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**LEGAL SHARED SERVICE AGREEMENT**

Between

**South Staffordshire District Council**

And

**Lichfield District Council**

And

**Tamworth Borough Council**

**LEGAL SERVICES**

**SOUTH STAFFORDSHIRE DISTRICT COUNCIL**

**COUNCIL OFFICES**

**WOLVERHAMPTON ROAD**

**CODSALL**

**WV8 1PX**

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This Agreement is made the            day of

## **BETWEEN**

## **THE PARTIES**

(1)                    SOUTH STAFFORDSHIRE DISTRICT COUNCIL of Wolverhampton Road, Codsall, WV8 1PX (The Host Authority)

(2)                    LICHFIELD DISTRICT COUNCIL of District Council House Frog Lane, Lichfield, Staffordshire. WS13 6YZ (LDC)

(3)                    TAMWORTH BOROUGH COUNCIL of Marmion House, Lichfield Street, Tamworth, Staffordshire B79 7BZL. WV8 1PX (TBC)

Together the “Parties” and each of them a “Party”

## **BACKGROUND**

- 1) In November and December 2019 the Cabinets of the Parties agreed to share Legal Services provision as and when required pursuant to section 113 of the Local Government Act 1972.
- 2) Each of the Parties is a Contracting Authority for the purposes of the Public Contracts Regulations 2015 (“the Regulations”)
- 3) This Agreement sets out how the Parties will collaborate in accordance (as applicable) with the Local Authorities (Goods and Services) Act 1970, s1 of the Localism Act 2011, s93 of the Local Government Act 2003 and s101 and s111 of the Local Government Act 1972;
- 4) The Parties aim to benefit from the economies of scale that will be generated through this collaboration which will contribute to the promotion and improvement of the respective areas;
- 5) This Agreement, amongst other things, sets out and is predicated on the principles of co-operation as contemplated by Regulation 12(7) of the Regulations which the Parties have agreed should apply to the arrangements in this Agreement;
- 6) The rationale for entering into this Agreement is for the Parties to be able to work co-operatively in the public and common interest and in accordance with the principles of co-operation in order to utilise the professional expertise and experience of employees of all parties in the delivery of a shared legal services service in certain areas set out in Schedule 1 (Scope of Services)

- 7) It is intended that staff currently involved in the provision of the Legal Service and employed by the Host Authority continue to be employed by the Host Authority with effect from the Commencement Date.
- 8) The Parties agree that previous arrangements made under section 113 of the Local Government Act 1972 and pursuant to the Local Authorities (Goods and Services) Act 1970 shall cease and be governed by the terms of this Agreement from the Commencement Date.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

<b>Agreement</b>	This Agreement and the Schedules
<b>Assistant Director of Democratic and Regulatory Services</b>	means the Host Authority's Assistant Director of Democratic and Regulatory Services or officer having responsibility for Legal Services at the Host Authority
<b>Client</b>	An officer from any of the Parties who requests the provision of the Services
<b>Client Lead</b>	The senior officer representative for each Party. In the first instance, this shall be the posts of Corporate Director Governance (Host Authority), Executive Director (TBC) and Head of Corporate Services (LDC).
<b>Commencement Date</b>	Means the 1 <sup>st</sup> January 2020
<b>Controller</b>	Shall have the meaning given in the Data Protection Legislation
<b>Data Loss Event</b>	Any event that results, or may result, in unauthorised access to Personal Data held under this agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this agreement, including any Personal Data Breach.
<b>Data Protection Impact Assessment</b>	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>Data Protection Legislation</b>	(i) the GDPR, the Law Enforcement Directive 2016/680 and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018; (iii) the Privacy and Electronic

	Communications Directive 2002/679 (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 and (iii) all applicable Law about the processing of personal data and privacy.
<b>Data Protection Officer</b>	Shall have the meaning in the Data Protection Legislation.
<b>Data Subject</b>	Shall have the meaning given in the Data Protection Legislation.
<b>Data Subject Access Request</b>	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>DPA 2018</b>	the Data Protection Act 2018
<b>Effective Date</b>	The date(s) on which the Services (or any part of the Services), transfer from the Host Authority to LDC and TBC or a sub-contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Host Authority or a sub-contractor
<b>Employee Liability Information</b>	The information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE
<b>Equipment</b>	Equipment including ICT equipment, vehicles, plant, materials and such other items supplied by the Host Authority and used by Staff in the delivery of Services
<b>Executive</b>	A local authority executive as defined by the Localism Act 2011.
<b>External Lawyers</b>	Any Lawyers/barristers instructed by Clients via the Host Authority to provide the Service other than the Host Authority
<b>External Legal Budget</b>	The budget approved by the Governance Board for instructing External Lawyers and for work carried out in accordance with clauses 21.2 and 21.3.
<b>Force Majeure</b>	An event or circumstance, including (without limitation), any of the following events or circumstances: <ul style="list-style-type: none"> <li>a) acts of God, flood, drought, earthquake or other natural disaster;</li> <li>b) epidemic or pandemic;</li> </ul>

<p><b>GDPR</b></p>	<p>c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;</p> <p>d) nuclear, chemical or biological contamination or sonic boom;</p> <p>e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;</p> <p>f) collapse of buildings, fire, explosion or accident;</p> <p>g) any labour or trade dispute, strikes, industrial action or lockouts;</p> <p>h) non-performance by suppliers or subcontractors; and</p> <p>i) interruption or failure of utility service.</p> <p>which directly causes any party to be unable to comply with all or a material part of its obligations under this Agreement</p> <p>the General Data Protection Regulation (Regulation (EU) 2016/679).</p>
<p><b>Governance Board</b></p>	<p>The management group of the three Parties</p>
<p><b>Initial Term</b></p>	<p>The initial term of this Agreement beginning on the Commencement Date and ending on 31<sup>st</sup> December 2024</p>
<p><b>Laws</b></p>	<p>Any statute, statutory instrument, subordinate legislation, standard, law, proclamation, order, resolution, notice, rule of court, bye-law, directive, code of conduct or other instrument or requirement having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by HM Parliament, the legislation making institutions of the European Union, any court or other judicial forum and Commission of Inquiry, local authority, statutory undertaking or relevant authority or any other body or person having such power</p>
<p><b>Lawyers</b></p>	<p>The solicitors employed by the Host Authority</p>
<p><b>Lead Lawyer</b></p>	<p>The solicitor employed by the Host Authority designated to oversee work allocations, progress and quality control of work undertaken by the Lawyers and External Lawyers.</p>

<b>Legal Service(s)</b>	The Host Authority's Legal Services which shall include the Services from the Commencement Date
<b>Local Government Pension Scheme</b>	means a Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as from time to time amended
<b>Members</b>	Councillors of the Parties
<b>Monitoring Officer</b>	The monitoring officer of each Party designated under section 5 of the Local Government and Housing Act 1989
<b>Personal Data</b>	Shall have the meaning given in the Data Protection Legislation.
<b>Personal Data Breach</b>	Shall have the meaning given in the Data Protection Legislation.
<b>Processor</b>	Shall have the meaning given in the Data Protection Legislation.
<b>Relevant Employees</b>	The employees who are the subject of a Relevant Transfer
<b>Relevant Transfer</b>	A relevant transfer for the purposes of TUPE
<b>Service(s)</b>	The provision of Legal Services by the Host Authority as set out in Schedule 1 (Scope of Services) under any relevant legislation including any support services such as human resources, information technology, finance and property which are required by the Host Authority to facilitate the provision of Legal Services
<b>Staff</b>	The Lawyers providing the Services and employed by the Host Authority
<b>Sub-processor</b>	Any third party appointed to process Personal Data on behalf of the Processor related to this agreement
<b>TUPE</b>	The Transfer of Undertakings (Protection of Employment) Regulations 2006
<b>Variation</b>	Has the meaning given to it in clause 9
<b>Working Day</b>	Any day other than a Saturday or Sunday or a public or bank holiday in England

1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

- 1.3. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4. References to clauses and schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.5. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9. A reference to writing or written includes e-mail but excludes fax.
- 1.10. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12. Where there is a conflict between the terms and conditions of this Agreement, and a Schedule, the terms and conditions shall prevail to the extent of the inconsistency.

## **2. COMMENCEMENT AND DURATION**

- 2.1. This Agreement shall commence on the Commencement Date and shall continue for the Initial Term and then until terminated by any party in accordance with clause 11.



### **3. DISCHARGE OF FUNCTIONS**

- 3.1. LDC and TBC empowers the Host Authority to arrange for the discharge of the Legal Services in the manner set out in this Agreement and to the extent permitted by law and the Host Authority delegates to its Assistant Director of Democratic and Regulatory Services, the responsibility of discharging the Services.
- 3.2. The Assistant Director of Democratic and Regulatory Services shall report to the Governance Board and shall have oversight of and ultimate responsibility for the provision of the Services. The Assistant Director of Democratic and Regulatory Services shall provide reporting information to the Governance Board in accordance with its Terms of Reference.
- 3.3. For the avoidance of doubt LDC and TBC does not delegate any decision making to the Host Authority and the Host Authority shall have no authority to make any decisions on behalf of LDC and TBC.

### **4. RELATIONSHIP BETWEEN THE PARTIES**

- 4.1. The Parties acknowledge that this is not a commercial agreement and agree to work together on a non-commercial basis, acting in good faith and in the spirit of mutual trust and co-operation.
- 4.2. No party is authorised to bind any other party or to enter into any obligations on its behalf without written authorisation from the relevant Monitoring Officer.

### **5. PROVISION OF SERVICES**

- 5.1. The Host Authority shall provide the Services for the Initial Term in accordance with the scope of services set out at Schedule 1 (Scope of Services) and in compliance with the service standards set out in Schedule 2 (Service Standards).

- 5.2. The Host Authority shall provide the Services, or shall procure that they are provided in accordance with all relevant Laws and with all reasonable skill, care and diligence and will comply with all reasonable instructions given by LDC and TBC.
- 5.3. The Host Authority shall employ sufficient staff with such qualifications, skill and experience as are necessary for the proper performance of the Services in accordance with this Agreement.
- 5.4. The Host Authority shall be responsible for the provision of all the Equipment required for the provision of the Services except the provision of identification cards and access fobs to Staff for entry and access into LDC and TBC's offices which shall remain the responsibility of LDC and TBC. Lichfield District Council and Tamworth Borough Council agree to pay for the reasonable costs of Equipment and other facilities used at its offices by the Staff for the purposes of providing the Services.

## **6. ACCOMMODATION**

- 6.1. All Parties shall provide appropriate accommodation and facilities for the provision of any of the Services that reasonably requires the visiting of or working at their respective offices by Staff at their own cost. It is agreed that accommodation and facilities provided by each party shall remain in the ownership of the party, which purchased or otherwise acquired it and each Party shall retain responsibility for maintaining, insuring and replacing their accommodation and facilities for the provision of the Services.
- 6.2. All Parties agree that all relevant corporate policies applicable to staff working at their offices will also apply to the Staff working at their offices while providing the Services, including but not limited to, rules, procedures and regulations specific to any particular site upon which the Services are performed or which are used to perform the Services.
- 6.3. For the avoidance of doubt, it is hereby declared that the permission to enter and use any of the party's offices hereby given is not the grant of a tenancy of any part of such offices.

## **7. STAFF TRANSFERS**

- 7.1. The Parties agree that the expiry or termination of this Agreement may constitute a Relevant Transfer and the contracts of employment of any Relevant Employees shall transfer to the

party responsible for the Services (in part or whole), which are transferring on the relevant date. Each party shall comply and the Host Authority shall procure that any replacement contractor shall comply with their obligations under TUPE.

- 7.2. LDC and TBC shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to but not including the Commencement Date.
- 7.3. The Host Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, from the Commencement Date until but not including the Effective Date, such costs will be shared as agreed between the parties or as set out in Schedule 3 (Financial Contributions).
- 7.4. LDC and TBC or a replacement contractor shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, from the Effective Date.
- 7.5. LDC and TBC shall provide and, where necessary, update the Employee Liability Information for the Relevant Employees to the Host Authority, as required by TUPE prior to the Commencement Date. LDC and TBC shall warrant that such information is as complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed.
- 7.6. The Host Authority shall provide and, where necessary, update the Employee Liability Information for the Relevant Employees to LDC and TBC or a replacement contractor, as required by TUPE prior to the Effective Date. The Host Authority shall warrant that such information is complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed.
- 7.7. LDC and TBC shall indemnify and keep indemnified the Host Authority against any losses, except indirect losses, incurred by the Host Authority in connection with any claim or demand by any Relevant Employees arising out of the employment of any Relevant Employees prior to

the Commencement Date, where and to the extent that such claim or demand arises from the Relevant Employees' employment by LDC and TBC. For the avoidance of doubt, this shall not apply in the event that the Host Authority make any of the Relevant Employees redundant without LDC and TBC's prior written consent.

- 7.8. The Host Authority shall indemnify and keep indemnified LDC and TBC or a replacement contractor against any losses, except indirect losses, incurred by LDC and TBC or a replacement contractor in connection with any claim or demand by any Relevant Employees to the extent that it arises out of the employment of any Relevant Employees from the Commencement Date until the Effective Date.
- 7.9. The parties agree to be jointly liable for any employment liabilities arising from or as a consequence of any proposed changes to terms and conditions of employment or any proposed measures the Host Authority may consider making on or within 12 months of the Commencement Date and shall agree the basis for apportioning the liability should it arise, where such a decision is approved by all Parties, otherwise the party at fault shall bear and be responsible for such liabilities.
- 7.10. The Host Authority shall be liable for and indemnify and keep indemnified LDC and TBC against any employment liabilities arising from or as a consequence of any proposed changes to terms and conditions of employment or any proposed measures the Host Authority may consider making 12 months after the Commencement Date until the Effective Date.
- 7.11. The Host Authority shall immediately on request by LDC and TBC provide details of any measures that the Host Authority envisages it will take in relation to any Relevant Employees, including any proposed changes to terms and conditions of employment within 12 months of the Commencement Date.
- 7.12. LDC and TBC or a replacement contractor shall immediately on request by the Host Authority provide details of any measures that LDC and TBC or a replacement contractor envisages it will take in relation to any Relevant Employees, including any proposed changes to terms and conditions of employment prior to the Effective Date.
- 7.13. The Parties agree that the Relevant Employees will on completion of a Relevant Transfer, retain membership of, or retain a right to join, the Local Government Pension Scheme and that, were permitted by the Local Government Pension Scheme, they will have continuity of

service for the purposes of entitlement to pension under the Local Government Pension Scheme.

## **8. FUNDING**

- 8.1. The Parties agree to make the contributions set out in Schedule 3 (Financial Contributions) for Year 1 2020 for the costs of delivering the Services excluding VAT and the contributions agreed by the Governance Board for any subsequent years
- 8.2. The Parties may agree to vary their percentage contribution for specific items of expenditure by mutual agreement.
- 8.3. The Governance Board will agree annual budgets for the contributions of the Parties and it is anticipated that LDC and TBC shall pay a proportionate part of any reasonable and justifiable employment costs.
- 8.4. The Host Authority shall invoice LDC and TBC for the pro rata proportion of their contribution every quarter in advance and LDC and TBC shall pay the invoice if undisputed within 30 calendar days of receipt.
- 8.5. If the cost of Services for LDC and TBC exceeds the financial contributions paid set out in Schedule 3 in any financial year after the Commencement Date then this will be reported by the Host Authority to the Governance Board who shall consider whether the Parties should pay any additional costs. If a year end adjustment is necessary to align the contributions by the Parties to accord with actual spend and the Governance Board have approved it or there is any unspent money which is to be rolled forward to the next year then the invoices for quarter 4 will be adjusted accordingly.
- 8.6. If any Party considers that the volumes of Services provided in any part or period of the agreement, or anticipated to be required, do not fairly represent the financial contributions set out in Schedule 3 that party shall notify the other Parties. The Parties, through the Governance Board, shall then agree any required adjustments to the financial contributions or to the provision of additional staff and resources as provided by 8.2 if the capacity issues cannot wait until Quarter 4 for adjustment as set out in 8.5. If agreement cannot be reached the dispute

resolution process set out in paragraph 14.1 shall be followed save that the timescale for referring the matter to the Chief Executives of each party will be dictated by the urgency of the issue in dispute and can be referred earlier than the 1 month generally provided for dispute resolutions where the circumstances require an earlier resolution.

- 8.7. The Host Authority shall manage and monitor the volume of Service provision by Legal Services at regular intervals to ensure that all party's service needs are being met in accordance with and proportionally to their financial contributions set out in Schedule 3. Should a conflict or dispute arise in relation to the priority or volume of work undertaken by Legal Services, the Parties, through the Governance Board, shall discuss this and agree any required adjustments to the financial contributions or to the provision of additional staff and resources or the allocation of existing Staff. If agreement cannot be reached the same dispute resolution process and timescales set out in paragraph 14.4 shall apply.

## **9. VARIATION**

- 9.1. Any Party on giving three (3) months written notice may request changes to the Services (whether by way of the removal of a part of the Services, the addition of new services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called a "Variation". A request for such a Variation shall not be unreasonably refused.
- 9.2. The financial impacts of any Variation shall be agreed by the Governance Board and the financial contributions due from the Parties shall be amended accordingly.
- 9.3. Any such Variation shall be documented in writing signed by all parties and shall take the form of an addendum to this Agreement.

## **10. LIABILITIES AND INDEMNITIES**

- 10.1. The Host Authority shall indemnify and keep indemnified the other Parties from and against all losses, claims, proceedings, expenses, actions, demands, costs and any other liability whatsoever arising out of, in respect of or in connection with the provision of the Services or the performance or non-performance of the Host Authority of its obligations under this

agreement and the Parties financial loss arising from any advice given or omitted to be given by the Host Authority or any other loss which is caused by any act or omission of the Host Authority.

10.2. Nothing in this Agreement shall limit or exclude any party's liability for death or personal injury arising from its negligence, bribery or fraud by its employees or agents or for any other loss or damage for which liability may not by law be excluded.

10.3. This clause shall survive the expiry or termination of this Agreement.

## **11. TERMINATION**

11.1. In the event that any Party wishes to terminate this agreement prior to the end of the Initial Term it shall give no less than six (6) months written notice to the other Parties unless otherwise agreed. The Parties shall work together to make any required amendments to the Service and this Agreement to effect the changes required.

## **12. CONSEQUENCES OF TERMINATION**

12.1. Upon the expiry or termination of this Agreement the following provisions shall apply:

12.1.1. The Host Authority shall cease to provide the Services for LDC and TBC;

12.1.2. The Parties will work together to ensure the transfer of any Relevant Employees in accordance with clause 7;

12.1.3. The Host Authority shall submit an invoice for any unbilled contributions outstanding and LDC and TBC shall pay its contribution for the costs of delivering the Services up to the expiry or termination date;

12.1.4. The Host Authority shall provide LDC and TBC with such information and data within its possession that LDC and TBC shall reasonably require for carrying out its own Legal functions, complying with all relevant Data Protection Legislation.

12.2. Upon partial or full termination of this Agreement, the Parties shall discuss and agree which Equipment and any intellectual property rights are to be retained or transferred between them in accordance with the proportion of the Services provided using the Equipment or relates to intellectual property.

12.3. This clause shall survive the expiry or termination of this Agreement.

### **13. INSURANCES**

13.1. The Host Authority shall effect and maintain professional indemnity insurance in respect of any financial loss to TBC and LDC arising from any advice given or omitted to be given by the Host Authority under this agreement. Such insurance shall be at a minimum level of £10,000,000 (£10 million) and shall be maintained by the Host Authority for as long as they may have any liability to TBC or LDC hereunder.

13.2. This clause shall survive the expiry or termination of this Agreement.

### **14. DISPUTE RESOLUTION**

14.1. In the event of a dispute, the matter shall be referred to the relevant Client Lead initially who may then refer the matter to the Governance Board who shall use their reasonable endeavours to resolve by mutual agreement any dispute arising over the operation of the terms of this Agreement. In the event that the matter remains unresolved within one (1) month, the dispute shall be referred to the Chief Executives of each of the Parties for resolution.

14.2. If the Chief Executives are unable to resolve the matter, any Party may serve written notice to terminate the agreement which shall expire 3 months after service.

14.3. Unless otherwise agreed in writing, the Parties shall continue to comply with their undisputed obligations under this Agreement during the course of the dispute resolution process.

### **15. NOTICES**

15.1. Any notice or other communication, which is to be given by any Party to the other, shall be given by letter (sent by hand, post, or by the special or recorded delivery service) or electronic mail. Such notices shall be addressed to the other party in the manner referred to in clause 15.2 below. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which it was posted, or 4 hours, in the



case of electronic mail or facsimile transmission or sooner where the other party acknowledges receipt of such notice.

- 15.2. For the purposes of clause 15.1 above, the address of each party shall be as set out at the beginning of this Agreement:

For the Host Authority:

Telephone

Email:

And Lichfield District Council

Frog Lane

Lichfield

Staffordshire

WS13 6YZ

Telephone: 01543 308000

Email: Christie.tims@lichfielddc.gov.uk

And Tamworth Borough Council

Telephone:

Email:

Any Party may change its address for service by serving a notice in accordance with this clause.

## **16. FREEDOM OF INFORMATION**

- 16.1. The Parties acknowledge that each is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall provide

all necessary assistance and cooperation as reasonably requested by the other party to enable a party to comply with its obligations and any requests for information without charge.

## **17. DATA PROTECTION**

- 17.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, all Parties may take on the roles of Controller or Processor during the provision of the Services, and the Parties shall consider their role under this clause 17 in relation to each separate incidence when Personal Data is to be processed. The only processing that the Processor is authorised to carry out is listed in Schedule 4 and may not be determined by the Processor.
- 17.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 17.3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - 17.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
  - 17.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 17.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 17.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this agreement:
  - 17.4.1. process that Personal Data only in accordance with Schedule 4, unless the Processor is required to do otherwise by law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by law;
  - 17.4.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
    - 17.4.2.1. nature of the data to be protected;
    - 17.4.2.2. harm that might result from a Data Loss Event;
    - 17.4.2.3. state of technological development; and
    - 17.4.2.4. cost of implementing any measures;
  - 17.4.3. ensure that:
    - 17.4.3.1. The Processor's Personnel do not process Personal Data except in

- accordance with this agreement (and in particular Schedule 4);
- 17.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any of the Processor's Personnel who have access to the Personal Data and ensure that they:
- 17.4.3.2.1. are aware of and comply with the Processor's duties under this clause;
  - 17.4.3.2.2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - 17.4.3.2.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this agreement; and
  - 17.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data;
- 17.4.4. not transfer Personal Data outside of the EU/Safe Harbour unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- 17.4.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - 17.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
  - 17.4.4.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - 17.4.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 17.4.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the agreement unless the Processor is required by law to retain the Personal Data.
- 17.5. Subject to clause 17.6, the Processor shall notify the Controller immediately if it:
- 17.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 17.5.2. receives a request to rectify, block or erase any Personal Data;

- 17.5.3. receives any other request, complaint or communication relating to any party's obligations under the Data Protection Legislation;
  - 17.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this agreement;
  - 17.5.5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
  - 17.5.6. becomes aware of a Data Loss Event.
- 17.6. The Processor's obligation to notify under clause 17.5 shall include the provision of further information to the Controller in phases, as details become available.
- 17.7. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to any party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 17.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 17.7.1. the Controller with full details and copies of the complaint, communication or request;
  - 17.7.2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 17.7.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 17.7.4. assistance as requested by the Controller following any Data Loss Event;
  - 17.7.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 17.8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.
- 17.9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 17.10. The Processor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 17.11. Before allowing any Sub-processor to process any Personal Data related to this agreement, the Processor must:
- 17.11.1. notify the Controller in writing of the intended Sub-processor and processing;
  - 17.11.2. obtain the written consent of the Controller;

- 17.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 17 such that they apply to the Sub-processor; and
- 17.11.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 17.12. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 17.13. The Processor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 17.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **18. GOVERNANCE AND MONITORING AND REPORTING**

- 18.1. The Governance of these Shared Services arrangement shall be as set out in Schedule 5 (The Governance Arrangements).
- 18.2. The Governance Board will arrange suitable monitoring arrangements and shall monitor the performance of the Services and. Each Party will establish its own Client Care forum to ensure that the Governance Board understands the opinion of Clients.
- 18.3. the Governance Board shall have the right to require the Assistant Director of Democratic and Regulatory Services to answer any reasonable questions raised by them in relation to the performance of the Services generally and in respect to any specific Service carried out for LDC or TBC under this Agreement.

## **19. AUDIT**

- 19.1. LDC and TBC and its officers or professional consultants shall be entitled to have access at all reasonable times, on giving reasonable notice, to all the financial and administrative records relating to this Agreement and the provision of Services. The Host Authority shall provide such assistance and access to information as may be reasonably required by LDC and TBC to enable them to monitor performance of the obligations contained in this Agreement.

- 19.2. LDC and TBC shall have the power to inspect and examine the Host Authority's performance of the Services at any premises from which the Services or any part of the Services are being performed at any reasonable time provided that LDC and TBC gives reasonable notice to the Host Authority.

## **20. FORCE MAJEURE**

- 20.1. No Party shall be liable to the other party for any delay in or failure to perform its obligations under this Agreement if such delay or failure results from a Force Majeure event, provided it shall have informed the other party in writing.
- 20.2. If the Force Majeure event continues for more than one (1) month any Party may terminate this Agreement by giving three (3) months written notice to the other party. No party shall have any liability to the other for termination of this Agreement due to the Force Majeure event, but any rights and liabilities, which have accrued prior to such termination, shall remain in force.

## **21. CONFLICTS OF INTEREST**

- 21.1. The Parties shall take appropriate steps to ensure that there are no actual or potential conflicts of interest between the pecuniary or personal interests of the Staff, Assistant Director of Democratic and Regulatory Services and the Client Leads and their duties under the provisions of this Agreement. Each party shall disclose to the other Parties full particulars of any such conflict of interest, which may arise and shall take such steps as will in its opinion, avoid, or as the case may be, remove the conflict.
- 21.2. Where LDC and TBC have a vested interest in a matter and the provision of the Service by the Host Authority may prejudice LDC and TBC's interest, LDC and TBC may require the Host Authority to instruct External Lawyers able to meet the Service Standards. In such circumstances the costs of the External Lawyers shall be met from the External Legal Budget (if agreed by the Governance Board) or by the instructing Party in accordance with operating practice. For the avoidance of doubt it has been agreed that any legal advice which is likely to cost more than £25,000 (exc VAT) shall be met by the relevant instructing Party.

- 21.3. Where LDC and TBC have a vested interest in a matter and the provision of the Service by the Host Authority may prejudice LDC and TBC's interest, LDC and TBC may itself instruct a third party to provide the Service required if it does not wish it to be dealt with in accordance with 21.2 above. Where LDC and TBC instructs a third party independently of the Host Authority, LDC and TBC shall meet all the costs of and associated with that instruction and such instruction shall not be considered by any Party to be within the scope of this Agreement or paid for using the External Legal Budget.
- 21.4. Where the provision of the Service may lead to a potential conflict of interest either in relation to the provision of other shared services between the Parties or the discharge of the Monitoring Officer's functions or to any other matter involving all Parties or which may prejudice the other Party, the Parties shall take such steps as is reasonable to avoid, minimise or as the case may be, remove the conflict.

## **22. INTELLECTUAL PROPERTY RIGHTS**

- 22.1. Any intellectual property rights generated by any party in the course of performing its obligations under this Agreement shall be jointly owned and any income generated therefrom will be split between the Parties in accordance with the contributions set out in Schedule 3 or as otherwise agreed.

## **23. GENERAL**

- 23.1. No Party shall assign, sub-contract or in any other way dispose of this Agreement or any part of it without the written approval of the other party or as provided elsewhere in this Agreement.
- 23.2. This Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.
- 23.3. The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.
- 23.4. If any court of competent jurisdiction holds any provision of the Agreement invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the

provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

- 23.5. The failure of any Party to insist upon strict performance of any provision of the Agreement or the failure of any Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.
- 23.6. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.
- 23.7. A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 23.8. This Agreement constitutes the entire contract between the Parties relating to the subject matter of the Agreement.



**IN WITNESS** whereof the parties have executed this Agreement the day and year first before written.

Signed on behalf of **SOUTH STAFFORDSHIRE DISTRICT COUNCIL** )

.....  
Authorised Officer

.....  
Name

Signed on behalf of **LICHFIELD DISTRICT COUNCIL** )

.....  
Authorised Officer

.....  
Name

Signed on behalf of **TAMWORTH BOROUGH COUNCIL** )

.....  
Authorised Officer

.....  
Name

Legal draft

## Schedule 1: Scope of Services

- i. Planning - development management
- ii. Planning – enforcement
- iii. Planning – trees and conservation protection
- iv. Planning – legal agreements including CIL/S106
- v. Planning – policy
- vi. Advising planning committee both at meetings and in preparation
- vii. Regulatory – including licensing
- viii. Advice on RIPA
- ix. Property – right to buy / leases / minor disposals & acquisitions
  - x. Local Government law
  - xi. Election law
  - xii. General contracts / procurement / commercial activity
- xiii. General advice including data protection and Freedom of Information
- xiv. Complex commercial property
- xv. Complex contract law
- xvi. Company law

Legal draft

## Schedule 2: Services Standards

### SERVICE STANDARDS

It is anticipated that clients will be able to expect the following:

1. Access to the team via email, telephone and face to face.
2. Advice can be provided either verbally or in writing.
3. All requests, and advice provided, will be recorded.
  
4. A generic telephone number to be provided so that initial contact can be made more easily.
5. An out of hours telephone number to be provided – but only to be used in the most urgent circumstances.
6. A generic email address to be provided such that clients are not reliant on an individual Lawyer reading the email.
7. Email inboxes to be provided with sufficient capacity to accommodate usual business.
8. All Lawyers to use Out-of-office notifications if they are not available.
9. If immediate contact is not made, communications to be acknowledged within one working day.
10. Initial instruction form (request form) to be provided to each partner to enable easier exchange of information when raising issues initially by email.
  
11. Each case to be given a priority status by the client at first contact. Priority definitions to be as follows:
  - a. Urgent – initial contact to be by telephone - acknowledgement to be provided at once, response required urgently (within hours) (for instance, in the cases of enforcement, security, during an election, or immediately before a meeting)
  - b. Immediate – initial contact to be by telephone - acknowledgement to be provided within hours; advice to be provided as soon as reasonably practicable (say within one working day)
  - c. Routine – initial contact to be at surgery or email with a request form completed by the Client - acknowledgement required within one day, and work to be incorporated within work programme and completed within 10 working days unless agreed otherwise by the Client and Lawyer.
  
12. The client to be advised of complexity and hence likely timescales for delivery.
13. The client to be advised frequently of progress of the case.
14. When complete, cases to be formally closed with agreement of client.
  
15. Each instruction to be given a unique case number by Lead Lawyer.
16. Each case to be recorded on Iken case management system.
17. Case book to be reviewed monthly to ensure that all cases are actively managed.
18. Quality standards to be overseen by Lead Lawyer.

19. Client / Lawyer may decide to instruct External Lawyer for any reason. Client has the right to insist on the instruction of an External Lawyer.
20. Host Authority to undertake procurement and commissioning / contracting with external lawyers including barristers.
21. Lawyer to act as client liaison on behalf of client with external lawyers including barristers.
22. Lawyer to oversee and sign-off work of external lawyers including barristers and to authorise the payment of invoices.
  
23. Each partner to be allocated a designated planning lawyer, which will remain consistent whenever practical, to support all planning committees and preparation meetings.
24. Planning officers to provide draft planning committee reports to the Lawyer in advance of the preparation meeting for comment.
25. Service to make available planning training for Members – to be agreed with Planning Officers.
26. Services to standardise and to communicate approach for the completion of regular work streams including s106 agreements and unilateral undertakings etc.
  
27. Lawyers to visit partners frequently to allow for surgeries, case conferences.
28. In the first instance, planning surgeries will be held fortnightly, or as agreed.
29. Planning officers will prepare an agenda of issues / cases to be discussed in advance
30. Visits to other councils to be no less frequent than fortnightly, or as agreed.
  
31. Client Leads to be provided with access to the IKEN case management system.
32. No client will be refused legal support because of budgetary pressures. The Client Leads / Governance Board will be responsible for ensuring that the service is funded appropriately.
33. Each council to establish its own client group to be a conduit for corporate feedback to the partnership / Governance Board.
34. Clients to be consulted by the Lead Client at least quarterly as to client satisfaction.
35. Lead Clients to report to the Governance Board on client feedback and demand.

## QUALITY CONTROL

The Parties shall ensure that the following Quality Control is in place:

- **Case Management** - that a suitable electronic case management system (CMS) will be used for all Instructions.
- **Time Recording** - that all time worked on Instructions will be recorded using the CMS.
- **Client Lead Access** - that access to the CMS will be provided to the Client Lead, save where a conflict situation arises or confidentiality/data protection restrictions apply.
- **Right Lawyer** - that the right level lawyer with the right specialisms will work on the Instructions and in the absence of this or capacity issues consideration will be given to use of external legal representation.
- **Service Standards** - the Service Standards set out will be met.

- **File Checking** - regular file checking will take place on all files to ensure that the Service Standards are met – where files are inactive consideration will be given to whether the file should be closed.
- **Peer File Checking** - peer file checking will be carried out by the lead lawyer on a number of files on a monthly basis to ensure that the Service Standards are being met and that the quality of advice is good and that conflicts have been considered and addressed.

Legal draft

**Schedule 3: Financial Contributions**

Legal draft

## Schedule 4: Processing, Personal Data and Data Subjects

### Processing by the Parties

#### Part 1

1. **Scope**
2. **Nature**
3. **Purpose of the processing**
4. **Duration of the processing**

#### Part 2 Types of personal data

Categories of data subject

Legal draft

## Schedule 5 The Governance Arrangements and Terms of Reference

### The Governance Arrangements

This Agreement and the delivery of the Services will be overseen by a Governance Board of the Parties' Client Leads. The Governance Board will meet monthly to ensure that the Agreement is working and to keep an oversight of the Case Management and to monitor costs and budgets of the Shared Legal Services.

The operations of the Governance Board shall be as transparent as possible and the Agenda and minutes of the Governance Board meetings shall be circulated to the Parties' Leadership Teams.

Legal draft



## **Terms of Reference**

The Parties shall adhere to the Terms of Reference set out below

### **APPENDIX B**

#### **Terms of Reference for Governance Board on Shared Legal Service**

##### **The officers sitting on the Governance Board**

In line with the Shared Service Agreement the Governance Board is comprised of the client leads for the 3 authorities. These are currently:

- South Staffordshire Council – Corporate Director Governance
- Lichfield District Council – Monitoring Officer
- Tamworth Borough Council – Executive Director & Deputy Chief Executive

##### **The role of the Governance Board**

To oversee the operation of the partnership and ensure that it operates in accordance with the agreed principles of the service set out below.

- All partners to be equal albeit South Staffordshire Council will be the Host Authority.
- The partnership to be informed by a Strategic Partnership Agreement
- 5 year initial term. Dissolution before end of the term can be by mutual consent.
- The partnership to be governed and monitored by a tri-partite Governance Board comprising a senior officer, 'Lead Client' from each partner
- The partnership to be branded to differentiate it from the Host Authority and to ensure that partners feel that they have equal ownership
- South Staffordshire Council to be the Host Authority because they already employ a team of solicitors
- South Staffordshire Council to continue employment of the team of solicitors and legal support
- The team to have specific specialisms to complete work in-house including local government, elections, planning, property, regulatory and contract law
- South Staffordshire Council to procure external legal advisors as required by the partnership. External advice will be sought when the team does not have the expertise or capacity or where there is conflict
- Fixed costs of the team to be shared equally between the three parties
- Variable costs (i.e. the costs of external advice) to be met either from a partnership budget equally funded by the partners or from the partner specifically requiring advice.
- No partner will pay more because more of their routine work is contracted out rather than being completed in-house
- Lead Lawyer to ensure that work is allocated appropriately to the team
- Work to be managed through a case management system to allow for full transparency
- Caseload to be reviewed regularly to ensure quality and progress
- Expectation that all legal work from all 3 partners will go through partnership

- Team will be available to 'clients' by telephone, email and in person at frequent 'surgeries' and for case meetings
- Team expected to be able to 'hot desk' at partner offices.
- Team to attend committee meetings as required.

### **Budgets**

Budgets, instructions and invoices will be monitored by the Governance Board at its regular meetings.

Business Plans will be shaped and shared by the Governance Board.

Governance Board will also monitor the levels of external work sent out and how this is procured.

### **Performance**

The Governance Board will consider the performance dashboard to monitor the levels of performance of the shared service arrangements.

### **Staffing**

The Governance Board will keep oversight of the levels of staffing and representatives from all 3 partners will be involved in the recruitment of new lawyers servicing the partnership.

The Governance Board will also ensure that best practice is shared across the 3 authorities.

### **Caseloads**

The Governance Board will keep oversight of caseload and costs to ensure that the contributions made by each partner are broadly equitable. But it is recognised that in some years, one partner may benefit more than the others.

### **Frequency of meeting**

The Board will meet monthly for the first year to ensure that the Partnership is being established correctly, to keep an oversight of the quality of case management, and to monitor costs and budgets.

### **Service standards**

The Governance Board will ensure that the case book is being managed in accordance with the quality standards. The Governance Board will also seek client feedback for the purposes of continuous improvement.

The Governance Board will also ensure that Clients are interacting with the Service in a positive manner.

**Secretariat**

Lead lawyer to provide secretariat support to the Governance Board and ensure that the notes of each board and shared with the client leads for each authority.

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