claim or complaint with regards to the County Council's actions to the extent that such actions directly result from instructions received from the Borough Council.

15.4 The County Council shall procure that each of the Sub-Contractors shall comply at all times with the Data Protection Legislation and shall not perform their obligations under this Agreement in such a way as to cause either party to breach any of its obligations under the Data Protection Legislation. The County Council shall immediately notify the Borough Council in the event that it becomes aware of any breach of the Data Protection Legislation by the County Council or any of the Sub-Contractors in connection with this Agreement.

15.5 The County Council shall, at all times during and after the Term, indemnify the Borough Council and keep the Borough Council indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Borough Council arising from any breach of the County Council's obligations under this clause 15 except and to the extent that such liabilities have resulted directly from the Borough Council's instructions.

15.6 It is anticipated that during the term of this Agreement, the law on Data Protection will change. The County Council and the Borough Council will negotiate in good faith any changes required to this Agreement and/or any Co-operation Project to comply with such changes on the basis that the County Council is left no better and no worse off in the carrying out of the Co-operation Project's concerned.

16 CONFIDENTIALITY

16.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:

- (a) treat the other party's Confidential Information as confidential; and
- (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

16.2 Clause 16.1 shall not apply to the extent that:

- (a) such information was in the possession of the party making the disclosure, without obligation of confidentiality, prior to its disclosure; or
- (b) such information was obtained from a third party without obligation of confidentiality; or
- (c) such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement; or

(d) such information was independently developed without access to the other party's Confidential Information; or

(e) either party is obliged to disclose such Confidential Information pursuant to its duties under the Environmental Information Regulations 2004, the Freedom of Information Act 2000 or other applicable legislation or is ordered to disclose such information by a court tribunal regulator or other competent authority.

16.3 The County Council may only disclose the Borough Council's Confidential Information to the County Council's Personnel who are directly involved in the carrying out of any Co-operation Project and who need to know the information. The County Council shall ensure that such County Council's Personnel are aware of, and comply with, these confidentiality obligations.

16.4 The County Council shall not, and shall procure that the County Council's Personnel do not, use any of the Borough Council's Confidential Information received otherwise than for the purposes of this Agreement.

16.5 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPRs.

17 SECURITY REQUIREMENTS

17.1 The County Council and the Borough Council shall comply with the Security Policy. Any changes to the Security Policy shall be notified to the Borough Council by the County Council.

17.2 The County Council will comply with any security policy of the Borough Council that is notified to it in respect of any Co-operation Project, save to the extent it prevents or incurs the County Council additional cost to carrying out the Co-operation Project. In this eventuality, the County Council will notify the Borough Council of the conflict and the Borough Council may (a) amend its policy to remove the conflict, (b) authorise the County Council to incur the additional costs, which the Borough Council shall be responsible for, or (c) agree that the County Council will not carry out the affected part of the Co-operation Project.

18 BOROUGH COUNCIL'S RESPONSIBILITIES

18.1 Access

The Borough Council will

- Provide the County Council with access to appropriate members of the Borough Council's staff, as such access is reasonably requested by the

County Council, in order for the County Council to discharge its obligations under this Agreement.

- Provide any such documentation, data and other information as the County Council reasonably requests in order for the County Council to perform its obligations under this Agreement.
- To the extent that the following are not expressly provided for elsewhere in this Agreement, using its reasonable endeavours, respond to requests for information in a prompt and timely manner, where such requests are reasonably made by or on behalf of the County Council to enable the County Council to comply with its obligations under this Agreement
- Subject to compliance with the Borough Council's security policy, provide such access for any of the County Council's personnel or sub-contractors to the relevant Borough Council's premises during the Borough Council's normal working hours in each working day as may be reasonably required in connection with the carrying out of any Co-operation Project
- Provide free of charge all electric power, office space, lighting and heating at the Borough Council's premises and the provision of normal office services reasonably needed by the County Council's representatives to carry out any Co-operation Project. The County Council's representatives must, in using the Borough Council's premises, comply with all relevant health and safety and security policies of the Borough Council that have been notified to the County Council.

18.2 Borough Council's Premises

In relation to the Borough Council's premises

- The Borough Council will, subject to compliance with their security policy, provide the County Council and its sub-contractors with access to such parts of the Borough Council's service environment as the County Council reasonably requires for the purposes of properly carrying out any Co-operation Project.
- In the event of expiry or termination of either a Co-operation Project or the Joint Co-operation Agreement, the Borough Council will, on reasonable notice provide the County Council with such access as the County Council reasonably requires to the Borough Council's premises and the Borough Council's service environment to remove any of the County Council's equipment. All such equipment will be promptly removed by the County Council, and
- The County Council will notify the Borough Council immediately upon becoming aware of any damage caused by the County Council, its

agents, employees or sub-contractors to any property of the Borough Council, to any of the Borough Council's premises or to any property of any other recipient of the services created pursuant to the carrying out of any Co-operation Project. Where such damage is caused by the negligence of the County Council's personnel, the County Council will be responsible for promptly making it good.

18.3 Data Migration

The Borough Council will provide such assistance as the County Council reasonably requests in identifying validation criteria to facilitate the successful migration of the Borough Council's data onto the County Council's or its Sub-Contractor's platforms or systems.

18.4 Training

The Borough Council will use its reasonable endeavours to ensure that all of its staff who will use the services created under any Co-operation Project

19 WARRANTIES AND REPRESENTATIONS

19.1 Each party warrants, represents and undertakes that:

- (a) it has full capacity and authority to enter into and to perform this Agreement and any agreed Co-operation Project; and
- (b) this Agreement is executed by a duly authorised representative of that party.

19.2 The County Council undertakes, warrants and represents on an on-going basis that:

- (a) from the Effective Date, the County Council will carry out any Co-operation Projects in compliance with all Applicable Laws;
- (b) it has, and will continue to hold, all consents and regulatory approvals necessary to carry out the Co-operation Projects;
- (c) it has, and will continue to have, all necessary rights in and to the County Council's Software, the Third Party Software (but excluding any Third Party Software licenced to or acquired by the Borough Council prior to the date of this Agreement) and the County Council's Background IPRs, or any other materials

made available by the County Council or the Sub-Contractors to the Borough Council which are used to carry out the Co-operation Projects;

(d) (in so far as the County Council has the benefit of a corresponding and enforceable warranty from the provider of the Software) all Software (but excluding any Third Party Software licenced to or acquired by the Borough Council prior to the date of this Agreement) used by or on behalf of the County Council pursuant to any Co-operation Project will:

(i) be currently supported versions of that Software;

(ii) be free of material defects and errors; and

(iii) perform in accordance with the user manuals and the published specification for such Software.

(e) it has or will procure each Sub-Contract in compliance with all applicable laws including the Public Contracts Regulations 2015 to enable the parties to lawfully utilise such Sub-Contract in the provision of any Co-operation Project.

20 COMPLIANCE WITH APPLICABLE LAWS

20.1 Subject to clause 15.6, the County Council shall (at no additional cost to the Borough Council) at all times carry out the Co-operation Projects in compliance with all Applicable Laws. The County Council shall maintain such records as are necessary pursuant to such Applicable Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Borough Council (or its authorised representative).

20.2 Without prejudice to clause 20.1, the County Council shall monitor and shall keep the Borough Council informed in writing of any changes in the Applicable Laws which may impact upon the Co-operation Projects and shall provide the Borough Council with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.

20.3 The County Council shall consult with the Borough Council (and wherever possible agree with the Borough Council) on the manner, form and timing of changes it proposes to make to meet any changes in Applicable Laws where they would impact upon the Co-operation Projects. The County Council and the Borough Council will negotiate in good faith any changes required to this Agreement and/or any Co-operation Project to comply with such changes on the basis that the County Council is left no better and no worse off in the carrying out of the Co-operation Project's concerned.

20.4 Without prejudice to the rest of this clause 20, the County Council shall use all reasonable endeavours to minimise any disruption caused by any changes in Applicable Laws introduced pursuant to this clause 20.

21 BUSINESS CONTINUITY

21.1 The County Council shall provide reasonable assistance to the Borough Council to assist the Borough Council in drawing up the Borough Council Disaster Recovery and Business Continuity Plan and revising it from time to time in so far as it concerns the Co-operation Projects.

21.2 The County Council shall incorporate the Co-operation Projects into the County Council's Disaster Recovery and Business Continuity Plan

21.3 The County Council shall test the County Council's Disaster Recovery and Business Continuity Plan from time to time and following each test, the County Council shall send to the Borough Council a written report summarising the results of the test in so far as they apply to the Co-operation Projects.

21.4 The County Council shall ensure Sub-Contractor obligations in respect of disaster recovery and business continuity obligations accord with good business practice as applicable to the subject matter of the Sub-Contracts. When relevant to the Co-Operation Projects and to the extent it has the contractual right to do so the County Council shall enforce such contractual obligations for the benefit of the Borough Council.

22 FORCE MAJEURE

22.1 Neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.

23 GENERAL CONSEQUENCES OF EXPIRY AND TERMINATION

23.1 Following the service of a termination notice for any reason either in respect of this Agreement or any individual Co-operation Project, the County Council shall continue to provide and/or procure the carrying out of the Co-operation Projects, and shall ensure that there is no degradation in standards until the expiry of the Termination Period.

23.2 The County Council shall comply with its obligations set out in the Exit Plan for the Co-operation Project concerned.

23.3 The County Council shall use its reasonable endeavours to transfer its interest in the County Council's Replacement Equipment, the Assumed Contracts and any other Sub-Contracts (but only in so far as such Sub-Contracts apply to the Co-operation Project and it is in the opinion of the County Council reasonably practicable to novate the part of the Sub-Contract which applies to the Co-operation Project) to the Borough Council (or to such other party as it may direct) on the End Date

23.4 The County Council will indemnify the Borough Council against any liabilities which arise under the Sub-Contracts prior to the End Date of the Co-operation Project concerned.

23.5 Where the County Council has entered into, varied or otherwise extended a Sub-Contract for the purposes of any Co-operation Project, and, in compliance with the County Council's obligations in clause 9.2, such Sub-Contract has Sub-Contract Liabilities that apply after the End Date of the Co-operation Project concerned, the Borough Council will indemnify the County Council against any such Sub-Contract Liabilities.

23.6 On each End Date, the County Council shall:

(a) repay to the Borough Council any amount which it may have been paid in advance in respect of the Co-operation Project concerned not provided or procured by the County Council as at the End Date; and

(b) provide access, during normal working hours, to the Borough Council and/or its contractor for up to 12 months after the End Date to:

(i) such information relating to any Co-operation Project as remains in the possession or control of the County Council; and

(ii) such members of the County Council's Personnel as have been involved in the design, development and carrying out of the Co-operation Project and who are still employed by the County Council, provided that the Borough Council and/or the Replacement Provider shall pay the reasonable costs of the County Council actually incurred in responding to requests for access under this clause

23.7 The provisions of clause 7.1, clause 9, clause 15, clause 16, clause 23, clause 24 and clause 30 shall survive the termination for any reason or expiry of this Agreement.

24 EXIT AND SERVICE TRANSFER

24.1 The County Council is required to ensure the orderly transition of the services described in any Co-operation Project from the County Council to the Borough Council or any Replacement Provider in the event of any termination or expiry of the Agreement or any Co-operation Project.

24.2 Within 7 calendar days of the commencement of the Termination Period, the County Council and the Borough Council will each appoint an exit manager and provide written notification of such appointment to each other. The County Council will ensure that its exit manager has the requisite authority to

arrange and procure any resources of the County Council as are reasonably necessary to enable the County Council to fulfil its obligations under this Agreement. The exit managers will liaise with one another in relation to all issues relevant to termination or expiry including the production and implementation of the Exit Plan.

24.3 The Exit Plan will

- Detail how the carrying out of the services will transfer to the Borough Council or Replacement Provider including details of processes, documentation, Sub-Contract arrangements, data transfer, systems migration, security and the segregation of the Borough Council's technology components from the County Council's technical components;
- Detail the extent to which the Borough Council and/or Replacement Provider may continue to use parts of the County Council's systems on a fair and equitable basis;
- Set out the management structure to be put in place and employed during the Termination Period.

24.4 In the event of the termination or expiry of this Agreement for any reason both parties shall comply with their respective obligations set out in the Exit Plan. The County Council shall act in good faith and provide all reasonable co-operation to the Borough Council and/or any contractor to the extent reasonably required to facilitate the smooth migration of any Co-operation Project from the County Council to the Borough Council.

25 DISPUTE RESOLUTION PROCEDURE AND COMPLAINTS

25.1 The parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:

(a) the Dispute shall be referred, by either party, first to the Borough Council's Representative and the County Council's Representative;

(b) if the Dispute cannot be resolved by them then the dispute will be referred to the Chief Executive or other Chief Officer of each party

25.2 If the dispute remains unresolved then it may be referred for expert determination by an expert appointed by the President of the Law Society upon the application of either party. The costs of the expert shall be initially borne jointly by both parties but the expert may order one party to pay the other parties costs. The decision of the expert shall be binding on both parties except in the case of manifest error.

25.3 The County Council shall provide the Borough Council with such information that it reasonably requests relating to any Co-operation Project and this Agreement which it may need to deal with a complaint under the Borough

Council's complaints procedure or a complaint to the Local Government Ombudsman.

26 ASSIGNMENT AND NOVATION

26.1 Without obligation on either party, the County Council may propose the transfer of any Co-operation Project or the services deriving from any Co-operation Project to a company incorporated by the County Council to provide the Current NCC Services and/or any Co-operation Project

26.2 This Agreement and any Co-operation Project may not be transferred or assigned by either party without the written consent of the other party.

27 VARIATIONS

27.1 This Agreement may not be varied except by an agreement in writing expressed to vary this Agreement signed by duly authorised representatives of the parties.

28 RELATIONSHIP OF THE PARTIES

Nothing in this Agreement is intended to create a partnership or legal relationship of any kind that would impose liability on one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall make representations, act in the name of, on behalf of or otherwise bind the other party.

29 PUBLICITY AND BRANDING

29.1 Neither party shall make any press announcements or publicise this Agreement or its contents in any way without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

29.2 Each party acknowledges to the other that nothing in this Agreement, either expressly or by implication, constitutes an endorsement of any products or services of the other party (including any Co-operation Project and the County Council's System) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

30 SEVERANCE

30.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remainder of the provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the County Council and the Borough Council shall immediately commence good faith negotiations to

remedy such invalidity. Neither party shall unreasonably withhold or delay their agreement to any such matters.

31 FURTHER ASSURANCE

31.1 Each party undertakes, at the request of the other and at the cost of the requesting party, to do all acts and execute all documents which may be necessary to give full effect to this Agreement.

32 ENTIRE AGREEMENT

32.1 This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

32.2 Nothing in this clause shall operate to exclude any liability for fraud.

33 THIRD PARTY RIGHTS

33.1 This Agreement does not create, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not party to this Agreement save as specified in clause 33.2

33.2 Any Incoming Employer or Outgoing Employer (as defined in accordance with Schedule 5) may enforce the obligations that are intended to benefit it, as set out in Schedule 5.

34 NOTICES

34.1 Any notice required to be given under or in connection to this Agreement shall be in writing, signed by or on behalf of the party giving it and shall be served by delivering it personally, or by sending it by pre-paid first-class post, recorded delivery or registered post, or by fax, to the address or fax number and for the attention of the relevant party notified for such purpose, or to such other address as that party may have notified to the other party in accordance with this clause 34.1. Notices shall not be deemed to be served if sent by e-mail.

34.2 A notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid first-class post, three Working Days from the date of posting; and

(c) in the case of fax, on the day of transmission if sent before 4.00 pm on any Working Day and otherwise at 9.00 am on the next Working Day provided that, at the time of transmission, an error-free transmission report has been received by the sender.

34.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant party at its address previously notified for the receipt of notices (or as otherwise notified by that party) and delivered either to that address or into the custody of the postal authorities as pre-paid first-class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party at its fax number previously notified for the receipt of notices (or as otherwise notified by that party).

35 GOVERNING LAW AND JURISDICTION

35.1 This Agreement shall be governed by and construed in accordance with English law. Each party agrees to submit to the exclusive jurisdiction of the English courts.

35.2 In the event of any breach of this Agreement the parties acknowledge that the normal commercial contractual remedies shall apply.

36 COUNTERPARTS

36.1 This Agreement may be executed in any number of counterparts and by the parties in separate counterparts, but shall not be effective until each party has executed and delivered at least one counterpart to the other party. Each counterpart, when executed and delivered, shall constitute an original and all the counterparts together shall constitute one and the same instrument.

IN witness of which the parties have executed this Agreement as a deed on the date set out at the start of this Agreement

THE COMMON SEAL OF
THE GREAT YARMOUTH BOROUGH COUNCIL

Was hereunto affixed but
not delivered until the date
hereof in the presence of:

AUTHORISED OFFICER

THE COMMON SEAL OF
THE NORFOLK COUNTY COUNCIL

Was hereunto affixed but
not delivered until the date
hereof in the presence of:

HEAD OF LAW

Schedule 1 – Project Pro-forma

Schedule 1.1

Cooperation Project for the Provision of ICT Infrastructure Services

4. Project Summary

a. Background

This Schedule 1.1 describes the infrastructure services to be provided as a Co-operation Project between the County Council and the Borough Council through the framework of the Joint Co-operation Agreement dated **xxx**.

The County Council is responsible for delivering the products and services in the timeframes and manner specified in this document. The County Council may use sub-contractors and third party suppliers but remain responsible for the performance of its third parties.

b. ICT Shared Service Management

The services will be managed by the County Council's Head of ICT & IM, the ICT & IM Senior Management Team and Operational Managers in the County Council's ICT & IM Shared Service. It is the obligation of the County Council to use all reasonable endeavours to deliver the agreed services within the annually agreed budget and in a cost efficient manner.

The Head of ICT & IM provides overall professional leadership of the Shared Service and manages the governance processes to ensure that the service meets business priorities.

The services described in this schedule are assigned to a Senior Manager responsible for managing those services who is responsible for:

- Applying common standards
- Developing and maintaining ICT strategy, policy and technical standards
- Identifying efficiencies and economies of scale
- Managing operational service, including the provision of change, problem and asset management
- Managing the third party contracts used in the delivery of the services described in this schedule.
- Provision of ICT professional advice with respect to the services provided through this Joint Co-operation Project.

c. Service Desk

The Service Desk is the single point of contact for all support calls and service requests related to the services described in this schedule.

- The Service Desk can be contacted through self-service, email or telephone.
- Service hours are 8 a.m. to 5 p.m. Monday to Friday. A voicemail service is provided outside of these normal business hours.
- All calls will be logged in the IT Service Management System and where possible fixed, calls which require second line support are and passed to the relevant internal support team for management.
- Escalation for service delivery is through the Service Desk to the ICT Service Manager.
- The Service Desk will provide communications to designated Borough Council personnel concerning both planned and unplanned events and system downtime.
- The Service Desk will operate a VIP Service for Borough Council Members. This services consists of a dedicated Member support phone line and voice mail.

d. Shared Infrastructure Services

i. Data Network

The County Council will provide 2 data network connections to the Borough Council to ensure resilience and continuity of service.

- A 1Gb connection to County Hall, Norwich and a 100mb connection to Stalham provide diverse, resilient routes in the event of circuit failure or loss of connectivity
- Two managed, secure, routers protect from unauthorised access
- Each circuit is sized to handle the voice traffic in the event of failure
- The higher capacity circuit has been sized to enable further development and sharing of services

ii. Telephony

The County Council will provide VoIP services to the Borough Council consisting of the provision, installation and support of VoIP handsets; connection is to the County Council's virtual voice service to support flexible working, provide resilience and ensure continuity of service and the provision and setup of the Borough Council's contact centre.

- A Survivable Media Gateway (SMG) has been installed and connected to the County Council's virtual voice service.

- In the event of loss of connectivity to the virtual voice service, the SMG will operate standalone and all VoIP handsets will continue to operate normally.
- In the event of failure of the SMG, all VoIP phones will register to another SMG to allow outgoing calls to be made.
- Wherever possible all voice calls are routed across the data network including calls between users of the VoIP network.
- All VoIP handsets support virtual login - enabling users to login with their number on any equivalent handset across the county.
- Voicemail is provided
- Teleconferencing functions are provided as standard functionality.
- Call logging internal and external is provided

iii. Contact Centre

The County Council will provide contact centre facilities to the Borough Council which consists of the provision, installation and support of VoIP Avaya contact centre handsets, scripting and routing functions to ensure a flexible, resilient contact centre.

- Contact centre scripts and skill based routing are provided.
- Fall-back facilities are configured to enable Contact Centre staff to operate at another County Council Voice Network site in the event of a disaster.
- Contact centre auto attendant and messaging has been implemented.
- The Borough Council non-geographic numbers are routed to direct dial numbers.

iv. Internet

The County Council will provide the Borough Council leveraged internet services using 2 internet connections to ensure a reliable, fast, resilient and secure service.

- Internet Access via dual 1Gb internet connections that use diverse routes.
- Managed internet proxy service using Smoothwall filtering to both filter and log all internet access.
- Anti-virus and malware scanning using Messagelabs for all internet routed email.
- Inbound internet access to hosted services.

v. Remote Access

The County Council will provide to the Borough Council a remote access service to enable secure access to Borough Council systems and data.

- Remote access is provided for staff.
- Secure remote access is provided for third party support of systems.
- The service is provided using secure RSA dual factor authentication and Public Service Network compliant encryption.

vi. Member Service

The County Council will provide remote access, email and internet services to the Borough Council's members.

vii. Reprourement of Voice and Data Service

The County Council has recently reprocured its voice and data services and will replace those described in paragraphs 1.4.1 to 1.4.5 and 1.4.7. The County Council will provide equivalent services to the Borough Council using these new contractual framework arrangements. A description of the proposed new services together with pricing details is provided in Annex A to this schedule.

e. Corporate Server and Application Infrastructure

i. Corporate Server Infrastructure

The County Council will maintain leveraged server infrastructure services to support the Borough Council including

- Domain name services (DNS)
- Active Directory

The County Council will provide server infrastructure to support the following applications

- Microsoft Exchange email

ii. Application Hosting

The County Council's strategic approach is to provide a flexible application hosting service. The County Council is currently reviewing its approach and mechanisms for offering this service but will in the interim continue to host the District Council's server estate within the County Council's data centre. The County and the District will undertake a review of the District Council's server requirements as part of the 2016/17 ICT Programme.

Based on the current District requirement, Annex B, a budgetary figure of £250,000 is suggested to include both Corporate Server and Application Infrastructure.

2. Borough Council's Retained Equipment

a. Client Computing

Devices and licencing have been procured on behalf of the Borough Council through the HP framework contract. Ownership of both devices and licencing fall outside the services described in this schedule and remain with the Borough Council

3. Borough Council Premises

Maritime House	25 Marine Parade		Great Yarmouth	NR30 2EN	01493 846155
Community Neighbourhood Centre	135 King Street		Great Yarmouth	NR30 2PQ	
Great Yarmouth Borough Council	Crematorium	Oriel Avenue	Gorleston	NR31 7JJ	
Great Yarmouth Borough Council	Novus Centre	The Conge	Great Yarmouth	NR30 1NA	01493 335641
Communal Room	Seawake Close		Gorleston	NR31 7DR	01493 846657
S Yarmouth Area Housing	90/91 King Street		Great Yarmouth	NR30 2PR	01493 846155
Gorleston Area Housing	46/48/50 Magdalen Way		Gorleston	NR31 7DA	01493 846155
Greyfriars House	Greyfriars Way		Great Yarmouth	NR30 2QF	01493 846155
Sheltered Housing	Wherry Way	105 Caister Road	Great Yarmouth	NR30 4DG	01493 846155
Town Hall	Hall Quay		Great Yarmouth	NR30 2QF	01493 846293

4. Employees

TUPE will not apply.

5. Budget

See schedule 2 for further detail.

6. Borough Council's Service Environment

Not applicable.

7. Effective Date and End Date, including scope for early termination

Effective Date: 29 June 2015

End Date: 28 June 2020.

The Co-operation Project may be terminated early on the same terms as is specified in clause 2.1 of the Co-operation Agreement. The Borough Council would be liable for early termination costs that the Council incurs in respect of any Sub-Contract costs that the County Council incurs in respect of such Sub-Contracts.

8. Sub-contracts that will trigger additional liability on early termination

Voice and Data Contract

In the event of expiry or termination of either this schedule 1.1 or the joint cooperation agreement, all locally installed voice hardware, including telephone handsets and local survivable PBX (SMG), can be novated to the ownership of the Borough Council.

In the event of expiry or termination of either this schedule 1.1 or the joint cooperation agreement, network connectivity to the County Council will be ceased. Early termination charges for Updata services will apply where services are not novated. These are calculated based on the remainder of the term of the Updata contract at the point of cessation.

In the event of expiry or termination of either this schedule 1.1 or the joint cooperation agreement the SMG could be converted to a standalone voice gateway and the appropriate licences installed. Any additional costs incurred by the County Council for this work would be recharged to the Borough Council. At this stage the SMG would be removed from the County Council's managed voice contract and the Borough would assume full responsibility for the support and maintenance of the Borough's VoIP service.

Core services such as Contact Centre, voicemail, call recording and call logging are hosted at County Hall and cannot be migrated. Continued access to these existing services would not be possible.

9. Service Levels, Service Credits and Performance Reporting

a. Service Levels

The Service Levels are set out in Annex B and will be calculated for each three month measurement period.

b. Service Principles

The following principles have been agreed as being pertinent to the performance of the service:

- Service levels will be measured against service operation, availability and performance.
- The emphasis will be towards sustaining and improving the quality of service delivered through the joint cooperation with partners. Within the constraint of the available resources the parties will work together to maximise the quality of service.
- The County Council will manage its third party relationships and offer the Borough Council a fully managed service.
- It is technically impracticable to provide an incident free service and the County Council does not undertake to do so. The County Council will, however, respond to incidents in accordance with the agreed Service Levels.

c. Service Availability

Service availability will be calculated using the following formula:

Total potential hours less unplanned service outages x 100/Total potential hours.

Loss of service due to scheduled outages will not be included in the calculation of service availability. Where the duration of loss of service as a result of scheduled outage time exceeds the agreed period, as a result of the County Council's failure to restore service, then the period in excess of that agreed will become a loss of service and be included in the calculation of the service availability service level.

d. Service Credits

The following principles have been agreed as being pertinent to the application of service credits.

- This is a public service cooperation and therefore the application of a service credit scheme is not intended to be punitive nor to financially disadvantage the County Council.
- A service credit scheme will exist to raise the profile of service degradation to both the County Council and the Borough Council and to compensate the Borough Council if certain service levels are not reached.

- Service credit points will apply for failure to meet the service level for priority 1 or priority 2 issues, excluding those where after investigation a change of service provision is required and which is therefore subject to the change control procedure.
- Service credit points will be converted into additional service days to be used against the Borough Council's service improvement projects. The service credits cannot be used to fund additional work from third parties nor can they be taken as financial payment.
- Service credit points will not be applicable in the case of any part of the service which is a new service until that service has been operational for three months.

e. Performance Reports

The County Council will produce a report each quarter detailing performance over the preceding quarter. The report will provide the following information:

- Performance against the service levels detailed in Annex B of this schedule.
- Service credits and balance on the service improvement fund

Schedule 2 – Finance

1.1 Financial Model

The County Council will provide the following Co-operation Projects, within the Project Budgets below:

- 1.1 Infrastructure Services (Client ICT)
- 1.2 On site ICT Support
- 1.3 Programme Support.

This financial model will be updated and amended to account for any further Co-operation Projects or any changes to any Co-operation Projects in accordance with the terms of this Agreement.

	Unit	Volume	Unit Cost £	Year 1 2016/17	Year 2 2017/18	Year 3 2018/19	Year 4 2019/20	Total
Client ICT								
Service Management	User	364	16.00	£5,824	£5,824	£5,824	£5,824	£23,296
Service Desk	User	364	18.00	£6,552	£6,552	£6,552	£6,552	£26,208
Voice and Data Services	See attached			£112,147	£112,147	£112,147	£112,147	£448,587
Voice and Data Support	FTE	0.5	36,078.21	18,039.11	18,039.11	18,039.11	18,039.11	£72,156
				£142,562	£142,562	£142,562	£142,562	£570,247
GYBC Servers								
Server Support	FTE	1	36,078.21	36,078.21	36,078.21	36,078.21	36,078.21	£144,313
Corporate Server and Application Hosting	Estimate			£250,000	£250,000	£250,000	£250,000	£1,000,000
				£286,078	£286,078	£286,078	£286,078	£1,144,313
On site ICT Support at GYBC Office in Great Yarmouth								
Desktop Service	FTE	2		£60,945	£60,945	£60,945	£60,945	£243,782
Applications Support Staff x 2	FTE	2		£67,279	£67,279	£67,279	£67,279	£269,117
				£128,225	£128,225	£128,225	£128,225	£512,898
Services no longer required								
Web Service				£0	£0	£0	£0	£0
Procurement & Finance Support				£0	£0	£0	£0	£0
Total NCC Service Cost				£556,865	£556,865	£556,865	£556,865	£2,227,458
Optional Services								
Programme Management								
GYBC Programme Resource Estimate				£118,288	£118,288	£118,288	£118,288	£473,152

1.2 Price Increases

The County Council will provide a fixed priced unit price for client ICT for the term of Co-operation Project 1.1 subject to a minimum service level of 300 units and a maximum of 500 units.

Application hosting is provided subject to the prices provided through the County Council's framework contract with HP under which inflation will not apply for its initial term.

Provision of seconded staff is subject to the recharge of salary costs and will therefore be indexed to NJC pay rates.

1.3 Payment Schedule

The County Council will invoice the Borough Council quarterly on 1st October, 1st December, 1st March and 1st June each year.

The Year 1 budget will be adjusted to take into account the fact that the period 1st April to 30th June falls outside these arrangements

1.4 Additional Services

Any additional services will be invoiced on a monthly basis and paid within 30 days.

1.5 Invoice Address

Invoices should be addressed to:

Schedule 3 – Service Levels

1.1 Background

The Service Levels and Service Credits detailed in this Schedule are designed to establish a commitment for ICT support as detailed in the Co-operation Projects. This document clarifies both parties' responsibilities and procedures to ensure Customer needs are met in a timely manner. The Service Levels set out in this Schedule apply to Co-operation Project 1.1 (Infrastructure Services) and will be amended by agreement to reflect any service levels that apply for any future Co-operation Projects.

1.2 Hours of Service

Service hours are 8 a.m. to 5 p.m. Monday to Friday. Great Yarmouth Borough Council may request emergency support for urgent issues during non-covered hours by contacting the County Council's emergency support contact.

1.3 Service Availability

Service	Availability	SLA
Email	99.7%	95%
Data Network	99.7%	95%
Internet Connectivity	99.7%	95%
Telephony	99.7%	95%
Server	99.7%	95%

Service availability will be calculated using the following formula:

Total potential hours less unplanned service outages x 100/Total potential hours.

Loss of service due to scheduled outages will not be included in the calculation of service availability. Where the duration of loss of service as a result of scheduled outage time exceeds the agreed period, as a result of the County Council's failure to restore service, then the period in excess of that agreed will become a loss of service and be included in the calculation of the service availability service level.

1.4 Incident Management

Each incident originating from the Borough Council's Authorised Users or the County Council's monitoring systems will be prioritised based on the an assessment of its Impact and Urgency as reported by Borough Council's Authorised User or the County Council's system manager.

Priority Definitions
Priority 1 Incident:
An Incident causing a complete interruption of service delivery to the affected customer service entity / key production environment or business operation. There is no immediate workaround. Typically this refers to the loss of a critical business service in its entirety, such as the complete loss of email.
Priority 2 Incident:
An Incident causing a significant interruption or degradation of service delivery to the affected customer service entity (whole department) / key production environment or business operation. A contingency plan will allow those affected to achieve some functionality during the event. Typically this refers to loss of service to a complete department or location or the loss of service to a limited number of users but at a critical time, such as the loss of services to the finance team at financial year end or the schools team during schools census
Priority 3 Incident:
An Incident affecting one user who is unable to utilize services as designed. While immediate impact is moderate, the risk for greater impact exists.
Priority 4 Incident:
An Incident causing minimal interruption or degradation of service delivery to the affected customer, their user environment or business operation (a Inconvenience)

Incident Resolution Targets and SLAs

Incident Priority	Resolution Target	SLA
Priority 1	4 hours	95%
Priority 2	8 hours	95%
Priority 3	1 working days	95%
Priority 4	5 working days	95%

Incident Operational Hours

Incident Priority	Resolution Target
Priority 1	24 hours a day, 365 days a year
Priority 2	24 hours a day, 365 days a year
Priority 3	0800 – 1700 Monday to Friday (Excluding Bank Holidays).
Priority 4	0800 – 1700 Monday to Friday (Excluding Bank Holidays).

Communication Times

Incident Priority	Notification/Update Frequency	Communication Type
Priority 1	Initial contact within 15 minutes of Incident being raised. subsequent updates every hour	Service Desk and assigned owner out of hours
Priority 2	Initial contact within 15 minutes of Incident being raised. subsequent updates via Automated notification every 3 hours	Service Desk and assigned owner out of hours
Priority 3	Automated notification or viewable via Self Service.	Service Desk and Self Service
Priority 4	Automated notification or viewable via Self Service.	Service Desk and Self Service

Contact Process

Contact Attempt	Action	Communication Type
1 st Contact	Initial attempt to contact customer Suspend SLA clock	Phone call or email
2 nd Contact	Second attempt to contact customer	Phone call or email
1 st Contact plus 2 working days	Update Incident with details	

3 rd Contact	Final attempt to contact customer	Phone call or email
1 st Contact plus 5 working days	No response follow closure process Email customer that Incident will be closed in 2 working days	
	(Total 7 days open since first contact)	

1.5 Programme Management

Service Area	Measurement	Performance	SLA
Provision of ICT business advice	Response to request for advice	Within 10 working days from when request is submitted	N/A
Projects	Timescale - against NCC Gateway Programme governance model	To meet agreed Gateway milestones	N/A

1.6 Service Credits

The following principles have been agreed as being pertinent to the application of service credits.

- This is a public service cooperation and therefore the application of a service credit scheme is not intended to be punitive nor to financially disadvantage the County Council. Accordingly the amount of any service credit that will be paid is capped at the amount the County Council is able to recover from its contractor in respect of the diminution of service levels to the Borough Council concerned.
- A service credit scheme will exist to raise the profile of service degradation to both the County Council and the Borough Council and to compensate the Borough Council if certain service levels are not reached.
- Service credit points will apply for failure to meet the service level for resolution of priority 1 or priority 2 issues, excluding those where after investigation a change of service provision is required and which is therefore subject to the change control procedure.
- Service credits will be 10 points per hour for loss of service less than 4 supported hours; 20 points per each additional supported hour. The value of each service credit point will be £5

- Service credit points will be converted into additional service days to be used against the Borough Council's service improvement projects. The service credits cannot be used to fund additional work from third parties nor can they be taken as financial payment.
- Service credit points will not be applicable in the case of any part of the service which is a new service until that service has been operational for three months.

1.7 Performance Reports

The County Council will produce a report each quarter detailing performance over the preceding quarter. The report will provide the following information:

- Performance against the service levels detailed in this schedule.
- Service credits and balance on the service improvement fund

1.8 Customer Survey

Norfolk County Council will carry out a sample Customer Satisfaction survey at least once a year. The survey content will be agreed with Great Yarmouth Borough Council in advance including the method of survey, survey size and coverage. The target delivery is for a satisfaction rating of good by at least 60% of the survey sample.

1.9 Effective Date

This Schedule is valid from the date below and remains in effect throughout the life span of the services supported.

Effective date: 1st July 2016 – 30th June 2020

1.10 Review of the Service Levels

The Service Levels will be reviewed annually. In the absence of the completion of a review, the current Service Levels will remain in effect. Any changes to the service levels will be incorporated into the Agreement via the Change Control process.

Next review by: 1st July 2017

Schedule 4 – Not used

Schedule 5 – Employees

In this Schedule 5, the following terms have the following meanings:

“Employee Liability Information” means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of the Employment Regulations

“Incoming Employer” means the transferee within the meaning of the Employment Regulations

“Outgoing Employer” means the transferor within the meaning of the Employment Regulations

“Relevant Transfer”: means as defined in the Employment Regulations.

“Staffing Information” means, in respect of the Transferring Employees, the information listed below, in any anonymised format to the extent necessary to comply with Data Protection Legislation:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the current employer;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) 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;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) 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
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Transfer Date” means the date on which a Relevant Transfer takes place in connection with a Cooperation Project.

“Transferring Employees” means those employees identified by the Outgoing Employer on the Staffing Information as liable to transfer under the Employment Regulation on the Transfer Date

“Transfer Preparation Date” means the date 12 months before the applicable Transfer Date, or where the Transfer Date is not known by this time, the date the Transfer Date becomes known to the parties.

1. General provisions

1.1 In respect of any Co-operation Project it is anticipated that the commencement or ending, or a significant change to, such Co-operation Project may trigger a Relevant Transfer. The obligations in this Schedule will apply in respect of each such Relevant Transfer.

1.2 In this Schedule 5, where the Incoming Employer or the Outgoing Employer is a contractor (or sub-contractor) of the County Council or the Borough Council, then an obligation upon the Incoming Employer or the Outgoing Employer, as the case may be, is an obligation on the County Council or the Borough Council, as applicable, to procure that their contractor (or sub-contractor) complies with the obligations contained in this Schedule 5. Where the Borough Council or the County Council's contract with the contractor pre-dates the Transfer Preparation Date, such obligations to procure that a contractor (or sub-contractor) does or does not do something shall be limited so that it extends only to the extent that the Borough Council's or the County Council's (as the case may be) contract with the contractor contains a corresponding contractual right in that regard that the Borough Council or the County Council (as the case may be) may enforce, and in all other cases it is limited so that it requires only that the Borough Council or the County Council (as the case may be) must use reasonable endeavours to procure that the contractor (and sub-contractor if applicable) does or does not act accordingly.

1.3 The Outgoing Employer shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the Transfer Date.

1.4 The Incoming Employer shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Transfer Date.

1.5 The Incoming Employer shall comply (and shall procure that any Contractor complies) with its obligations under Regulation 13 of the Regulations during the period prior to the Transfer Date.

1.6 The Outgoing Employer shall comply with its obligations under Regulations 13 and 14 of the Employment Regulations during the period prior to the Transfer Date, save where the Outgoing Employer is unable to do so as a result of the failure of the Incoming Employer to comply with their duties under Regulation 13 of the Employment Regulations.

2. Provision of information prior to a Relevant Transfer

2.1 The Outgoing Employer shall provide the Staffing Information and the Employee Liability Information to the Incoming Employer within two weeks of the Transfer Preparation Date and then updated within two weeks of each request by the Incoming Employer to do so.

2.2 The Outgoing Employer shall notify the Incoming Employer of any material change to the Employee Schedule and the Staffing Information as soon as is reasonably practicable, and shall upon request by the Incoming Employer meet the Incoming Employer to discuss the information disclosed.

2.3 The Outgoing Employer warrants to the Incoming Employer:

- (i) that the information in the Employee Schedule and the Staffing Information shall be complete and accurate and kept up-to-date;
- (ii) that it is not in material breach of the contract of employment of any of the Transferring Employees nor is any Transferring Employee in material breach of his contract of employment save as notified to the Incoming Employer in writing;
- (iii) that save as notified to the Incoming Employer in writing none of the Transferring Employees have given or received notice of termination of employment nor are any of the Transferring Employees the subject of any material disciplinary action nor is any Transferring Employee engaged in any grievance procedure; and
- (iv) that neither it (nor any other employer of a Transferring Employee) is engaged in relation to any Transferring Employee in any dispute, claim or legal proceedings, arising under contract or common law or arising out of or relating to any statute including the provisions of the Employment Regulations and any claim or allegation of unlawful discrimination save as notified to the Incoming Employer in writing;

3. Compliance with obligations of Outgoing Employer

- 3.1 The Outgoing Employer undertakes to the Incoming Employer that during the period from the Transfer Preparation Date up to and including the Transfer Date:
- (a) the Outgoing Employer shall enable and assist the Incoming Employer and such other persons as the Incoming Employer may determine to communicate with and meet the Transferring Employees and their trade union or other employee representatives;
 - (b) the Outgoing Employer, shall not without the prior written consent of the Incoming Employer:
 - (i) amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay and job description) of any Transferring Employees (other than where such amendment or variation has previously been agreed between the Outgoing Employer and the Transferring Employees in the normal course of business, and where any such amendment or variation is not in any way related to the transfer to the Incoming Employer);
 - (ii) terminate or give notice to terminate the employment or engagement of any Transferring Employees (other than in circumstances in which the termination is for reasons of misconduct or lack of capability); or
 - (iii) employ or assign any person to the Co-operation Project who would or might as a consequence of such employment or assignment become a Transferring Employee;
- 3.2 The Outgoing Employer shall indemnify the Incoming Employer (either for itself or for or on behalf of any other person to whom the Transferring Employee or any liability relating to them has transferred or is alleged to have transferred) against all reasonable costs and all losses incurred by the Incoming Employer in connection with or as a result of:
- (i) any claim or demand by any Transferring Employee or former Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the employer in respect of any

Transferring Employee or former Transferring Employee, or any claim relating to the period on and before the Transfer Date (and for the avoidance of doubt, this indemnity shall apply in respect of all losses incurred by the beneficiary of this indemnity in respect of the period after the Transfer Date where the claim (such as, without limitation, a claim for equal pay) arises out of circumstances which arose on or before the Transfer Date);

- (ii) any failure by the Outgoing Employer or any other employer of the Transferring Employees to comply with its obligations under Regulations 13 and 14 of the Employment Regulations, or any award of compensation under Regulation 15 of the Employment Regulations, save where such failure arises from the failure of the Incoming Employer or any Contractor to comply with its duties under Regulation 13 of the Employment Regulations;
- (iii) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the Transferring Employees arising from or connected with any failure by the Outgoing Employer to comply with any legal obligation to such trade union, body or person; and/or
- (iv) any claim by any person (other than a Transferring Employee) in respect of which the Incoming Employer is alleged to incur responsibility or liability as a result of the operation of the Employment Regulations.

3.3 If in connection with the Relevant Transfer it is found or alleged that the employment of any person other than the Transferring Employees has transferred to the Incoming Employer pursuant to the Employment Regulations:

- (i) the Incoming Employer may by 4pm on the fifteenth (15th) working day following but excluding the day upon which it becomes aware of that allegation or finding, dismiss the employee with immediate effect; and
- (ii) the Outgoing Employer shall indemnify and keep indemnified the Incoming Employer against all losses which the Incoming Employer may suffer or incur in respect of that dismissal and the employment of that person up to the date of the dismissal and any other claim brought by or on behalf of that person.

4.1 Compliance with obligations of Incoming Employer

The Incoming Employer shall indemnify the Outgoing Employer against all losses incurred by that party in connection with or as a result of:

- (i) any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Incoming Employer in respect of any Transferring Employee on or after the Transfer Date;
- (ii) any failure by the Incoming Employer as the case may be, to comply with its obligations under Regulation 13 of the Employment Regulations; and/or
- (iii) any claim or demand by any Transferring Employee arising out of any change or proposed change in the terms and conditions of employment or working conditions of that person on or after their transfer to the Incoming Employer on the Transfer Date, where that Transferring Employee would have been a Transferring Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of the Employment Regulations on or before the Transfer Date as a result of any such changes.

5. Pensions

- 5.1 The County Council and the Borough Council both have obligations under the Best Value Authorities Staff Transfers (Pensions) Direction 2007 in respect of Transferring Employees. Accordingly:
 - (i) Both Councils will co-operate with the other to ensure neither party is in breach of this direction in respect of any Relevant Transfer.
- 5.2 The Outgoing Employer shall be responsible for any Local Government Pension Scheme (LGPS) deficit relating to the Transferring Employees' membership of the LGPS referable to service up to and including the Transfer Date.
- 5.3 The Incoming Employer shall be responsible for all employer contributions payable to the LGPS in respect of the Transferring Employees after the Transfer Date