

# CABINET

21 FEBRUARY 2025

## REPORT OF PORTFOLIO HOLDER FOR ASSETS & COMMUNITY SAFETY

### A.2 ESSEX PROCUREMENT PARTNERSHIP UPDATE & PROCUREMENT STRATEGY

#### PART 1 – KEY INFORMATION

##### **PURPOSE OF THE REPORT**

To update Cabinet on the progress of the collaborative procurement service, known as Essex Procurement Partnership and the Collaboration Agreement due to be entered into, replacing the arrangement directly with Essex County Council and ensuring the necessary financial contributions are within the existing budget.

The report also seeks Cabinet approval for the Procurement Strategy for Essex Procurement Partnership to be recommended onto Full Council for adoption as part of the Council's Policy Framework in readiness to respond to the new Procurement Act 2003 and National Procurement Policy Statement.

##### **EXECUTIVE SUMMARY**

The collaborative partnership initially between Tendring District Council and Essex County Council for the delivery of procurement functions began on 1<sup>st</sup> October 2021 and continues until March 2025.

In March 2023, Cabinet approved Tendring District Council forming part of a wider partnership of Councils to explore the Shared Procurement Service for parts of Essex, now known as the Essex Procurement Partnership (EPP).

Since 2023, the Council has worked in collaboration with Braintree District Council, Castle Point Borough Council, Epping Forest District Council and Essex County Council (the EPP Member Authorities) with the purpose to enable effective and efficient procurement, maximising the value for every pound spent by these local authorities across Essex for the benefit of local residents.

The collaboration will achieve this through a shared procurement team, with:

- Pooled resource enabling a resilient procurement service.
- The combination of expertise enabling well informed procurement activity to maximise value from the market and better value for Essex residents.
- Shared procurement activity enabling savings through economies of scale and efficiencies in the use of the procurement team.
- Standardisation of processes and documentation to support local businesses and SMEs in bidding for Essex opportunities.

The Portfolio Holder for Assets and Community Safety being responsible for procurement represents the Council at the Member Advisory Group (MAG) with elected members from each

local authority. The MAG was established in September 2023 and provides executive member oversight of the EPP reviewing the performance of EPP in delivering against its objectives and acting as both critical friends and champions of the partnership.

Currently the EPP Member Authorities are taking the Collaboration Agreement, Procurement Strategy and Social Value Policy through their respective Cabinets. The concept of the collaborative procurement partnership and shared working approach has already been introduced and adopted through Cabinet. Whilst existing delegations are already in place to complete a partnership agreement, it was felt that in light of the substantial progress made through the collaboration, it was appropriate to seek full Cabinet's approval and present the proposed Procurement Strategy for consideration.

The core objectives of EPP, endorsed by the MAG are set out in Schedule 1 of the Collaboration Agreement provided at Appendix A, and transferred to Service Plan objectives, as follows:

- **Contract Liquidity** – To develop a clear contract register and forward plan to enable members to understand third party commitments and proactive procurement.
- **RFQ Process** – Provide the necessary template documentation and training to allow member authority staff to effectively undertake sourcing activity under the Party's tender threshold.
- **Sourcing Activity** – Undertake all procurement for the Members Authorities above the Party's tender threshold where placed on the pipeline 6 months ahead of requirement, with the exception of ECC where projects will be allocated by the Service Manager. This sourcing activity to be undertaken in line with the prioritisation approach set out in Schedule 3. Where projects are identified less than 6 months before needing to be procured the Lead Party will use best endeavours to undertake this procurement to support the requesting party.
- **Category Management** – Identify key categories of spend across member authorities and undertake review of this spend to identify savings opportunities, with the creation of a category strategy.
- **Collaboration** – Identify through category strategies and general procurement activity opportunities for collaborative procurement, create a plan for these projects and undertake sourcing activity to deliver benefits from this.
- **Frameworks** – Critically assess existing frameworks to understand income vs. effort and expertise to create. Focus on increasing income from existing frameworks and identifying new frameworks to increase income.
- **Social Value** – Introduce a common approach to social value/ climate agenda to sourcing activity for members.
- **Knowledge** – Provide business Parties and a supporting procurement team with the right knowledge and capabilities to deliver an effective and professional sourcing service to each member.

- **Development** – Undertake an assessment of procurement maturity and support in developing this level of maturity in line with the National Procurement Strategy.
- **Network** – enable access to wider expertise within the ECC team and wider authority network where resource is available.

The Collaboration Agreement sets out how EPP will deliver the objectives in detail and the governance structure which oversees its operation and further information is contained within the Background section of this report.

The Collaboration Agreement is proposed to be in place for a three-year trial period, during which time performance will be reviewed for all Member Authorities to consider whether it wishes to continue to participate in EPP and whether a longer-term position should be adopted. This timeline also accords with the potential Local Government Reorganisation programme and can be reflected upon as further information is known.

It is important that the Council responds proactively to the Prioritisation Approach and ensures that it maintains robust data to ensure the projects and services can be delivered by factoring the procurement activity and all 4 stages of the commercial pathway into their timelines. The Portfolio Holder for Assets and Community will have oversight of the Council's Procurement Project Pipeline to feed into the EPP workplan.

The Collaboration Agreement as set out in Appendix A, is still in draft form to be finalised for completion by the Member Authorities. The financial contributions can be met from existing budgets and any inflations through the normal budget setting cycles. As the level of procurement activity increases and the Procurement Act 2023 ("the Act") comes into force, with a revised National Procurement Policy Statement there is a need to review the legal resource and its capacity to support the partnership. There is a proposal to be explored with shared resources within the partnership and potentially funding additional capacity to provide procurement and contract legal advice.

### **The Procurement Strategy**

The Procurement Strategy provided as Appendix B sets out the rationale for the Collaboration, Vision, Goals, Scope and Remit, and Strategic Priorities and Actions of EPP for the next three years and would be expected to apply to procurement within the Council. This seeks to deliver the agreed objectives as set out and in particular outlines how EPP will do so over the next three years in line with the Act.

Current guidance documents produced by the Government are highlighting the 4 stages of the commercial pathway being Plan, Define, Procure and Manage and the Strategy provides more detail on these stages, but all services across the Council should note that the procurement phase, is the 3<sup>rd</sup> one out of 4. More attention to preparation resources and groundwork being provided by the commissioning service area should be placed on the first two parts to ensure the Council can make the most of the flexibilities the new Act provides, by being clear of the service's intentions through the required notices.

EPP will review and update its Procurement Strategy annually to ensure that it remains relevant and responsive to the changing needs and circumstances of the Authorities including the new legislation and national policy. EPP will monitor and report on the progress and

performance of this Procurement Strategy to members and stakeholders.

The Procurement Act 2023 (“the Act”) introduces a shift in procurement objectives, moving beyond the traditional focus on equal treatment and non-discrimination. Now, contracting authorities are mandated to deliver value for money, maximise public benefit and act with integrity throughout the procurement process.

The Government’s National Procurement Policy Statement (NPPS) was published on 13<sup>th</sup> February 2025 in readiness for the Act going live on 24<sup>th</sup> February 2025 and comes into effect on the same date. The NPPS applies to all contracting authorities as defined in the Act. The Procurement Strategy supports the priorities of the NPPS, and further information is contained within the body of the report.

## **RECOMMENDATION(S)**

**It is recommended that Cabinet:**

**(a) Agrees to enter into a Collaboration Agreement for the delivery of joint procurement services for a three-year period on substantially the same terms as set out in Appendix A of this report with:**

- **Braintree District Council**
- **Castle Point Borough Council**
- **Epping Forest District Council**
- **Essex County Council**

**(b) agrees that the Director for Governance, being responsible for the Council’s corporate procurement function is authorised to sign the final Collaboration Agreement on behalf of the Council;**

**(c) agrees that Essex County Council should be the Accountable Body under the Collaboration Agreement acting as Lead Party, which includes responsibility for the day-to-day management of the service and its financial administration and managing seconded staff;**

**(d) notes that the Collaboration Agreement provides for annual contributions from the Council, which can be met from within existing budgets, although subject to review as part of the annual budget setting cycle to respond to changes such as inflationary increases;**

**(e) notes further secondment or employment of staff to Essex County Council to support Essex Procurement Partnership, is fully and jointly funded by its Members Authorities;**

**(f) supports exploration of additional resource to support the legal support to the Essex Procurement Partnership, in particular for procurement and contract legal advice;**

**(g) endorses the continuous improvement approach as identified seeking views on the existing partnership and joint working through an internal questionnaire to feed into the arrangement for the next three years;**

**(h) approves the Procurement Strategy for recommendation onto Full Council for adoption as required by the Council’s Policy Framework; and.**

**(i) instructs officers to regularly update the Portfolio Holder for Assets and Community Safety, as being responsible for procurement on the content and**

**quality of the Council's Contract Register and Procurement Project Pipeline ensuring it is kept up to date, enabling Council projects and business as usual can be delivered through the approved Essex Procurement Partnership Prioritisation Approach.**

#### **REASON(S) FOR THE RECOMMENDATION(S)**

A number of benefits will be achieved to EPP members, so benefiting Essex residents. These benefits include:

- **Increased resilience** – through more resource, EPP is able to better flex to the peaks and troughs of each authority and enable effective delivery of projects in districts improving the services residents receive.
- **Procurement Expertise** – By operating across multiple authorities, staff are able to specialise in categories of spend, with more procurement activity in those categories. The result of this should be more informed procurements which in turn will deliver better value for money for the Tending residents.
- **Category Spend management and strategic oversight for consolidation opportunities** – Ensuring the Council can have regard to the importance of achieving value for money, as this is always the overarching priority in public procurement. Government guidance (e.g. Managing Public Money and Best Value statutory guidance) sets out how to use public money responsibly.
- **Savings Opportunities & Increased Market Influence** – Through a common forward plan of procurements required, and working as a team, the Member Authorities will be able to better identify collaborative procurement opportunities. This gives the opportunity to combine spend, creating economies of scale and so delivering contractual savings. Additional benefits will be achieved through efficiency in the resource model, with collaborative procurements enabling fewer tender processes to be undertaken. Over time, as the team develops, savings in the staff model will be enabled so reducing the overall cost of the team to member authorities.
- **Reduced Duplication** – Working together to have one common approach to procuring and social value will both create efficiencies for the procurement team and reduce administrative burden to those bidding for procurements. Small to Medium Enterprises and Voluntary Sector Organisations who tend to have limited resources to bid, should be particularly advantaged by this approach.
- **Staff Retention and Improved Practice** – By collaborating together, efficiencies will be created to enable the delivery of professional procurement practice. The common approach to assessing Social Value is an example of this. Other examples include work to understand the market from which we are sourcing, introducing an industry recognised category management approach to drive better value for money in Districts and Boroughs.
- **Governance** – ensuring the Member Authorities have appropriate and proportionate controls, systems and standards to manage procurement risk and to comply with legal requirements.

The adoption of the EPP Procurement Strategy for the Council to deliver in line with and publication on the Council's web page sets a clear direction of the next three years, in line with the requirements of the Act and the National Procurement Policy Statement.

## ALTERNATIVE OPTIONS CONSIDERED

(1) Not agree the Collaboration Agreement, with the Council undertaking resourcing and delivering procurement independently.

- Benefits – Control over resource available.
- Disbenefits – The efficiencies and benefits set out above will not be able to be delivered without additional investment. Procurement will remain reactive, and resource will need to be invested to prepare for the changes from the Procurement Act 2023. Recruitment and retention remain a concern and capacity to deliver the Council's Corporate Plan and Priorities will be put at risk.

(2) Carry on with the existing Service Level Agreement with Essex County Council – this is not the direction of pooled resources or government's policy on local authorities working closer together through Local Government Reorganisation. The Council should remain at the heart of partnerships as they emerge and evolve.

(3) Not agree the EPP Procurement Strategy, with the Council either creating its own Procurement Strategy or deciding not to implement one.

Disbenefits – Resource to create and deliver against the Procurement Strategy and if the Council failed to do so, we could be acting on old policies and strategies which are not consistent with new legislation and the NPPS. The Council would be failing in its responsibilities to deliver value for money and would not have the direction required to improve the professionalism of the service and meet the changing legislative demands of procurement.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

Tendring District Council adopted its Corporate Plan 2024-28 ('Our Vision') at full Council in November 2023 (Minute No. 76 refers) with Community Leadership and listening to, and delivering for, our residents and businesses to be recognised as cross cutting elements of the Plan. The Corporate Plan Themes are:

- Pride in our area and services to residents
- Raising aspirations and creating opportunities
- Championing our local environment
- Working with partners to improve quality of life
- Promoting our heritage offer, attracting visitors and encouraging them to stay longer
- Financial Sustainability and openness

*"To continue to deliver effective services and get things done we must look after the public purse; that means carefully planning what we do, managing capacity, and prioritising what we focus our time, money and assets on. Tough decisions will not be shied away from, but will be taken transparently, be well-informed, and based upon engagement with our residents. We will give clarity on where the Council spends the money it is provided with."*

A number of the Council's priorities and statutory services rely on the procurement function to

deliver their objectives. From 24<sup>th</sup> February 2025, all contracting authorities are mandated to deliver the objectives as defined in the Act, being value for money, maximise public benefit and act with integrity throughout the procurement process.

The National Procurement Policy Statement (NPPS) is provided for at section 13 of the Act (coming into force on 24 February 2025). Contracting authorities are required to have regard to the policy objectives contained within the NPPS that is current at the time they are carrying out a procurement. The Act also specifies how the NPPS should be drafted, consulted upon and considered by Parliament. The NPPS has very recently been presented to Parliament and also comes into effect on the 24 February 2025.

There was no such statutory statement in the previous legislation. The first NPPS was released as PPN 06/21 and required, as a matter of policy, that contracting authorities take account of its specified priorities. The Act changes this so that contracting authorities are now under a statutory duty to have regard to the NPPS.

The new NPPS contains the following Priorities:

- **Delivering Value for Money:**

*In carrying out a procurement covered by the Act, a contracting authority must have regard to the importance of delivering value for money. Achieving value for money is always the overarching priority in public procurement. This must include consideration of outcomes and quality to avoid waste from low value, poor quality bids. This means optimising the use of public funds by balancing effectiveness, efficiency and economy over the life cycle of a product, service or works to achieve the intended outcomes of the procurement. This includes wider socio-economic and environmental benefits and impacts. The Act will deliver a step change in the transparency of public procurement that will drive value for money, bringing greater visibility of pipelines of future opportunities through to individual contract performance. Contracting authorities will need to ensure they have the right capability to benefit from the new commercial tools and deliver greater value for money.*

- **Driving economic growth and strengthening supply chains by giving small and medium-sized enterprises (SMEs) and voluntary, community and social enterprises (VCSEs) a fair chance, creating high quality jobs and championing innovation.**
- **Delivering social and economic value that supports the Government's missions including by working in partnership across organisational boundaries where appropriate.**
- **Ensuring the right commercial capability and standards are in place to procure and manage contracts effectively and to collaborate with other contracting authorities to deliver best value.**

## **OUTCOME OF CONSULTATION AND ENGAGEMENT**

Consultation has taken place in the creation of the Essex Procurement Partnership with representation across the member Councils, at elected Member, senior officer and operational levels. Through the consultation it has been agreed to create one collaborative approach

and the officer team for undertaking of procurement for these operations with ECC as the operating as the Accountable Body given its position with regards to expertise, capacity and collaborative approach already in place over a number of Councils, in particular Tendring District Council through the initial joint service. The documents provided as Appendices A & B have been developed with these officers.

The EPP member authorities have been working together over the last 18 months to develop this collaborative approach to procurement and latterly to agree the collaboration agreement appended to this report. All partner authorities are now taking this proposal through their respective decision-making bodies.

A questionnaire is being developed for internal use to seek feedback on the collaborative working with Essex Procurement to date, to ensure that the future arrangements can be delivered with continuous improvement in mind reflecting on previous experiences. It is intended that feedback will also be sought from Essex Procurement on the way the Council approached the initiative, so that we too can also learn lessons for the future.

**LEGAL REQUIREMENTS (including legislation & constitutional powers)**

<b>Is the recommendation a Key Decision (see the criteria stated here)</b>	<b>YES</b>	<b>If Yes, indicate which by which criteria it is a Key Decision</b>	<input type="checkbox"/> <b>Significant effect on two or more wards</b> <input checked="" type="checkbox"/> <b>Involves £100,000 expenditure/income</b> <input type="checkbox"/> <b>Is otherwise significant for the service budget</b>
		<b>And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)</b>	Longer than 28 days

The Member Authorities have decided to work collaboratively together to pool resources to deliver day-to-day procurement activities and wider specialist procurement advice and support on behalf of each other.

The Collaboration Agreement will be entered into by the member authorities to document how the parties will work collaboratively.

ECC will be the 'Lead Party' under the Collaboration Agreement which means they will be responsible for the day-to-day management of the service. As the Accountable Body, they will also hold the financial contributions received from other member authorities and be responsible for the financial administration of the service.

The Collaboration Agreement will be made pursuant to the Local Authority (Goods and Services) Act 1970, Sections 101 and 113 of the Local Government Act 1972, Section 9EA of the Local Government Act 2000 together with the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012 and all other enabling powers. Therefore, the Council is not commissioning the work of Essex Procurement Partnership but is forming a



shared service to deliver the functions in a collaborative manner, with Tendring Council still making the decisions as the Contracting Authority.

The Agreement as set out in Appendix A is currently in draft form (as different to document as attached to the Braintree and Essex Councils' reports, as it has been amended in format, but not the principles, which are the same). The Director for Governance has been working with EPP on the drafting of the legal agreement.

These arrangements will need to be reviewed and revisited as part of devolution and reorganisation and review mechanisms are built into the agreement. A review of contracts also forms a huge part of the work programme for EPP, and this work will also feed into the LGR workstreams.

Article 4 of the Council's Constitution sets out the Council's Policy Framework which includes the Procurement Strategy (including the Social Value Policy) (Part 2.7). Once approved by Cabinet the Procurement Strategy must be recommended to Full Council for approval and adoption as part of its Policy Framework.

## **PART 5 CONSTITUTION - PROCUREMENT PROCEDURE RULES**

The Council's Procurement Procedure Rules (Part 5) are still fit for purpose, both in line with the principles of the Act and the objectives of the EPP, but it is recognised that these will require reviewing and collaborative work has already commenced. There maybe some additional steps as a result of the Act, which mainly cover openness and transparency with the publication of a range of notices on the national database called Central digital Purchasing Platform.

### **PROCUREMENT ACT 2023:**

Public procurement under the previous legislation was subject to principles derived from the Treaty on the Functioning of the European Union that sought to create a single public procurement market in the EU and maximise cross-border procurement. The Act does replicate some significant aspects of those principles, namely those that ensure fairness, but it does so by introducing revised objectives for covered procurement at Section 12 that government considers better meet the UK's domestic needs.

These objectives set out the matters contracting authorities must give proper consideration to in the course of carrying out a procurement:

- value for money;
- maximising public benefit;
- transparency; and
- integrity.

With respect to equal treatment and non-discrimination, which were features of the previous regime, the Act provides, at sections 12(2) and (3), that contracting authorities must treat suppliers the same unless a difference between suppliers justifies different treatment (equal treatment).

Ensuring value for money in procurement is key to ensuring the optimum utilisation of limited

public resources. What is new in the Act is the explicit recognition (at section 12(1)(a)) that value for money is a key objective of public procurement.

Section 12(4) requires contracting authorities to have regard to the difficulties faced by small and medium-sized enterprises (SMEs) who wish to participate in public procurements and consider whether these can be mitigated. The definition of SMEs is found in section 123(1).

The objectives in section 12 provide signifiers as to what contracting authorities must do, and have regard to, in order to carry out fair procurements in a proportionate manner; but a noticeable difference from the previous legislation is that there is no underlying principle of proportionality in the Act. That is not to say that proportionality is not an important principle. Under the Act, where proportionality must be considered, this is expressly set out in the relevant sections.

The Procurement Review Unit (PRU) will manage the oversight regime on behalf of the government. The PRU will monitor compliance by contracting authorities, focusing mainly on investigations into contracting authorities who demonstrate 'institutional non-compliance' across its procurements (section 108 of the Act). Their role could be seen as similar to the Local Government and Social Care and Housing Ombudsmen but not to determine on the lawfulness of any particular activity. If an investigation is being conducted, the PRU may by notice require the contracting authority to provide relevant documentation as is reasonably required for the purposes of the investigation. It is an avenue, aggrieved suppliers can utilise, being able to raise queries akin to the current Ombudsman processes.

### **INFORMATION SHARING DUTY:**

The Act creates an environment of 'transparency by default' by imposing procedural transparency obligations at each stage of the procurement so that contracting authorities are clear about exactly what they are required to publish.

The information-sharing objective at section 12(1)(c) complements these procedural transparency obligations by introducing an overarching, general requirement for contracting authorities to have regard to the importance of sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions.

This duty does allow the contracting authority some discretion in deciding what to share beyond the specific procedural transparency requirements although the purpose of the objective in its own right must be borne in mind.

Notices and Decisions made in respect of procurement activity will increase in scale and detail.

### **BEST VALUE DUTY:**

The Best Value Duty relates to the statutory requirement for local authorities and other public bodies defined as best value authorities in the Local Government Act 1999 to "*make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness*".

The Best Value Statutory Guidance issued in May 2024, makes reference to the procurement function in 4 of the Best Value Themes demonstrating how important it regards the process to

achieve value for money, and standards expected as characteristics of a well-functioning authority:

- **Governance** - *Effective procedures are in place and followed to ensure members and all officers comply with the Nolan Principles, relevant codes of conduct and policies, including procurement. This includes adequate protections and support for whistle-blowers and adherence to Contract Procedure Rules.*
- **Use of resources** - *Sustainable corporate functions including procurement and IT which deliver value for money.*
- **Service delivery** - *Procurement processes ensure economic, efficient and effective outcomes of contract procurement and management.*
- **Partnerships and community engagement** - *The authority drives social and environmental value in their place through mechanisms like procurement and employment.*

An indicator of failure is described as having inefficient or uncompetitive procurement arrangements that do not deliver value for money.

**The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:**

The Monitoring Officer is the author of this report.

## **FINANCE AND OTHER RESOURCE IMPLICATIONS**

Paragraph 2.3 of the Council's Procurement Procedure Rules as set out in Part 5 of the Constitution requires alternative delivery options for whole or part of services to be achieved in accordance with the Council's Procurement Strategy. The current Strategy (2012) expressly refers to '*Our Partners in Procurement*' and that the Council will seek to work with a number of partners to maximise any procurement opportunities and provide best practice. This includes other public bodies and shared services.

The current Service Level Agreement with Essex County Council has to date been funded primarily via 'holding' two in-house dedicated procurements posts vacant. This level of resource was increased in 2024/25 via an agreed contribution through the Housing Revenue Account due to the number of procurement activities directly related the Council's landlord function that have been supported within the current SLA arrangement with ECC.

Based on the above, the underlying budget available to support the current associated arrangement with ECC in 2024/25 totals £133,290, which increases to £142,440 in 2025/26.

An additional one-off sum of £45,000 also remains within the budget for 2024/25 that is available to support additional procurement activities if required.

In addition, funding for additional procurement capacity has been identified and approved by Cabinet in relation to the work required to support the Levelling Up Partnership although, the resource has not yet been recruited to, Essex County Council are providing the extra procurement support.

Other Member Authorities within the proposed collaboration do have some officers supporting

procurement activity within their Councils and therefore arrangements are being considered for secondments to Essex County Council, as the Lead Party and Accountable Body. Tendring District Council does undertake the client side of managing the existing Essex Procurement SLA and support to the lower threshold activity, providing governance and compliance advice, along with additional procurement advice and 'referral' to the EPP if it is tender appropriate or potential savings by collaboration. General administrative functions are also provided in-house such as contracts register data collation provided by services across the Council and the Procurement Pipeline of Projects, which assists with the prioritisation within the partnership. This resource will remain with Tendring as part of the Governance Directorate. Consequently, there are no employment issues to address for the Council, the current Public Contract Regulations 2015 permit public sector shared service and collaboration arrangements within certain criteria, which have been observed in the Service Level Agreement arrangement and will continue to do so under the wider collaboration. These principles also exist within the Act.

The Council's Procurement Procedure Rules are observed in any bids or tender exercises managed by ECC on behalf of TDC.

In terms of the EPP proposals, Essex County Council are funding £99,846 in 2025/26 for a Procurement Specialist which will lead the Essex Procurement Partnership for the three-year trial period. All other staff costs are covered by the other Member Authorities for EPP, alongside relevant organisational overheads as set out in Table A below.

This recognises that EPP staff will work flexibly across each organisation, but as capacity is funded via a contribution from the Housing Revenue Account, arrangements will be put in place to ensure that the associated ring-fencing arrangements are maintained.

Each Party will pay its Financial Contribution to ECC, the Financial Contribution will cover the staff costs and overheads associated with those staff. The contributions as shown in Table A. Braintree District Council will pay their contribution and will invoice back for the staffing cost of the seconded staff.

Time recording will be undertaken to baseline the resource time per Member Authority, where usage differs from this baseline, this will be discussed at Strategic Officer Group, with consideration given to the reason for this change and whether this is a temporary or long-lasting change. This will inform the decision of the Strategic Officer Group about how to alter future resources to reflect the change in usage. Financial Contributions will be updated to reflect the changes in resources.

Note that costs in Table A are for 2024/25 and will be subject to pay award and inflationary increases as with existing costs. The overhead charges can be revisited in the future if there are material changes to the assumptions behind the calculations. These costs will be picked up by each Member Authority for their individual payments and ensure the true costs will continue to be picked up through the term of the collaboration agreement.

ECC will maintain insurance for the activity undertaken by EPP, which does not carry any additional cost burden. The excess resulting from a claim where EPP is at fault will be paid by EPP, while any claim resulting from a procuring Council will be paid by that Council. Each Member Authority will maintain insurance for their input into the procurement process.

Essex Procurement Partnership – Member Authority	Staffing (based upon 2024/25 activity)	Overhead Charge	Financial Contribution
Braintree:	99,345	10,870	110,215
Castle Point	39,738	4,348	44,086
Epping Forest	59,607	6,522	66,129
Tendring	122,972	13,455	136,427
23/24 figures were	116,758 (as identified in the Collaboration Agreement)		
<b>Total</b>	321,662	35,194	356,856

Based on the underlying budgets highlighted earlier, the proposed contributions in the table above can be met from within existing budgets, which can be reviewed annually as part of the setting cycle.

Through EPP, additional income maybe charged for one off projects, which exceed the level of usage agreed with the Member Authority, these will be agreed with the procuring Council to be resourced separately, for example to support the additional procurement support required for the Levelling Up Fund, CRP and Partnership.

**The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:**

Although there are no significant comments over and above those set out elsewhere in the report, the proposed approach provides opportunities over the next three years to build on the current partnership agreement with ECC to support the Council's on-going best value / value for money arrangements.

#### **USE OF RESOURCES AND VALUE FOR MONEY**

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	The concept of a wider Shared Procurement Service across Councils within Essex builds upon existing the Service Level Agreement to ensure the Council can continue perform its procurement functions, as required by legislation and internal governance.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	All procurement activity will continue to be in accordance with Tendring District Council's Procurement Procedure Rules, as contained with Part 5 of the Constitution which are still compatible with the new legislation. However, there will be additional requirements such as

	publishing notices and decisions providing more information which will be necessary. The report presents a new Procurement Strategy with recommendation onto Full Council, which supports the partnership approach.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Throughout the report details are provided on how the 3 E's are improved with the collaborative approach.
<b>MILESTONES AND DELIVERY</b>	
<p>16 December 2024 – Braintree District Council Cabinet meeting (to establish the Essex Procurement Partnership, approval of the Procurement Strategy) and Social Value Approach.</p> <p>21 January 2025 – Essex County Council Cabinet meeting (as above)</p> <p>21 February 2025 – Tendring District Council's Cabinet meeting (as per the recommendations set out in this report)</p> <p>24 February 2025 – New Procurement Act 2023 &amp; National Procurement Policy Statement comes into force.</p> <p>March 2025 – Epping and Castlepoint Cabinet meetings</p> <p>31 March 2025 – expiry of existing Service Level Agreement with Essex County Council for Procurement Services.</p> <p>31 March 2025 – Completion of the Collaboration Agreement – If approval is given by the participating Member Authorities, the final Collaboration Agreement will be signed with secondment of staff from other Member Authorities (not Tendring) to Essex County Council in line with a development mobilisation plan. The intention being that the service begins in April.</p> <p>Subject to Cabinet's decision - Procurement Strategy recommended to Full Council for adoption as part of the Council's Policy Framework – Full Council meeting on 25 March 2025.</p> <p>Raising awareness of the new Procurement Act requirements, Collaboration Agreement and Prioritisation Approach, Procurement Strategy with staff and stakeholders from March 2025 onwards.</p>	
<b>ASSOCIATED RISKS AND MITIGATION</b>	
<p>There is a risk that with a wider Essex Procurement Partnership, Tendring District Council's procurement activity is reduced in prioritisation however, this is mitigated through further development of the Procurement Project Pipeline for Tendring and referenced in the Collaboration Agreement (Schedule 3).</p> <p><b>The agreed Prioritisation Approach</b> sets out the order in which sourcing projects of each Authority are undertaken. Projects will be evaluated in line with the Prioritisation Tool embedded within Schedule 3 as follows:</p>	

- a. Projects graded A-E will be placed on the forward plan.
- b. Projects with time limited funding or where the contract will expire will be prioritised in line with the parameters set out in sourcing grading tool.
- c. All other projects will be scheduled on the forward plan considering when the contract is required and in order of the grading i.e. Grade A first

Where a project not on the forward plan requires immediate resource, the grading will be assessed against projects currently being undertaken and where there is an opportunity to pause an existing project this will be done to enable the urgent project to be undertaken.

Where a project cannot go ahead due to resource not being available, discussions will be held with the member Authority affected to consider options for example a short exemption to enable a procurement to be undertaken. The Partners Working Group will be updated as part of the monthly reporting cycle.

Tendring has 134 (procurements identified, in progress, on hold, awarded, closed) on the Procurement Project Pipeline and further work is being undertaken to clarify numbers of each category). So far there are 9 projects identified for the Levelling Up Partnership although this requires updating.

The robustness of the Council's Procurement Project Pipeline is essential to feed into the Prioritisation Approach and to date the quality and timeliness of the information has put the procurement resources under particular strain. Further discipline is required across the Council's services to understand the importance of the data and the consequences of failing to keep the information up to date.

## **EQUALITY IMPLICATIONS**

The Public Sector Equality Duty applies to the Council when it makes decisions.

The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

Essex County Council have undertaken an Equalities Impact Assessment for the Essex Procurement Partnership (referred to in their report to Cabinet on 21 January 2025) which indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **SOCIAL VALUE CONSIDERATIONS**

One of the key objectives of the partnership between Tendring and Essex over the past 3

years has been to introduce a common approach to social value/climate agenda to sourcing activity for members.

At its meeting in November 2024 (Minute No. 82), Cabinet approved a Social Value Policy to demonstrate how the Council will deliver corporate priorities by achieving social value through procurement. Ensuring the additional benefit to the community which we can derive, over and above the direct purchasing of goods, services and outcomes, where these quality criteria are relevant and proportionate to the subject matter of the contract and non-discriminatory.

#### **IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2050**

Our Social Value Themes, Outcomes and Measures (TOMs) adopted in November 2024, have been agreed by our partners to directly contribute towards achieving each partner's Corporate Priorities. TOMs will be used in the evaluation process and which ones are used will be dependent on the nature of the procurement. Tenderers will have to demonstrate they will achieve benefits in the TOM to score points. The Measures represent added value that we would like our suppliers to deliver locally to the respective Borough, City or District of the Contracting Authority and as a result of the contract being tendered unless otherwise stated in the tender documents.

Within the Policy: Priority 4 (**Theme**) '*A high-quality environment*', **Outcome** – "*Suppliers contribute to the delivery of net zero targets; reduced greenhouse gases; reduced waste; and strengthened climate resilience*'. For an example "**Measure** - *Saving car miles on the contract through green transport programmes such as cycle to work and car-pooling programmes or public transport*' (EPP23a)

#### **OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

<b>Crime and Disorder</b>	There are no implications from the subject matter of this report, however each project and new procurement opportunity will consider these implications through the individual decision making.
<b>Health Inequalities</b>	
<b>Area or Ward affected</b>	None

### **PART 3 – SUPPORTING INFORMATION**

#### **BACKGROUND**

The Collaboration Agreement sets out how EPP will deliver the objectives in detail and the governance structure which oversees its operation.

The Member Advisory Group will work closely with the Strategic Officer Group, consisting of Director level representation from each EPP Member Authority will have responsibility for:

- Setting the strategic direction of the collaboration, ensuring the service meets the defined service objectives.



- Agreeing the priorities of the collaboration within the resources available and supporting the process for ensuring sufficient resources are provided by each party to enable the objectives to be delivered.
- Monitoring the performance of the service delivered by the Lead Party (ECC) to ensure it is working effectively and in line with the work plan agreed by the parties.
- Agreeing to the growth of the collaboration with new Local Authorities joining.

The above groups will be supported by the Officer Operational Group and Partner Working Group with a greater operational focus to ensure confidence that sourcing activity is being done effectively and demands from each Member Authority are being effectively met.

These groups ensure that the work and strategic direction of EPP and procurement in the Member Authorities are set by the parties in partnership. It is a collaboration of resources from across these Member Authorities rather than a service being delivered by one Council on behalf of others although as the Lead Party, ECC will have some additional responsibilities as set out in this report.

The existing collaborative approach with shared procurement resources has already identified a number of specific activities that have been jointly delivered to Tendring District Council, such as:

- (a) Ensure the Council's practices are up to date with legislation, both existing and emerging, national guidance and best practice.
- (b) Commercial awareness in public law environment focusing on procurement opportunities.
- (c) Developing and delivering training both on the existing regime and ensuring readiness for the implementation of the Act.
- (d) Seek compliance with the regulatory framework and raising matters of probity and non-compliance with Senior Managers, Management Team and Internal Audit, where necessary.
- (e) Incorporate Social Value opportunities through the production of a Social Value Policy for procurement purposes (adopted in November 2024).
- (f) Develop a revised Procurement Strategy to be used across the Councils to enable wider collaboration and common approaches (as attached).
- (g) Review of the Procurement Procedure Rules (currently in progress); and
- (h) Contract management principles (developed but requires training and awareness).

The objectives of the new Act transform public sector procurement, driving innovation, delivering better outcomes and embedding transparency at each point of the procurement pathway. Crucially, it will let everyone access procurement data and understand how money has been spent.

In line with the above objectives, the Act sets out the following four stages, note the emphasis on pre procurement activity:

- Plan
- Define
- Procure
- Manage

The new act brings in considerable flexibility, but this requires planning and defining the route

to be taken ahead of procurement. EPP have undertaken a significant amount of training on the new Act and have worked with Essex County Council to develop procurement approaches, standard templates etc. for the new Act.

The Government's Commercial Function produced on 29 January 2025, an updated short guide for Senior Leaders on the Act, some extracts are included for reference.

It will create simpler, more flexible and effective procurement. The Procurement Act will bring a range of benefits, including:

- creating a simpler and more flexible commercial system that better meets our country's needs, while remaining compliant with our international obligations.
- opening up public procurement to new entrants, such as small businesses and social enterprises, so that they can compete for and win more public contracts.
- taking tougher action on underperforming suppliers and excluding suppliers who pose unacceptable risks.
- embedding transparency throughout the commercial lifecycle so that the spending of taxpayers' money can be properly scrutinised.

The Government Commercial Function has rolled out a comprehensive programme of learning and development for people whose work touches on procurement and who need to be aware of the changes - including contract managers, finance teams, service commissioners, legal advisers and reporting teams. Tending and Essex officers have undertaken the training. Further training will be delivered in-house to those involved in procurement activity.

In order to take full advantage of the new regime, organisations should treat this as an organisational change programme. This is a great opportunity to make procurement processes better to deliver outcomes for taxpayers - this needs support from budget holders and policy designers.

Go-live on 24 February 2025 will mark the beginning of the journey. Not all the benefits of the new regime will be available from Day 1. However, senior leaders can support the process as we approach go-live and beyond by:

- Checking in and offering support and encouragement for your commercial and procurement teams who are coordinating the change and championing their work across the wider organisational family.
- Encouraging early engagement by policy with commercial teams - this is key to delivering innovation and getting the most from the market.
- Using the new flexibilities in procurement when appropriate and championing this change across government and wider public sector - in order for this reform to be effective, we need to drive behavioural changes.

## **PREVIOUS RELEVANT DECISIONS**

### **Cabinet Report 17 SEPTEMBER 2021 Minute No 42**

[\(LINK: Agenda for Cabinet on Friday, 17th September, 2021, 10.30 am\):](#)

### **REPORT TEXT - OTHER EMERGING ISSUES:**

*Appendix B sets out a number of proposed budget adjustments that respond to other*

emerging issues as at the end of July 2021. Following the recent retirement of the Council's Procurement Manager, discussions have commenced with ECC in terms of a shared service / collaborative approach as a way of providing a more comprehensive procurement service to our internal departments. This approach would involve the Council purchasing a range of procurement services from ECC on a proposed 'hourly rate' basis via a service level agreement. Although this remains subject to ongoing discussions, Appendix B sets out a proposed adjustment, which would see budgets transferred from direct employee costs to 'contract' payments to ECC. This approach would also support the accelerated delivery programme where the Council would have access to specialist / expert advice along with additional procurement capacity e.g. it could support the procurement of replacement cremators as set out elsewhere in this report. This arrangement will be kept under wider review as it may form part of a longer-term solution where the Council continues to have access to such advice as part of the future delivery of projects and activities along with 'usual' operational requirements expected of a procurement function / service.

**Appendix B – relevant extract**

**Proposed Adjustments to the Budget as at the end of July 2021**

Description	Budget £	Reason for Adjustment
Direct budgets associated with the in-house procurement service	(67,790)	Work remains on-going to explore the opportunity to work with ECC on a shared service / collaborative approach to the provision of procurement services within the Council. This adjustment forms the basis of realigning the existing procurement services to support this proposed approach, with further details set out in the main body of the report.
Payment to ECC	67,790	

**RESOLVED** – (2) That in respect of the Council's Financial Performance for 2021/22, Cabinet:

- (b) agrees the proposed in-year adjustments to the budget as set out in Appendix B;
- (c) agrees an exemption to the Council's procurement rules in order to enable a Service Level Agreement to be entered into with Essex County Council to enable the Council to 'buy in' various procurement services from them to support its day-to-day operational activities and the delivery of one-off projects, as necessary; and
- (d) authorises the Assistant Director (Finance and IT) and the Deputy Chief Executive to agree the terms of the Service Level Agreement, in consultation with the Portfolio Holder for Corporate Finance and Governance.

Following consultation with the Portfolio Holder for Corporate Finance and Governance, and an Officer Decision published on 24 August 2022, [Decision - Essex County Council Service Level Agreement with Tendring District Council](#)] a Partnership Agreement was completed in August 2022; the services however commenced in October 2021 and continued until October 2023 for an annual payment of £60,000. The agreement can be renewed annually for up to 5 years. The agreement included a clause that should a Party not wish to renew for the next financial year they must serve at least 3 months written notice.

Cabinet Decision March 2023 – Minute No. 137 ([Cabinet March 23 - Shared Procurement Update.pdf](#)) agreed the extension to the SLA with ECC for the procurement resources and welcomes the work identified for a joint approach to Social Value for procurement purposes, for a further report to be presented at a Cabinet meeting later in 2023.

The Report also highlighted that with an ongoing vacancy of a senior post at Tendering for Corporate Procurement and Contract Management, it was proposed that £45,000 be reinvested to contribute to the shared procurement service for 2023/24, to develop and deliver the above activities. This was confirmed within the decision:

*(e) authorises the contribution of £45,000 from existing vacancies to the shared procurement project for the development of activities as set out in the report.*

On 3 November 2023, Councillor Kotz made an Executive Decision, as Portfolio Holder responsible for procurement endorsing the work identified for a joint TOMs approach to Social Value for procurement purposes, for further development against the Council's Corporate Plan, with a report being presented at a later Cabinet ([Decision - Shared Procurement Service - SERVICE LEVEL PARTNERSHIP AGREEMENT - PROVISION OF PROCUREMENT SERVICES BY ESSEX COUNTY COUNCIL & SOCIAL VALUE MEASUREMENT](#)).

In October 2023, as part of a response to urgent essential issues emerging within the Council's Housing Revenue Account (HRA), the Leader made an Executive Decision, amongst other things, to approve an additional contribution of £60K to ECC to secure necessary procurement capacity to support delivery of a range of important HRA activity. The longer-term impact of these decisions was to be covered in the 30-year HRA business planning process for 24/25 and covered in the budget decisions in February 2024.

Officer Decision 4<sup>th</sup> March 2024 – To vary the Service Level Agreement for the delivery of procurement functions with Essex County Council to increase capacity and provide additional services. The cost of the extension was £31,997.50 from 1<sup>st</sup> October – 31<sup>st</sup> March 2024 and increased capacity for additional services is £52,763.62 for October 23-September 24. [Decision - Variation to Service Level Agreement for the delivery of procurement functions with Essex County Council.](#)

On 17 April 2024, Councillor Kotz made an Executive Decision agreeing to extend the existing Service Level Agreement with Essex County Council for a further 6 months to allow the Essex Procurement Partnership Agreement to be completed. [Decision - SERVICE LEVEL PARTNERSHIP AGREEMENT - PROVISION OF PROCUREMENT SERVICES BY ESSEX COUNTY COUNCIL extension for 6 months](#)

A decision was not published for October 2024 to March 2025, as we were due to take a report to Cabinet for the Partnership Agreement and Strategy, and to cover the additional support required for the Project Delivery Unit (see below). However, no payments have been made, and the agreement continues unless notice is given, and the funding the service level agreement is met through salaries budgets.

Cabinet were presented with a report at its meeting on 26 July 2024, regarding "Resources To Increase Project Delivery And Progress Levelling Up Partnership". Within the body of the report, it stated "*Levelling Up Fund, Capital Regeneration Projects and anticipated Levelling Up Partnership programmes, are outside the current resource allocation for Essex*

*Procurement Service Level Agreement with the Council and so resources being allocated to deliver the schemes so far have been within the existing funding and therefore has had a significant impact on Council business as usual procurements. The Project Delivery Unit includes funding for additional procurement resource within Essex Procurement Service to support the implementation of these programmes”.*

Funding was identified for additional procurement support however no decisions were made, and this was rectified in the FINANCIAL PERFORMANCE REPORT 2024/25: GENERAL UPDATE AS AT THE END OF SEPTEMBER 2024 report to Cabinet in November 2024 (minute. No 83).

The Portfolio Holder’s recommendations proposed delegations to enable the flexible use of funding previously set aside to support the development of the Council’s Project Delivery Unit along with a contribution to ECC for procurement support.

*(e) in respect of the Project Delivery Unit budget:*

- (i) authorises the Director for Governance and the Director for Finance & IT, in consultation with the Corporate Director (Place and Economy), to enter into an agreement with Essex County Council (ECC) to increase existing procurement capacity for Tendring District Council; and*
- (ii) agrees a sum of up to the value of £120,000 over two years from the associated approved budget to fund the additional procurement capacity from ECC.*

[Minutes Template](#) This decision still requires action for further resources to be allocated.

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

None

#### **APPENDICES**

APPENDIX A – Draft Collaboration Agreement  
APPENDIX B – Procurement Strategy

#### **REPORT CONTACT OFFICER(S)**

<b>Name</b>	<b>Lisa Hastings</b>
<b>Job Title</b>	<b>Director of Governance and Monitoring Officer</b>
<b>Email/Telephone</b>	<a href="mailto:lhastings@tendringdc.gov.uk">lhastings@tendringdc.gov.uk</a> <b>01255 686561</b>

# **A.2 APPENDIX A**



Dated \_\_\_\_\_ 2025

- (1) **Essex County Council**
- (2) **Braintree District Council**
- (3) **Castle Point District Council**
- (4) **Epping Forest District Council**
- (5) **Tendring District Council**

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

**THIS AGREEMENT** dated [.....] 2025

is made **BETWEEN**:

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

Each a Party and together the Parties.

## **BACKGROUND**

- (A) The Parties to this Agreement have decided to work collaboratively together, as Member Authorities of Essex Procurement Partnership, to pool resources to deliver day-to-day procurement activities and wider specialist procurement advice and support on behalf of each other. The Parties will be governed by the terms and conditions of this Agreement.
- (B) Through this collaboration, the Parties will create common procurement documentation including a common strategy. The Parties will adopt the Essex Procurement Partnership Procurement Rules where they are not in conflict with the Constitution of each Party. The Parties agree with the objective of moving to formal joint procurement procedure rules to be embedded within their organisations over the period of this Agreement.
- (C) The Parties will identify common procurement activities and work to jointly procure goods, services and works to the benefit of each Member Authority and in line with the objectives, rationale, values and principles as set out in schedule 1.
- (D) The Lead Party will operate the procurement function on behalf of the Parties, with oversight by the Strategic Officer Group and Member Advisory Group.
- (E) This Agreement governs the Parties collaboration in relation to the delivery of the procurement function, in line with (G) below.
- (F) This Agreement is therefore made pursuant to the Local Authority (Goods and Services) Act 1970, Sections 101 and 113 of the Local Government Act 1972, Section 9EA of the Local Government Act 2000 together with the Local Authorities (Arrangements for the discharge of functions) Regulations 2012 and all other enabling powers.
- (G) Regulation 12 (7) of the Public Contract Regulations permits a contracting Authority to enter into a contract to cooperate on the delivery of public services to achieve common objectives. The EPP Members authorities are cooperating with the Lead Party to deliver procurement services.

## 1. DEFINITIONS AND INTERPRETATION

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

<b>Agreement:</b>	means this Agreement, including its Schedules, as amended from time to time in accordance with clause 10.8.
<b>Agreement Year:</b>	a period of 12 months, commencing on the Commencement Date.
<b>Announcement:</b>	any public announcement, communication or circular in relation to this collaboration or the Agreement.
<b>Authorised Representative</b>	An individual designated by each Party to represent that Party and Member Authority on the Strategic Officer Group authorised to undertake actions as required by this Agreement.
<b>Background:</b>	any information, data, techniques, Know-how, inventions, software, discoveries and materials (regardless of the form or medium in which they are disclosed or stored) that are provided by one Party to another Party for use in the Service (whether belonging to that Party or to a third party, and whether before or after the date of this Agreement), except any Result.
<b>Business Days:</b>	Monday to Friday (inclusive) except bank or public holidays in England.
<b>Chair</b>	The Chair who has been nominated by the Strategic Officer Group to oversee the operation of the Strategic Officer Group and ensure it has the information required to assess the effective operation of the Essex Procurement Partnership.
<b>Chartered Institute of Procurement and Supply</b>	A <a href="#">professional body</a> working for the procurement and supply profession promoting best practice.
<b>Commencement:</b>	1 <sup>st</sup> April 2025
<b>Confidential Information:</b>	each Party's confidential information is: any Background disclosed by that Party to any of the other Parties for use in the Service and identified as confidential before or at the time of disclosure; and any of the Results [in which that Party owns the Intellectual Property Rights] <b>OR</b> [in relation to which it has an exclusive licence]; and any other information disclosed by that Party to any of the other Parties for use in the Service or under this



Agreement and identified as confidential before or at the time of disclosure or which, by its nature or from the circumstances of its disclosure, should reasonably be presumed to be confidential including but not limited to the sourcing Services

**Contracting Authority:** The identified Member Authority for each procurement activity going through Essex Procurement Partnership, as defined in the Procurement Act 2023.

**Data Protection Legislation:** means all applicable data and privacy legislation in force from time to time in the UK including without limitation:

- (i) the UK GDPR;
- (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy;
- (iii) the Privacy and Electronic Communications Regulations 2003(SI2003/2426) as amended; and
- (iv) the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and which are applicable to a party.

**Essex Procurement Partnership or EPP:** The name of the collaborative working arrangement and Shared Service as set out in this Agreement.

drafting note – check schedules

**Essex Procurement Partnership Procedure Rules:** The rules by which EPP will undertake procurement activity

**Financial Contribution:** the financial contribution to be made by a Party Service, as set out in Schedule 2.

**Intellectual Property Rights:** patents, rights to inventions, trademarks, service marks, registered designs, copyrights, database rights, design rights, rights to use and protect confidential information, in each case whether registered or unregistered, including rights to apply for and be granted and applications for any of the above, and any continuations, continuations-in-part, divisional applications, renewals or extensions of,

and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;

<b>Initial Term:</b>	the period commencing on the Commencement Date and ending on the 3rd anniversary of the Commencement Date.
<b>Key Personnel:</b>	in the case of: Essex County Council: Melanie Evans Braintree District Council: Suzanne Bennett Castle Point District Council: Lance Wosko Epping Forest District Council: Samantha Preston Tendring District Council: Lisa Hastings
<b>Know-how:</b>	unpatented technical information (including information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) which is not in the public domain.
<b>Lead Party</b>	is Essex County Council as agreed between the Parties.
<b>Member Authority</b>	A local authority, named as a Party to this Agreement and a member of Essex Procurement Partnership.
<b>Member Advisory Group</b>	A group consisting of a Councillor representative nominated by each of the Parties in accordance with clause 2.7 acting in collaboration performing the role as set out in the terms of reference in Schedule 5. This group will meet every 6 months.
<b>Partner Working Group</b>	The individuals nominated by each Party who will liaise with the Lead Party to enable delivery of the strategic objectives as set out in Schedule 1 and oversee the prioritisation approach, as set out in Schedule 3,
<b>Prioritisation Tool</b>	means the approach to assigning resource to procurement projects in line with their relative importance to each Member Party.
<b>Procurement Act</b>	the relevant legislation applying to UK public procurement and sourcing activity by the Parties in force, as amended, from time to time, including secondary regulations, statutory guidance and national policy.

<b>Results</b>	all information, data, techniques, Know-how, results, inventions, discoveries, software and materials (regardless of the form or medium in which they are disclosed or stored) identified or first reduced to practice or writing in the course of the Service including but not limited to.
<b>Shared Service:</b>	the Service to undertake sourcing activity on behalf of each party as set out in the Service Plan (Schedule 1).
<b>Shared Service Pipeline:</b>	a list of procurement projects across the EPP Member Authorities which will require resource.
<b>Service Manager</b>	the service manager who is an authorised representative of the Lead Party will have responsibility for the operation of the sourcing activity as described within Schedule 1 (Service Plan) and the general operation of the collaboration.
<b>Service Plan:</b>	the Service Plan annexed to this Agreement as Schedule 1, as varied from time to time under the terms of this Agreement.
<b>Staff</b>	means all persons employed or engaged by a Party to this Agreement including servants, agents, suppliers and sub-contractors, with terms and conditions of hosting or secondment arrangements being confirmed in writing in accordance with section 113 of the Local Government Act 1972.
<b>Strategic Officer Group:</b>	the Key Personnel and Authorised Representatives acting in collaboration performing the role of oversight, steering group and to supervise the carrying out of the Service. This group will meet every three months.
<b>Term:</b>	the period of the Initial Term as may be varied by: <ul style="list-style-type: none"> <li>(a) any extensions to this agreement which are agreed pursuant to clause 3; or</li> <li>(b) the earlier termination of this agreement in accordance with its terms.</li> </ul>
<b>Variation Agreement:</b>	an agreement amending or varying this Agreement made in writing and executed by the Parties and any proposed new party joining this Agreement; and
<b>VAT:</b>	value added tax chargeable under the Value Added Tax Act 1994, or any tax replacing that tax.

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

## **COMMENCEMENT AND DURATION**

### **2. Term**

This Agreement shall take effect on the Commencement Date and shall continue for the Term.

### **3. Extending the initial term**

- 3.1 The Parties may extend this agreement beyond the Initial Term by a further period or periods of up to two years (Extension Period). If the Parties wish to extend this Agreement, decisions to extend should be made by the Member Authorities at least six months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Parties give such notice, then the Term shall be extended by the period set out in the notice.
- 3.3 If one Party or more does not wish to extend this Agreement beyond the Initial Term this Agreement will remain in full force and effect for the Term of the Service, but a Party may withdraw or may be deemed to have withdrawn from the Service in accordance with clause 8 or 10.

#### **4. Collaboration and co-operation**

- 4.1 The Parties shall co-operate and collaborate with each other to identify and deliver, in accordance with the terms of this Agreement, the services in line with the objectives, rationale, values and principles as set out in Schedule 1.
- 4.2 The Parties shall co-operate and collaborate in relation to the remaining Schedules.

#### **5. Due diligence and warranty**

Each Party warrants to the other Parties that it has full power and authority under its constitution and has taken all necessary actions and obtained all authorisations, governance, licences, consents and approvals, to allow it to enter into and perform this Agreement.

#### **6. The Shared Service**

Each of the Parties will carry out the tasks as defined in Schedule 1 and will provide the human and other resources, Financial Contributions, Background, materials, facilities and equipment which are designated as its responsibility in accordance with the terms and conditions of this agreement. The Shared Service will be carried out under the direction and supervision of the Lead Party as guided by the Strategic Officer Group and Member Advisory Group,

#### **7. AUTHORISED REPRESENTATIVES & GROUPS**

- 7.1 There will be a Strategic Officer Group whose Terms of Reference are set out in Schedule 4.
- 7.2. There will be Members Advisory Group whose Terms of Reference are set out in Schedule 5.
- 7.2 The Service Manager is appointed by the Lead Party and will sit on the Strategic Officer Group together with the Authorised Representatives and responsible for leading the operation of the Services as set out in Schedule 1 and reporting on that activity to the Strategic Officer Group and Members Advisory Group.
- 7.5 The Strategic Officer Group and Members Advisory Group have not been provided delegated authority to amend the terms of this Agreement except as may be expressly set out in those terms of reference.

#### **8. ROLES AND RESPONSIBILITIES**

**drafting note – check everything covered in next review**

8.1 The Lead Party will be responsible for:

- (i) the undertaking of the specific objectives as set out in 1.4 of Schedule 1.
- (ii) the day-to-day management of the Service.

- (iii) Ensuring a professional procurement service undertaken by staff MCIPS qualified or studying towards MCIPS.
- (iv) the financial administration of the Service
- (v) implementing decisions taken by the Strategic Officer Group.
- (vi) preparing progress reports and monitoring delivery of the Service.

3.2 Each Party will be responsible for:

- (i) Ensuring an Authorised Representative, at Director level attends the Strategic Officer Group and engages in discussion to enable the Strategic Officer Group to effectively define the way forward of the collaboration support the Lead Party to deliver in line with Schedule 1 the Service Plan by providing all necessary data and access to Staff.
- (ii) Ensuring all General Fund procurements above tender threshold as defined within the Procurement Rules of each party for the life of the proposed contract are allocated to EPP, with an agreed de minimis as agreed annually at the Strategic Officer Group. Non-General Fund procurements such as those funded by a Housing Revenue Account or Levelling Up funding will be funded and accounted for separately.
- (iii) Undertaking all reasonable steps to support the collaboration deliver in line with this Agreement and the procurement strategy agreed by the Strategic Officer Group.
- (iv) Give due consideration to another local authority joining the collaboration and a party to this Agreement and provide reasonable reasons why consent should not be given and not unnecessarily prevent the written agreement of all of the existing parties to this Agreement and execution of a Variation Agreement.
- (v) Give due consideration to another local authority joining the collaboration and a party to this Agreement and provide reasonable reasons why consent should not be given and not unnecessarily prevent the written agreement of all of the existing parties to this Agreement and execution of a Variation Agreement.
- (vi) obtaining and maintaining all regulatory and ethical licences, consents and approvals including each Parties internal approvals/governance (as per clause 2.6) necessary to allow it to carry out the tasks allotted to it in the Service Plan and will carry out the Service in accordance with all laws and regulations which apply to its activities under or pursuant to this Agreement.
- (vii) ensure that any Staff involved in the Service, observe the conditions attaching to any regulatory and ethical licences, consents and approvals; keep complete and accurate records of all research, development and other work carried out in connection with the Service and of all Results.

- (viii) ensure that any Staff involved in the Service, when working on or visiting the other Party's premises, comply with the other Party's health and safety and security policies and procedures and, when accessing or using the other Party's information systems, comply with the other Party's information security policies and procedures.
- (ix) acknowledge through this Agreement that the decision with regards to the specification details, procurement route, evaluation of the tenders, awards of contract rest with the individual Parties, as contracting authorities.

## **FINANCIAL CONTRIBUTION AND PAYMENT PLAN**

- 9.1 Each Party will pay its Financial Contribution to the Lead Party in accordance with Schedule 1 within thirty (30) days after its receipt of an annual invoice to be issue on or around 1<sup>st</sup> October. The Financial Contribution will cover the Staff costs and overheads associate with those Staff, detailed of which are set out within Schedule 1. Where any Financial Contribution is being claimed against costs and expenses incurred by a Party, each invoice must be accompanied by a statement certified by an authorised officer of that Party.
- 9.2 Unless any VAT exemption applies, all amounts are exclusive of VAT which the Party making the Financial Contribution will pay at the rate from time to time prescribed by law.
- 9.3 If any Party fails to make any payment due to another Party under this Agreement, without prejudice to any other right or remedy available to that other Party, that other Party may charge interest (both before and after any judgement) on the amount outstanding, on a daily basis in accordance with the Late Payments of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2013. That interest will be calculated from the date of last date for payment to the actual date of payment, both dates inclusive, and will be compounded quarterly. The Party, which is late paying, will pay that interest on demand.
- 9.4 Where the Party does not pay at all the matter will be escalated to the Strategic Officer Group and if no resolution is found it is to be escalated to the Chief Executives for the Lead Party and late paying Party. Non-payment can result in the late paying Party being excluded from the collaboration and this Agreement, as agreed by the Strategic Officer Group, with the other Parties required to share these costs equally between them until the costs can be reduced to reflect the reduction in operating costs of the Services.
- 9.5 Except as set out in the Service Plan each Party shall:
  - 9.5.1 not be entitled to charge the other Party for the provision of anything it provides in connection with each Service and this Agreement; and
  - 9.5.2 be otherwise responsible for its own costs incurred in connection with each Service and this Agreement, including all Inputs it provides.
- 9.6 The Financial arrangements for the Service will be overseen by the Strategic Officer Group

9.7 The Lead Party will prepare and submit an account and financial forecast of all income and expenditure in connection with the Service every 6 months in September and March to the Strategic Officer Group and the Members Advisory Group, in line with table A within Schedule 2, as adjusted by pay awards and any other inflationary increases.

9.8 The Lead Party will ensure adequate accounts and records are maintained of all income and expenditure under this Agreement and that the Party is allowed to examine the accounts and records of the Lead Party relating to the Service provided.

9.8.1 at least 14 days written notice is given in advance to the Lead Party;

9.8.2 the inspection or examination takes place during the Lead Party's normal working hours; and

9.8.2 the Party appointing the accountant and the accountant will keep confidential any information which it may acquire in the exercise of its rights under this clause 3.10.

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

- Playground, Gym and Urban Play- PROC20-0107
- Footpaths and Road Repairs – EPHF21-001
- In-Cab technology and Waste Services Consultancy – EPH21-004
- Refuse Supplies – EPHF21-002
- Construction Consultancy – EPHF21-001
- Webcasting Services – EPHF001
- Street Sweepings Arisings – EPH0005
- Cleaning and Hygiene Supplies – EPP0006

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

All Parties should benefit from new frameworks.

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

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



granted or implied by this Agreement except the rights expressly set out in this Agreement.

- 10.2 Each Party grants each of the other Parties a royalty-free, non-exclusive licence to use its intellectual property developed during the course of performing the Services or for the purpose of carrying out the Service.
- 10.3 For the avoidance of doubt the Parties hereby confirm and acknowledge that any Intellectual Property Rights or use through a non-exclusive licence, that exist or arise from the Results of the collaboration through the Essex Procurement Partnership, including but not limited to any reports or conclusions drawn from the Service, shall belong exclusively to the Parties, whilst they remain Parties to this Agreement.
- 10.4 The Strategic Officer Group will direct how to utilise and dispose of any Intellectual Property Rights or non-exclusive licence, as they see fit, including but not limited to commercialisation of the Results of the Service. The Lead Party may take such steps as it may decide from time to time, at the Lead Party's expense, to register and maintain any protection for those Intellectual Property Rights, including filing and prosecuting patent applications for any of the Results, and taking any reasonable action in respect of any alleged or actual infringement of those Intellectual Property Rights.
- 10.5 Each of the other Parties will ensure that any Staff involved in the creation of the Results gives the Lead Party such assistance (except financial assistance) as the Lead Party may reasonably request in connection with the registration and protection of the Intellectual Property Rights in the Results, including filing and prosecuting patent applications for any of the Results, and taking any action in respect of any alleged or actual infringement of those Intellectual Property Rights.
- 10.6 Where any third party (such as a contractor) is involved in the Service, the Party engaging that third party will ensure that that third party has assigned to the Lead Party any Intellectual Property Rights (including making a prospective assignment where appropriate) which that third party has in the Results in order to be able to give effect to the provisions of this clause 4.
- 10.7 The Lead Party grants each of the other Parties a royalty free, non-exclusive licence to use the Results for the purpose of carrying out the Service None of the Parties (except the Lead Party under the instruction of the Strategic Officer Group) may grant any sub-licence to use any of the Results except that any Commercial Party may allow any of its Group Company and any person working for or on behalf of the Commercial Party or any of its Group Companies to use the Results for the purpose of carrying out the Service

## **11. ANNOUNCEMENT AND PUBLICATION**

- 11.1 Subject to clause 11.2, no Party shall make, or permit any person to make, any Announcement concerning the existence, subject matter or terms of this Agreement, the Service, or the relationship between the Parties, without the prior written consent of the Lead Party (such consent not to be unreasonably withheld or delayed). The Parties shall consult with the Lead Party regarding the timing, contents and manner of release of any Announcement.
- 11.2 Where an Announcement is required by law or any governmental or regulatory

authority or by any court or other authority of competent jurisdiction, the Party required to make the Announcement shall promptly notify the other Parties. The Party concerned shall make all reasonable attempts to agree the contents of the Announcement before making it.

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

## 12. CONFIDENTIALITY

- 12.1 Subject to **clause 5**, none of the Parties will either during the Service Period or for 10 years after the end of the Service Period disclose to any third party nor use for any purpose, except as expressly permitted by this Agreement, any other Party's Confidential Information.

- 12.2 None of the Parties (**the Recipient**) will be in breach of any obligation to keep any Background, Results or other information confidential or not to disclose it to any third party to the extent that:

12.2.1 if it is received from another Party, it is known to the Recipient (demonstrable by written records) before its receipt from another Party, and it is not already subject to any obligation of confidentiality to another Party;

12.2.2 it is or becomes publicly known without any breach of this Agreement or any other undertaking to keep it confidential;

12.2.3 it has been obtained by the Recipient from a third party in circumstances where the Recipient has no reason to believe that there has been a breach of an obligation of confidentiality to another Party;

12.2.4 it has been developed by the Recipient without reference to another Party's Confidential Information; or

12.2.5 it is disclosed pursuant to the requirement of any law or regulation (provided, in the case of a disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, none of the exceptions to that Act or those Regulations (as the case may be) applies to the information disclosed) or pursuant to the order of any Court of competent jurisdiction or the requirement of any competent regulatory authority and that, in each case where the law permits, and the Party required to make that disclosure has informed the Party whose information it is, within a reasonable time after being required to make the disclosure, of the requirement to make the disclosure and the information required to be disclosed; or

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

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

### 13 **FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004**

- 13.1 All Parties are subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and should any Party receive a request under that Act or those Regulations to disclose any information which, under this Agreement, is the Confidential Information of another Party or within the terms of this Agreement, it will notify the Parties to undertake prompt consultation, before making any disclosure under that Act or those Regulations.
- 13.2 The Party in receipt of the request under the Freedom of Information Act 2000 or Environmental Regulations 2004 will take legal advice regarding the availability and applicability of any exemptions and any other options available and will notify the other Parties of the intended response to that request. The Parties will respond to the Party which received the request within 3 days after receiving the notice if that notice requests that other Parties to provide information to assist the Party which received the request to determine whether or not an exemption to the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 applies to the information requested under that Act or those Regulations. The Parties may make representations in relation to that request and the proposed response and may request amendments to the proposed response.
- 13.3 At the request of another Party, except in order to comply with any court order or any decision of the Information Commissioner's Office or the Information Tribunal, the Party which received the request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 (**the Disclosing Party**) will not disclose any information which, under this Agreement, is that other Party's Confidential Information in response to a request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 provided that:
- 13.3.1 that other Party makes that request in writing within 10 days after receiving notice from the Disclosing Party under this clause; and
- 13.3.2 that other Party provides the Disclosing Party and its Staff dealing with the request reasons in accordance with the Information Commissioner Office guidance relating to the Act and Regulations, applying the Public Interest Test where required.

### 14 **LIMITATION OF LIABILITY**

- 14.1 The Lead Party providing professional advice for the Service has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims not exceeding £10,000,000 in the aggregate. The limits and exclusions in this clause reflect the annual insurance cover arranged (the Cap) and the other Parties are responsible for making its own arrangements for the insurance of any excess liability.
- 14.2 References to liability in this clause 8 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.3 None of the Parties may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

14.4 Nothing in this clause 8 shall limit the Authority's financial contributions under this Agreement.

14.5 Nothing in this agreement limits any liability which cannot legally be limited, including for fraud or fraudulent misrepresentation, Death or personal injury caused by negligence.

14.6 The Lead Party's total aggregate liability to the Parties:

8.7.1 For loss arising from the Lead Party's failure to comply with its data processing obligations under schedule 6 shall not exceed £[AMOUNT];

8.7.2 In respect of all other claims, losses or damages arising in each financial year, shall not exceed the Cap.

14.7 Types of direct loss and specific losses not excluded:

(a) Wasted expenditure and losses incurred by the Contracting Authority arising out of or in connection with any third party claim against the Contracting Authority which has been caused by the negligence or omission of Lead Party. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings.

14.8 The Parties shall indemnify and hold harmless the Lead Party and its Staff with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the negligent actions and/or omissions of the other Parties in relation to the Service, the non-fulfilment of obligations of the Parties under this Agreement or their obligations to third parties.

14.9 The liability of each Party to the Lead Party under clause 7.1 in respect of any direct loss shall not exceed an amount equal £10,000,000. The Parties shall not in any event be liable to the Lead Party, whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect, consequential, or special damages including without limitation any loss of business, revenue, profit, anticipated savings or goodwill (whether direct or indirect).

14.10 The express undertakings and warranties given by the Parties in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are excluded to the fullest extent permitted by law.

## 15 FORCE MAJEURE

If the performance by the Party of any of its obligations under this Agreement (except a payment obligation) is delayed or prevented by circumstances beyond its reasonable control, then that Party will not be in breach of this Agreement due to that delay in their performance. However, if the delay in performance lasts for more than 6 months, the other Parties may, if they unanimously agree to do so, give that Party notice treating it as having withdrawn from the Service and the provisions of clauses 11.4 - 11.9 (inclusive) will apply.

## 16. JOINING THE COLLABORATION

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

## 17. TERMINATION AND WITHDRAWAL

- 17.1 Any Party may independently withdraw from the Collaboration and so this Agreement by providing 6 months written notice to all Parties.
- 17.2 All parties can agree by unanimous decision to dissolve the collaboration ahead of its expiry date. In such case the Intellectual Property Rights to documentation used by the Parties where not otherwise indicated as belonging to a Party, will be shared between the Parties to the collaboration at the time of dissolution in accordance with Clause 4 above.

**Drafting Note: To check clause reference numbers throughout in last review**

- 17.3 Each of the Parties will notify the Lead Party promptly if at any time an Authorised Representative appointed by that Party is unable or unwilling to continue to be involved in the Service. Within 1 month after the date of that notice, the Party which originally appointed that member of the Key Personnel will nominate a successor. The other Parties will not unreasonably refuse to accept the nominated successor, but if the successor is not acceptable this will be escalated in line with 10.11 below (escalation).
- 17.4 If a Party withdraws or is treated as having withdrawn from the Service, the other Parties will use reasonable endeavours to reallocate the obligations of that Party under this Agreement amongst themselves or to a third party acceptable to the remaining Parties, provided that that third party agrees to be bound by the terms of this Agreement.
- 17.5 If a Party withdraws or is treated as having withdrawn from the Service, the withdrawing Party will be required to pay to the Lead Party any expense incurred by the Lead Party as a result of the Party withdrawing this includes but is not limited to costs incurred from reduction of the workforce, licence cost. Such reasonable costs will be paid within 30 days of an invoice being issued by the Lead Party.
- 17.6 Clauses 1, 3, 4 (subject to the provisions of this clause 11) 5, 6, 7, 8, 11.4, 11.5, 11.6, 11.7, 11. 8, 11.9 and 12, will survive the completion or termination of the Service, the expiry of this Agreement, or the withdrawal or deemed withdrawal of any Party for any reason and will continue in force indefinitely or, in the case of clause 6, in accordance with clause 6.1.

- 17.7 Rights in respect of its Background granted under this Agreement by a Party which withdraws or is treated as having withdrawn will continue indefinitely and will be extended to any new party to this Agreement.
- 17.8 Rights in respect of its Results granted under this Agreement by a Party which withdraws or is treated as having withdrawn will continue indefinitely and will be extended to any new party to this Agreement.
- 17.9 All rights to use any other Party's Intellectual Property Rights granted under this Agreement to a Party which withdraws or is treated as having withdrawn will cease immediately on the expiry of the withdrawal notice given by or to that Party.

**18. PREVENTION OF BRIBERY**

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

**GENERAL**

**19. Assignment etc:**

None of the Parties may assign or transfer this Agreement as a whole, or any of its rights or obligations under it.

**20. Dispute Resolution and Escalation:**

If the Key Personnel are unable to reach agreement on any issue ("the Dispute") concerning this Agreement or the Service within 30 days after one party has notified the Lead Party of that issue, they will refer the Dispute to the Strategic Officer Group who shall attempt in good faith to resolve it;

If the Authorised Representatives, through the Strategic Officer Group are for any reason unable to resolve the Dispute within 15 Business Days of the referral the Dispute will be escalated to the Chief Executives of the Parties, who shall attempt in good faith to resolve it; and

If the Chief Executives are for any reason unable to resolve the Dispute within 10 Business Days of it being referred to them, the Parties will attempt to settle it by mediation unless otherwise agreed between the Parties.

**21. Rights and remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**22. Severability**

- (i) If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- (ii) If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**23. Waiver of rights:**

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

**24. No Partnership or agency:**

24.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between any of the Parties, constitute any Party, the agent of another Party, or authorise any Party to make any representation or enter into any commitments, or incur any liability, for or on behalf of any other Party, unless expressly provided for in writing.

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

**25. Entire agreement:**

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

26. **Third parties:**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

27. **Governing law:**

**Drafting note – dispute resolution clause**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by, and this Agreement is to be construed in accordance with, English law.

The English Courts will have exclusive jurisdiction to deal with any dispute (including any non-contractual claim or dispute) which has arisen or may arise out of or in connection with this Agreement, except that a Party may bring proceedings to protect its Intellectual Property Rights or Confidential Information in any jurisdiction.

28. **Data Protection:**

Each Party will comply with the provisions set out in Schedule 6.

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

29. **Counterparts:**

This Agreement may be executed in any number of counterparts. Once it has been executed and each Party has executed at least one counterpart, each counterpart will constitute a duplicate original copy of this Agreement. All the counterparts together will constitute a single agreement.

**Drafting note – formatting of attestation clause required**

**The Common Seal of**

**The Common Seal of**

**Essex County Council**

**Braintree District Council**

**Was hereunto affixed in the presence of**

**Was hereunto affixed in the presence of**

**Solicitor for and on behalf of the Council**

**Solicitor for and on behalf of the Council**



**The Common Seal of**

**Castle Point Borough Council**

**Was hereunto affixed in the presence of**

**Solicitor for and on behalf of the Council**

**The Common Seal of**

**Tendring District Council**

**Was hereunto affixed in the presence of**

**Solicitor for and on behalf of the Council**

**The Common Seal of**

**Epping Forest District Council**

**Was hereunto affixed in the presence of**

**Solicitor for and on behalf of the Council**

## **SCHEDULE 1**

### **“The Service Plan”**

#### **1. Service Objectives**

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

- i. **Development** – Undertake an assessment of procurement maturity and support in developing this level of maturity in line with the National Procurement Strategy.
- j. **Network** – enable access to wider expertise within the ECC team and wider authority network where resource is available

## 2. Rationale for the Collaboration

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

## 3. Core Values

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

;

## **4. Principles**

- 4.1. By signing this Agreement the Parties agree to
  - a. Commit resource, financial contributions or a combination of the two to the value provided within schedule 1 to sit within the structure of the Lead Party and work across the member organisations as directed by the Lead Party under the guidance of the Strategic Officer Group
  - b. Share spend/ contract data and commit to identify and deliver shared sourcing activity to the benefit of the Essex resident
  - c. Ensure all procurement activity over the Authority's tender threshold for the life of the proposed contract is undertaken by the Lead Party in an order determined by the Prioritisation approach as set out in schedule 3, with all procurement resource for the Collaboration to sit within the Lead Party (with the exception of Essex County Council who will work with the Parties to consider how best to integrate on the basis of category, spend and complexity)
  - d. Commit to commonality of documentation including but not limited to common tender documents, a shared set of procurement rules and procurement strategy.
  - e. Commit to active participation in each group and by staff working with Collaboration as if working with internal service.

## **5. Location**

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

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

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

discussed in a constructive manner for the benefit of each Party, achieving value for money and effectiveness of service for both Parties.

## **7. Core Service**

- 7.1. The Collaboration will be working to offer comprehensive sourcing service with capability across category management, market shaping and sourcing.
- 7.2. Working with the Parties and within the Financial Contributions agreed in Schedule 1, The Lead Party will:
  - 7.2.1. Provide a central professional procurement resource who
    - Are members of or studying to become a member of the Chartered Institute of Purchasing and Supply
    - Maintain procurement knowledge, understanding the latest procurement skills and techniques and able to articulate and implement this with Parties.
    - Effectively engage with all member authorities and have the right knowledge to deliver effective procurement support.
  - 7.2.2. Develop and maintain a good understanding of partner spend and contractual commitment through
    - Supporting each Party to develop a Contracts Register, working to ensure this is representative of each Party's spend and that details are published as necessary in line with legal commitments.
    - Creation of one procurement forward plan, with requirements from each partner represented with this and delivery priority informed by the Strategic Officer Group
    - Undertaking of analysis of spend as provided by each Party against the contracts register and other financial data to identify where procurement is necessary to manage uncontracted spend and protect the authority from unauthorised/non-compliant expenditure and risk.
    - Benchmarking of party contracts against contracts held by other Parties and external sources where possible.
    - Identifying key categories of spend for all Parties, defining opportunities to join up this spend and, where possible, deliver savings.
  - 7.2.3. Develop a good understanding of the sourcing markets for key categories of spend for the parties through the undertaking of market analysis for sourcing projects where sufficient time has been given by each party
  - 7.2.4. Deliver effective sourcing support to each party through:
    - Providing front line procurement advice and support to all partner employees, including for self-service request for quotations.

- Creation of quality tender documentation and undertaking of the sourcing process for requirements above the Party's tender threshold (total cost of the contract) using a defined e sourcing portal.
- Managing the liaison with external stakeholders such as suppliers, procurement framework organisations and Central Government on all procurement matters.
- Meeting and negotiating with suppliers' representatives as required and permitted

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

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

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

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

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

- The Lead party will facilitate access to its IT systems for all seconded Staff.
- Each party will ensure suitable work facilities for members of the shared service to utilise when work from that party's facilities including suitable internet access and parking where this is offered to existing staff.

# A.2 APPENDIX A

## SCHEDULE 2

### The Financial Contributions

#### 1. Finance Contributions

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

Table A:

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

**Drafting Note: check figures in next review**

- 1.3 **Note that costs in Table A will be subject to pay award and inflationary increases as with existing costs.**
- 1.4 **In line with clause 3.1**, each Party will pay its Financial Contribution in line with the above table, as adjusted by any pay awards or inflation, to the Lead Party in accordance within thirty (30) days after its receipt of an annual invoice to be issue on or around 1<sup>st</sup> October by Essex County Council.

# A.2 APPENDIX A

## **SCHEDULE 3 Prioritisation Approach**

- 1.1. The Prioritisation Approach sets out the order in which sourcing projects of each Authority are undertaken.

**Drafting Note – look at whether definition is required for Prioritisation**

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

### **Object 1**



Prioritisation  
Approach



## SCHEDULE 4

### Terms of Reference – Strategic Officer Group

#### 1. Purpose

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

#### 2. Responsibilities

2.1. The Strategic Officer Group is responsible for:

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

2.2. The Strategic Officer Group will be supported by:

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

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

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

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

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

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

### 3. Agendas

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

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

### 4. Records of Decisions

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

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

### 5. Authority

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

5.2. The Chair of Strategic Officer Group or, in his absence, any other individual the members of the Strategic Officer Group may from time to time agree, will chair meetings of the Strategic Officer Group. The Chair will ensure effective operation of the Strategic Officer Group and oversee the development of the collaboration arrangements in line with the procurement strategy agreed by the Strategic Officer Group.

5.3. The Strategic Officer Group does not have delegated authority or decision-making authority through the Essex Procurement Partnership and consequently the Parties should ensure that their own internal governance procedures are followed for any decisions required **and before implementation.**

5.4. Each Party will, through its Authorised Representative or his alternate, have one vote in the Strategic Officer Group. Decisions will be taken by a simple majority except where a decision necessitates a change to the Service Plan or a change to the allocation of any funding. In either of those cases, any decision must be unanimous. The Chair will not have a casting vote. Where a unanimous decision cannot be reached, this will be escalated to the Chief Executives (from the Strategic Officers

Group in accordance with Clause 20) of each party with agreement on the way forward.

## **6. Composition**

6.1. The Strategic Officer Group consists of

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

## **7. Performance Management**

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

7.2. The Service Manager will provide quarterly reports summarising the progress of the Service and the Results, and the Lead Party will ensure that all the Parties are informed about the progress of the Service, and the Results are circulated to each member of the Strategic Officer Group with the written notice for the relevant meeting.

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

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

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

- all relevant contextual developments, including changes in legislation, financial circumstances, and technical and operational methods;
- the extent to which the Parties's aims and objectives remain relevant to this changing context; and are being achieved.
- the nature and extent of opportunities for further development of the Parties's activities and funding
- any need to reduce the scope or scale of the Parties's activities.

## **8. Quorum**

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

- the chair (or a member nominated by the chair to act as chair) and

- at least three other members.

## **9. Information requirements**

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

## **10. Budget**

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

## **11. Meetings**

- 11.1. The Parties will ensure that the Strategic Officer Group meets at least every 3 months at venues to be agreed, and in default of agreement at Causeway House, Braintree District or at any other time at the request of any of the Parties. Meetings of the Strategic Officer Group will be convened with at least fifteen (15) Business Days written notice in advance. That notice must include an agenda. Actions from the Strategic Officer Group will be prepared by the chair of the meeting and sent to each of the Parties within fourteen (14) days after each meeting.
- 11.2. Any member of the Strategic Officer Group or Member Advisory Group may participate in the relevant meetings by tele-conference, videoconference or any other technology that enables everyone participating in the meeting to communicate interactively and simultaneously with each other.

## SCHEDULE 5

### Terms of Reference – Members Advisory Group

#### 1. Role

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

#### 2. Term

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

#### 3. Membership

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

#### 4. Responsibilities

- 4.1 The MAG is an advisory group and therefore decision-making powers are not devolved from each Partner Authority.
- 4.2 The MAG will hold responsibility for reviewing the performance of the partnership, providing insight and challenge to the delivery by EPP of its core objectives over the life of the partnership.
- 4.3 The core objectives of EPP, in priority order, are as follows:
- **To understand contract liquidity** – Through development of a clear contract register and forward plan enabling partners to understand third party commitments, providing transparency in line with legal requirements.
  - **Undertake sourcing activity** – Undertake all procurement for the members authority's above the tender threshold of that Authority, meeting legal obligations and delivering value for money.

- **Introduce category management** – Identifying key categories of spend across member authorities and undertaking review of this spend to identify collaborative procurement and savings opportunities.
- **Create frameworks** – Creating robust and effective frameworks to support partners in delivery of services whilst also creating income opportunities through the introduction of rebates.
- **Develop the professionalism of procurement in each partner** – Undertake an assessment of procurement maturity and support in developing this level of maturity in line with the National Procurement Strategy.
- **Grow procurement and market knowledge** – Provide business partners and a supporting procurement team with the right knowledge and capabilities to deliver an effective and professional sourcing service to each member.
- **Support robust contract management** – Introduce a new contract management approach for partner authorities to embed with guidance to enable consistent and effective management of contracts and suppliers across partners.
- **Develop social value** – Introduce a common approach to social value/ climate agenda to sourcing activity for members.

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

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

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

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

## 5. Authority

5.1 The Chair of Members Advisory Group or, in his absence, any other individual the members of the Members Advisory Group may from time to time agree, will chair meetings of the Members Advisory Group. The Chair will ensure effective operation of the Member Advisory Group and oversee the development of the collaboration arrangements in line with the procurement strategy agreed by the Members Advisory Group.

5.2 The Member Advisory Group does not have delegated authority or decision making through the Essex Procurement Partnership and consequently the Parties should ensure that their own internal governance procedures are followed for any decisions **required.**

- 5.3 The Service Manager will provide six monthly reports summarising the progress of the Service and the Results, and the Lead Party will ensure that all the Parties are informed about the progress of the Service and the Results are circulated to each member of the Member Advisory Group with the written notice for the relevant meeting.
- 5.4 Each Party will, through its Authorised Representative or his alternate, have one vote in the Members Advisory Group. Decisions will be taken by a simple majority except where a decision necessitates a change to the Service Plan or a change to the allocation of any funding. In either of those cases, any decision must be unanimous. The Chair will not have a casting vote. Where a unanimous decision cannot be reached, this will be escalated to the or Leaders (from the Members Advisory Group) of each party with agreement on the way forward.

## **6. Meetings**

- 6.1 The Parties will ensure that the Members Advisory Group meets every 6 months at venues to be agreed with representation from elected members, ideally the relevant Cabinet member responsible for the procurement function within each Party's respective organisation, to review the performance of the Essex Procurement Partnership, in oversight of the Strategic Officer Group, and to promote the approach of shared working to support growth and deliver efficiencies. Meetings of the Members Advisory Group will be convened with at least 15 Business Days written notice in advance. That notice must include an agenda. Actions from the Member Advisory Group will be prepared by the Service Manager and approved by the Chair of the meeting and sent to each of the Parties within 10 Business Days (10) days after each meeting.
- 6.2 Any member of the Strategic Officer Group or Member Advisory Group may participate in the relevant meetings by tele-conference, video-conference or any other technology that enables everyone participating in the meeting to communicate interactively and simultaneously with each other. The quorum for a meeting of the Strategic Officer Group and Members Advisory Group will be one representative of at least 75% of the Parties,
- 6.3 Additional meetings may be called by the Chair as appropriate. Reports and supporting documentation will be circulated at least five working days in advance of the meeting.

## SCHEDULE 6

### Data Protection

#### Part 1

#### Drafting Note to be reviewed by Information Governance Teams

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

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



- 5.5 maintain a written record of all categories of Processing activities carried out on behalf of the Controller, containing:
    - 5.5.1 the name and contact details of the Processor and its Subprocessors and of the Controller, and, where applicable, of the Processor's and its Subprocessors' Data Protection Officers and any Representative;
    - 5.5.2 the categories of Processing of Personal Data carried out on behalf of the Controller;
    - 5.5.3 where applicable, transfers of any of the Service Personal Data outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) or to an International Organisation, including the identification of that country or International Organisation and documentation of suitable safeguards adopted in connection with that transfer; and
    - 5.5.4 a general description of the technical and organisational security measures taken in respect of the Service Personal Data.
  - 5.6 provide the Controller, on request, with a copy of the records referred to in paragraph 5.5;
  - 5.7 make the records referred to in paragraph 5.5 available to any competent Supervisory Authority on request and will, as soon as reasonably possible, notify the Controller that it has done so; and
  - 5.8 all other respects, comply with all the duties and obligations imposed from time to time on Processors by the Data Protection Legislation.
6. Without prejudice to paragraph 5, the Processor will take appropriate technical and organisational measures:
    - 6.1 in such a way that the Processing of the Service Personal Data will meet the requirements of the Data Protection Legislation and will ensure the protection of the rights of Data Subjects and allow the Controller to fulfil its obligations to Data Subjects, including the Controller's obligations to respond to requests by Data Subjects to exercise their rights of access, rectification or erasure, to restrict or object to the processing of their Personal Data, or to data portability;
    - 6.2 to ensure a level of security appropriate to the risk, including amongst other things, as appropriate:
      - 6.2.1 the encryption of the Service Personal Data;
      - 6.2.2 the ability to ensure the on-going confidentiality, integrity, availability and resilience of systems and services Processing the Service Personal Data;
      - 6.2.3 the ability to restore the availability and access to the Service Personal Data in a timely manner in the event of a physical or technical incident;

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

- 11.1 comply with any request from the Controller to amend, rectify, transfer, block or destroy any of the Service Personal Data;
  - 11.2 securely destroy and permanently delete from the Processor's and its Subprocessors' systems (including back-up and archive systems) all copies of any of the Service Personal Data held by the Processor or any of its Subprocessors and in any case on the termination or expiry of this Agreement (except any of the Service Personal Data which any law to which the Processor is subject requires the Processor to continue to store that Personal Data);
  - 11.3 provide the Controller with such information about the Processor's and its Subprocessors' Processing of the Service Personal Data and such assistance as the Controller may request from time to time to allow the Controller to meet its obligations under the Data Protection Legislation, including the Controller's obligations to Data Subjects and in relation to data security and Data Protection Impact Assessments, and to allow the Controller to be able to demonstrate compliance with the Data Protection Legislation;
  - 11.4 take such other action or refrain from taking any action necessary to comply with, or to allow the Controller to comply with, the Data Protection Legislation or the order of any competent Supervisory Authority or court of competent jurisdiction; and
  - 11.5 co-operate with any competent Supervisory Authority.
12. The Processor will notify the Controller as soon as reasonably possible if the Processor becomes aware of any of the following: any breach of this Schedule, any breach of any of the Data Protection Legislation, and any Personal Data Breach. That notice must (at least):
  - 12.1 describe the nature and facts of the breach including, where possible, the categories and approximate number of Data Subjects (if any) concerned and the categories and approximate number of data records concerned;
  - 12.2 communicate the name and contact details of the Data Protection Officer or other contact point where more information can be obtained;
  - 12.3 describe the likely consequences of the breach; and
  - 12.4 describe the measures taken or proposed to be taken by the Supplier to address and remedy the breach, including, where appropriate, to mitigate its possible adverse effects.
13. The Processor will give written notice to the Controller, as soon as reasonably possible, should the Processor or any Subprocessor receive any request, complaint, notice, order or communication which relates directly or indirectly to the Processing of the Service Personal Data or to compliance with the Data Protection Legislation and, at the same time, will forward that request, complaint, notice, order or communication to the Controller. The Processor will co-operate with the Controller and give it such information and assistance as the Controller may reasonably require in relation to that request, complaint, notice or communication to enable the Controller to respond to the same in accordance with any deadline and any requirement to provide information. The Processor will not act on any such request, complaint, notice, order or communication without first obtaining the Controller's written consent.

14. The Processor will allow the Controller (or its representatives) at reasonable times and from time to time, to inspect and review the Processor's and its Subprocessors compliance with this Schedule and the Data Protection Legislation and the Processor will give the Controller any assistance which the Controller may reasonably require in connection with that inspection and review. The Processor will ensure that its Subprocessors will give the Controller any assistance the Controller reasonably requires to carry out that inspection and review.
15. The Processor will, as quickly as possible, rectify any and all security weaknesses and vulnerabilities reported to it by the Controller and will confirm to the Controller in writing when this has been done.
16. In the event of an unexpected even which affects the Processor's ability to process the Service Personal Data in accordance with this Schedule, including any storm, fire, flood, telecommunications failures, IT systems failures and breaches of security, the Processor will invoke and implement a recovery plan so that the Processor is still able to provide and does Process the Service Data in accordance with this Schedule.
30. The Processor will comply with [BS ISO/IEC 27001:2013, the Information Security Management System Standard published by the International Organization for Standardization and 27002:2014, the Code of Practice for Information security Controls, each as amended from time to time or, in each case, any higher standard published from time to time by the relevant authority (ISO 27001)] and will provide to the Controller, at least once every 12 months, a report or certificate by an independent third party qualified to give that report or certificate of the Processor's and its Subprocessors' compliance with this Schedule and [ISO 27001]. [The Processor will neither do, nor omit to do, anything which places the Controller in breach of ISO 27001. The Processor will promptly supply any and all information and will complete any and all questionnaires which the Controller reasonably requests to allow the Controller to obtain or maintain certification under ISO 27001 and to allow the Controller to comply with ISO 27001.]
18. The Processor will not appoint any Subprocessor without first obtaining the Controller's written consent. Notwithstanding the Controller giving any consent to the Processor appointing any Subprocessor, Processor will:
  - 18.1 impose on each Subprocessor obligations equivalent to or at least as onerous as those imposed on the Processor in this Schedule;
  - 18.2 monitor each Subprocessor's compliance with those obligations and ensure that each Subprocessor complies with those obligations; and
  - 18.3 be liable to the Controller for the acts and omissions of the Processor's Subprocessors as though they were the Processor's own acts and omissions.
19. This Schedule will, at the request of either Party, be amended from time to time insofar as is necessary or desirable to achieve any or all of the following:
  - 19.1 to bring this Schedule or either Party's or both Parties' obligations in respect of the Service Personal Data into line with the Data Protection Legislation; or
  - 19.2 to allow either Party or both Parties to comply with the Data Protection Legislation and the requirements and recommendations of any competent Supervisory Authority.

20. The Controller will comply with all the duties and obligations imposed from time to time on Controllers by the Data Protection Legislation and, without prejudice to the foregoing, the Controller will:
  - 20.1 establish and document the legal basis or bases on which the Controller Processes any and all of the Service Personal Data;
  - 20.2 where any Special Category Personal Data is Processed, establish and document the condition which justifies the Processing of that Special Category Personal Data for the purposes of the Service;
  - 20.3 provide Data Subjects with all information necessary to, and obtain any and all Consents from Data Subjects necessary to, allow the Controller to: Process their Personal Data in accordance with this Schedule; transfer their Personal Data to the Processor; and have the Processor Process their Personal Data in accordance with this Schedule, including (without limitation) any automated decision making or profiling carried out by the Processor on the Controller's instructions or at the Controller's request;
  - 20.4 at the Processor's request, provide the Processor with details of the legal basis on which any the Service Personal Data are Processed and the condition which justifies the Processing of any Special Category Personal Data, and with copies of any Consent obtained from any Data Subject;
  - 20.5 if the legal basis for Processing any of the Service Personal Data or the condition to be met to justify the Processing of any Special Category Personal Data for the purposes of the Service is the Data Subject's Consent, and that Consent is withdrawn, or if any Data Subject objects to any Processing of his or her Personal Data carried out by the Processor for the Controller or exercises his or her right to erasure or restriction or any other right under the Data Protection Legislation, as soon as possible, give notice of that withdrawal, objection or the exercise of that right and of the Service Personal Data affected to the Processor. (The Processor may stop Processing that Service Personal Data and delete it from its systems unless the Controller demonstrates that there is another legal basis for Processing that Service Personal Data, or that the Processing meets any other condition which justifies the Processing of Special Category Personal Data for the purposes of the Service, or that there are compelling legitimate grounds for the Processing which override the interests, rights and freedoms of the Data Subject, or that the Processing is necessary for the establishment, exercise or defence of legal claims.);
  - 20.6 provide the Processor with such instructions regarding the Processing of the Service Personal Data as may be necessary to allow the processor to Process the Service Personal Data for the purposes of the Service and not give the Processor any unlawful instruction;
  - 20.7 not instruct the Processor to transfer any of the Service Personal Data outside the European Union (including for these purposes the UK, even though the UK may have ceased to be a member state of the European Union) or to an International Organisation unless: i) the European Commission has made a Decision of Adequacy; or ii) the Controller has provided appropriate safeguards and has provided the Processor with details of any safeguards

which the Controller has implemented to ensure that the transfer is not in breach of the Data Protection Legislation;

- 20.8 carry out any Data Protection Impact Assessments in respect of the Processing of the Service Personal Data necessary to comply with the Data Protection Legislation
21. All expressions used in this Schedule beginning with a capital letter (and not defined in this Schedule or elsewhere in this Agreement) have the meaning given to them in the Data Protection Legislation.
22. The provisions of this Schedule will continue in full force and effect for so long as the Processor Processes any Personal Data on behalf of the Controller, notwithstanding the termination of this Agreement or the completion of the Service.
23. The Processor will indemnify the Controller and keep the Controller fully and effectively indemnified on demand against any and all costs, claims, demands, damages, expenses and liabilities of any nature and against any and all fines and penalties arising out of or in connection with any breach by the Processor or any of its Subprocessors of this Schedule. This paragraph will survive the termination of this Agreement, the completion of all Processing of the Service Personal Data by the Processor and its Subprocessors and the completion of the Service, and will continue in force without limit in time.

### **The Appendix**

The Subject Matter of the Processing  
[insert details]

The Duration of the Processing  
[insert details]

The Nature and Purpose of the Processing  
[insert details]

The Types of Personal Data Processed  
[insert details]

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

### **Part 2**

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

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

Data Processed, the categories of Data Subjects to whom the Service Personal Data relate, and the retention periods for the Service Personal Data.

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

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



December 2004 (Decision 2004/915/EU) amending Decision 2001/497/EC (or any standard or model clauses or agreement replacing the same) with the other Controller(s); and

- 10.2 without prejudice to paragraph 10.1, if any Controller is in the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) but will use a Processor in, or will transfer any of the Service Personal Data to a Processor in, a country or territory outside the European Union (which, for these purposes, includes the United Kingdom, even if it is no longer a member of the European Union) which does not ensure an adequate level of protection for the rights and freedoms of Data Subjects in relation to the Processing of Personal Data, it will first enter into the standard contractual clauses for the transfer of personal data from the EU to third countries (controller-to-processor transfers) contained in the Annex to the Commission Decision of 5 February 2010 (Decision 2010/87/EU) amending Decision 2002/16/EC (or any standard or model clauses or agreement replacing the same) with that Processor on its own behalf and on behalf of, and in the name of, the other Controller(s).
11. Each Controller will, on the request of any other Controller:
    - 11.1 comply with any request from that other Controller to amend, rectify, transfer, block or destroy any of the Service Personal Data;
    - 11.2 provide the other Controller(s) with such information about its and its Processors' Processing of the Service Personal Data and such assistance as any other Controller may request from time to time to allow each of the other Controller(s) to meet its obligations under the Data Protection Legislation, including the other Controller's obligations to Data Subjects and in relation to data security and Data Protection Impact Assessments, and to allow the other Controller to be able to demonstrate compliance with the Data Protection Legislation;
    - 11.3 take such other action or refrain from taking any action necessary to comply with, or to allow the other Controller(s) to comply with, the Data Protection Legislation or the order of any competent Supervisory Authority or court of competent jurisdiction; and
    - 11.4 co-operate with any competent Supervisory Authority.
  12. Each Controller will notify the other Controller(s) as soon as reasonably possible if it becomes aware of any of the following: any breach of this Schedule, any breach of any of the Data Protection Legislation, and any Personal Data Breach. That notice must (at least):
    - 12.1 describe the nature and facts of the breach including, where possible, the categories and approximate number of Data Subjects (if any) concerned and the categories and approximate number of data records concerned;
    - 12.2 communicate the name and contact details of the Data Protection Officer or other contact point where more information can be obtained;
    - 12.3 describe the likely consequences of the breach; and

- 12.4 describe the measures taken or proposed to be taken by the Controller(s) to address and remedy the breach, including, where appropriate, to mitigate its possible adverse effects.
13. Each Controller will give written notice to the other Controller(s), as soon as reasonably possible, should it or any of its Processors receive any request, complaint, notice, order or communication which relates directly or indirectly to the Processing of the Service Personal Data or to compliance with the Data Protection Legislation and, at the same time, will forward a copy of that request, complaint, notice, order or communication to the other Controller(s). Each Controller will cooperate with the other Controller(s) and give them such information and assistance as any other Controller may reasonably require in relation to that request, complaint, notice or communication to enable the other Controller(s) to respond to the same in accordance with any deadline and any requirement to provide information. None of the Controllers will act on any such request, complaint, notice, order or communication without first consulting the other Controller(s).
14. Each Controller will allow any other Controller (or its representatives) at reasonable times and from time to time, to inspect and review its and its Processors' compliance with this Schedule and the Data Protection Legislation and will give any other Controller any assistance which it may reasonably require in connection with that inspection and review. Each Controller will ensure that its Processors will, give any other Controller any assistance the other Controller reasonably requires to carry out that inspection and review.
15. Each Controller will, as quickly as possible, rectify any and all security weaknesses and vulnerabilities reported to it by any other Controller and will confirm to the other Controller(s) in writing when this has been done.
16. In the event of an unexpected even which affects any Controller's ability to process the Service Personal Data in accordance with this Schedule, including any storm, fire, flood, telecommunications failures, IT systems failures and breaches of security, that Controller will invoke and implement a recovery plan so that it is still able to provide and does Process the Service Data in accordance with this Schedule.
17. Each Controller will comply with [BS ISO/IEC 27001:2013, the Information Security Management System Standard published by the International Organization for Standardization and 27002:2014, the Code of Practice for Information security Controls, each as amended from time to time or, in each case, any higher standard published from time to time by the relevant authority (ISO 27001)] and will provide to the other Controller(s), at least once every 12 months, a report or certificate by an independent third party qualified to give that report or certificate of its and its Processors' compliance with this Schedule and [ISO 27001]. [No Controller will do, nor omit to do, anything which places any other Controller in breach of ISO 27001. Each Controller will promptly supply any and all information and will complete any and all questionnaires which any other Controller reasonably requests to allow that other Controller to obtain or maintain certification under ISO 27001 and to allow that other Controller to comply with ISO 27001.]
18. No Controller will appoint any Processor without first obtaining the written consent of the other Controller(s). Notwithstanding any other Controller giving any consent to the appointment of any Processor, each Controller will (as a minimum):
  - 18.1 impose on each Processor those obligations which Controllers are obliged to impose on Processors under the Data Protection Legislation;

- 18.2 monitor each Processor's compliance with those obligations and ensure that each Processor complies with those obligations; and
  - 18.3 be liable to the other Controller(s) for the acts and omissions of its Processors as though they were its own acts and omissions.
19. This Schedule will, at the request of any Controller, be amended from time to time insofar as is necessary or desirable to achieve any or all of the following:
  - 19.1 to bring this Schedule or any Controller's obligations in respect of the Service Personal Data into line with the Data Protection Legislation; or
  - 19.2 to allow any Controller to comply with the Data Protection Legislation and the requirements and recommendations of any competent Supervisory Authority.
20. Each Controller will comply with all the duties and obligations imposed from time to time on Controllers by the Data Protection Legislation and, without prejudice to the foregoing, each Controller will:
  - 20.1 establish and document the legal basis or bases on which it Processes the Service Personal Data;
  - 20.2 where any Special Category Personal Data is Processed, establish and document the condition which justifies the Processing of that Special Category Personal Data for the purposes of the Service;
  - 20.3 provide Data Subjects with all information necessary to, and obtain any and all Consents from Data Subjects necessary to, allow it: to Process their Personal Data in accordance with this Schedule; transfer their Personal Data to the other Controller(s); and allow the other Controller(s) to Process their Personal Data in accordance with this Schedule, including (without limitation) any automated decision making or profiling;
  - 20.4 at the request of any other Controller, provide the other Controller's with details of the legal basis on which any the Service Personal Data are Processed and the condition which justifies the Processing of any Special Category Personal Data, and with copies of any Consent obtained from any Data Subject;
  - 20.5 if the legal basis for Processing any of the Service Personal Data or the condition to be met to justify the Processing of any Special Category Personal Data for the purposes of the Service is the Data Subject's Consent, and that Consent is withdrawn, or if any Data Subject objects to any Processing of his or her Personal Data carried out for the purposes of the Service or exercises his or her right to erasure or restriction or any other right under the Data Protection Legislation, as soon as possible, give notice of that withdrawal, objection or the exercise of that right and of the Service Personal Data affected to the other Controller(s). (The other Controller(s) may stop Processing that Service Personal Data and delete it from its systems unless there is another legal basis for Processing that Service Personal Data, or the Processing meets any other condition which justifies the Processing of Special Category Personal Data for the purposes of the Service, or there are compelling legitimate grounds for the Processing which override the interests,

rights and freedoms of the Data Subject, or the Processing is necessary for the establishment, exercise or defence of legal claims.);

- 20.6 carry out any Data Protection Impact Assessments in respect of the Processing of the Service Personal Data necessary to comply with the Data Protection Legislation.
21. All expressions used in this Schedule beginning with a capital letter (and not defined in this Schedule or elsewhere in this Agreement) have the meaning given to them in the Data Protection Legislation.
22. The provisions of this Schedule will continue in full force and effect for so long as any of the Service Personal Data is Processed, notwithstanding the termination of this Agreement or the completion of the Service.
23. Each Controller will indemnify the other Controller(s) and keep them fully and effectively indemnified on demand against any and all costs, claims, demands, damages, expenses and liabilities of any nature and against any and all fines and penalties arising out of or in connection with any breach by it or any of its Processors of this Schedule. This paragraph will survive the termination of this Agreement, the completion of all Processing of the Service Personal Data and the completion of the Service and will continue in force without limit in time.
24. The Parties will [securely destroy and permanently delete from its and its Processors' systems (including back-up and archive systems)] all copies of any of the Service Personal Data held by it or any of its Processors at the end of the relevant retention period in the Annex to this Schedule and in any case on the termination or expiry of this Agreement (except any of the Service Personal Data which any law to which the parties is subject requires it to continue to store the Service Personal Data).

### **The Appendix**

The Subject Matter of the Processing  
[insert details]

The Duration of the Processing  
[insert details]

The Nature and Purpose of the Processing  
[insert details]

The Types of Personal Data Processed  
[insert details]

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

The Retention Periods  
[insert details]