

Dated

2016

WEST BERKSHIRE DISTRICT COUNCIL

AND

WOKINGHAM BOROUGH COUNCIL

AND

BRACKNELL FOREST COUNCIL

DRAFT INTER AUTHORITY AGREEMENT
in relation to
the Public Protection Partnership
31.10.16 v4

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DRAFT

THIS AGREEMENT is made on

day of

2016

BETWEEN:

- (1) **WEST BERKSHIRE DISTRICT COUNCIL** of Council Offices, Market Street, Newbury, Berkshire RG14 5LD ("**West Berkshire**")
- (2) **WOKINGHAM BOROUGH COUNCIL** of Civic Offices, Shute End, 6 Wokingham, Berkshire RG40 1BN ("**Wokingham**")
- (3) **BRACKNELL FOREST COUNCIL** of Market Street, Bracknell, Berkshire, RG12 1JD ("**Bracknell Forest**")

together known as the "Councils" and each as a "Council".

BACKGROUND

- (A) The Councils have recognised that there are significant potential gains to be made by working together in delivering public protection services in partnership in order to provide advantages and economies of scale and deliver robust and flexible services. West Berkshire and Wokingham already collaborate through a shared service supported by two Shared Services Agreements in relation to the provision of trading standards; and environmental health and licensing.
- (B) Building upon the collaboration described above Bracknell Forest will join the existing shared service arrangements described above. The Councils will establish a Joint Committee pursuant to Sections 101 and 102 of the Local Government Act 1972; Sections 9EA and 9EB of the Local Government Act 2000 (as amended); the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012; section 111 Local Government Act 1972 and all other enabling powers, for the purpose of jointly managing and providing trading standards, environmental health and licensing to the Councils.
- (C) West Berkshire has therefore resolved through a resolution of its Executive dated [] 2016 and its Council dated [] 2016 that the Joint Committee should discharge West Berkshire's Relevant Functions through the Service under the provisions of Sections 101(5) and 102 of the Local Government Act 1972, Section 9E of the Local Government Act 2000 and the Local Government (Arrangement for the Discharge of Functions) (England) Regulations 2012. West Berkshire shall receive a TUPE transfer of staff from Bracknell Forest. Operational delivery of the functions shall be delegated by the Council and the Executive to the Council's Head of Culture and Environmental Protection, who may further delegate functions to Service Managers.
- (D) Wokingham has therefore resolved through a resolution of its Executive dated [] 2016 and its Council dated [] 2016 that the Joint Committee should discharge Wokingham's Relevant Functions through the Service under the provisions of Sections 101(5) and 102 of the Local Government Act 1972, Section 9E of the Local Government Act 2000 and the Local Government (Arrangement for the Discharge of Functions) (England) Regulations 2012.
- (E) Bracknell Forest has therefore resolved through a resolution of its Executive dated [] 2016 that and its Council dated [] 2016 the Joint Committee should discharge Bracknell Forest's Relevant Functions through the Service under the provisions of Sections 101(5) and 102 of the Local Government Act 1972, Section 9E of the Local Government Act 2000 and the Local Government (Arrangement for the Discharge of Functions) (England) Regulations 2012. It has been agreed that the staff of Bracknell Forest involved in provision of the Services will TUPE transfer to West Berkshire.
- (F) This Agreement shall bring into effect the Service and shall set up and regulate the Joint Committee and the relationship between the Councils and the Joint Committee and the terms on which the Relevant Functions will be discharged.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

Actuary means the actuary to the Fund as appointed by the Fund from time to time.

Agreed Percentages means the percentages as agreed for the relevant Financial Year in accordance in Schedule 4.

Agreement means the agreement between the Councils in relation to the Joint Committee and the Service it shall provide as contained in this document.

Assets means all assets and equipment which belong to West Berkshire and which are used by West Berkshire in the performance of the Service and which for the avoidance doubt includes Bracknell Forest's Assets (as defined in Clause 9.1).

Bracknell Forest Employees means those employees listed Schedule 6.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Chief Finance Officer means the Head of Finance from time to time for West Berkshire, who will be the section 151 Officer for the Joint Committee and prepare accounts for the Joint Committee in accordance with best practice.

Commencement Date means [9th] January 2017.

Confidential Information means any information, data and/or material of any nature which has been designated as confidential by the Councils in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, Staff and other personnel, Service Users and suppliers of the Councils and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

Councils means West Berkshire, Wokingham and Bracknell Forest and their successors and permitted assignees.

Default means any breach of any breach of the Agreement which does not amount to a Fundamental Breach or any failure to meet the agreed KPIs.

Direct Losses means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law.

Dispute means any dispute relating to or arising from the terms of this Agreement.

DPA means the Data Protection Act 1998.

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Employment Claim means any claim (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the

grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other nature.

Exit Deficit shall have the meaning given to the term in Clause 11.

Exit Plan has the meaning given at Clause 17.5.

Exit Valuation means any sum determined by the Actuary as being owed to the Fund in respect of the Bracknell Forest Employees on cessation of Bracknell Forest's participation in the Fund as their scheme employer in accordance with Regulation 64 of the LGPS Regulations.

Financial Year means each financial accounting period of 12 months ending on the 31 March of each year.

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Fund means the Royal County of Berkshire Pension Fund within the LGPS of which the Royal Borough of Windsor and Maidenhead is the Administering Authority;

Fundamental Breach means:

- a) three or more Defaults in a six month period;
- b) a default which is not capable of remedy in accordance with Clause 16 (Defaults) and which has or will have a material adverse impact on the Service Users.

Future Exit Valuation means any sum determined by the Actuary as being owed to the Fund in respect of the Staff upon expiry or termination of the Agreement in accordance with the LGPS Regulations.

Host Authority means a Council that has entered into legal obligations and created legal rights on on behalf of the Councils in accordance with the terms of this Agreement.

Initial Term has the meaning given to it in Clause 2.1.

Intellectual Property Rights means any and all patents, inventions, trade marks, logos, service marks, domain names, registered designs, utility models, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or individual property rights whether or not registered or capable of registration and whether nor or in future residing in the United Kingdom or any other part of the world together with all or any goodwill and accrued rights of action.

Joint Committee means the joint committee set up by the Councils pursuant to Section 102 of the Local Government Act 1972 and section 9EA and 9EB Local Government Act 2000.

Joint Management Board means the joint management board established pursuant to Clause 6.2 and 6.3.

Joint Management Team means the joint management team established pursuant to Clause 6.4.

KPI means the key performance indicators set out in Schedule 5.

Lead Officer means the nominated lead officer for each participating Council as notified to the Joint Committee in writing from time to time.

LGA 1972 means the Local Government Act 1972.

LGPS means the 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.

LGPS Regulations means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356).

Monitoring Officer means the Monitoring Officer from time to time of each the Councils.

Premises means any office address in any of the Council's administrative areas from which the PPP operates or requires access to from time to time.

Prohibited Act: the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Councils a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence:

(i) under the Bribery Act 2010;

(ii) under legislation or common law concerning fraudulent acts;

(iii) defrauding, attempting to defraud or conspiring to defraud the Councils.

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

Procurement Agent means West Berkshire procuring a contract for the provision of goods and services on behalf of the Councils for the purposes of the PPP.

PPP means the Public Protection Partnership which is not a separate legal entity in its own right and for which West Berkshire is the Host Authority.

Redundancy Payment means in respect of any Staff :

(a) any statutory redundancy payment entitlement; and

(b) any contractual enhancements of the entitlement referred to in (a) above to which they are entitled at the Commencement Date; and

(c) any notice payments or payments in lieu of notice,

(d) pension strain, where applicable

payable by West Berkshire to the Staff on or after the Commencement Date, but excluding for the avoidance of doubt, all other costs incurred by West Berkshire relating to any such redundancy process such as, without prejudice to the generality of the foregoing:

(i) management and HR costs in dealing with any such redundancy process; and

- (ii) any Direct Losses in relation to any employment tribunal claims or other litigation or claims arising from any such redundancy process.

Redundancy Payment Share means in respect of any Redundancy Payments incurred, the costs shall be apportioned in the Agreed Percentages.

Relevant Functions means those functions as set out in Schedule 2.

Replacement Services means any services which are the same as or substantially similar to any of the Services and which the Councils receive in substitution for any of the Services following the expiry or termination of this Agreement, whether those services are provided by the Councils internally and/or by any third party.

Service means the provision of trading standards, licensing and environmental health services as more particularly set out in Schedule 5 (Service Specification). For the purposes of the Agreement any reference to Services has the same meaning as Service.

Service Specification means the specification set out in Schedule 5 to this agreement

Service User means a person receiving the Service from the PPP.

Staff means those employees (including the Bracknell Forest Employees) engaged by West Berkshire in the delivery of the Service.

Sub-Contract means any contract or agreement, or proposed contract or agreement between West Berkshire and any third party whereby that third party agrees to provide to West Berkshire the Service or any part of the Service, or facilities or services necessary for the provision of the Joint Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

Sub-Contractor means the third parties that enter into a Sub-Contract with West Berkshire.

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 references to clauses, paragraphs, recitals and Schedules are references to clauses and paragraphs of, and recitals and schedules to, this Agreement. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules. The recitals and headings to clauses and Schedules are for convenience only and shall not affect the construction or interpretation of this Agreement;

1.2.2 a reference to a statute or a statutory provision includes a reference to:

- (a) the statute or statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
- (b) any subordinate legislation made under the statute or statutory provision (whether before or after the date of this Agreement),

provided that any such modification, re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision;

1.2.3 references to a **person** shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality);

1.2.4 references to any gender shall include every gender, and the singular shall include the plural and vice versa;

- 1.2.5 words and expressions defined in the Companies Acts shall have the same meanings when used in this Agreement;
- 1.2.6 references to writing or written shall include any mode of reproducing words in a legible and non-transitory form;
- 1.2.7 references to a **party, Council** or the **Councils includes** any person who agrees to be bound by the provisions of this Agreement from time to time but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time;
- 1.2.8 in construing this Agreement, the rule known as ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word(s) **other** or **including** or **in particular** shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- 1.2.9 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month;
- 1.2.10 references to a document in the **agreed form** are to a document in a form agreed by the Parties and initialled by or on behalf of each of them for the purpose of identification; and
- 1.2.11 where in this Agreement an individual is referred to by name or by the post they hold within their organisation, such reference shall be deemed to mean either that individual or the person from time to time holding that appointment or post or such suitably qualified person as may from time to time be nominated by that organisation.

2 TERM

- 2.1 Subject to Clause 2.2 this Agreement will start on the Commencement Date and shall continue for a period of ten (10) years ("the Initial Term").
- 2.2 Subject to Clause 2.3 upon the expiration of the Initial Term this Agreement shall automatically renew for a further period of ten (10) years on the same terms as set out in this Agreement unless notice is provided in accordance with Clause 6.
- 2.3 Not less than twenty four months before the expiry of the Initial Term the Joint Management Board shall meet to decide whether to recommend to the Joint Committee and the Councils that the Agreement continues, having regard to whether the:
- 2.3.1 Objectives set out in Clause 3.5 having been met;
 - 2.3.2 Performance of the Service is satisfactory and any agreed KPIs are substantially met;
 - 2.3.3 Agreed savings and costs are in accordance with expectations; and
 - 2.3.4 Agreement should continue or be modified or changed in any respect.

3 GENERAL PRINCIPLES AND OBJECTIVES

- 3.1 This Agreement has been entered into by the Councils to establish and effect provisions for performance of the Service and to clarify the Councils' responsibilities in respect thereof and to each other.

- 3.2 The Councils will work together in good faith and in an open, co-operative and collaborative manner for the duration of this Agreement. The Councils' members and officers will work together in the spirit of mutual trust in order to endeavour to successfully deliver the Service and will respond in a timely manner to all relevant requests from the other Council.
- 3.3 The Councils shall use all reasonable endeavours to procure that their respective members and officers who are involved in the Joint Committee shall at all times act in the best interests of the Service.
- 3.4 Each of the Councils hereby represents to each other that it has obtained all necessary consents sufficient to ensure the delegation of the Relevant Functions provided for by this Agreement.
- 3.5 The Councils shall establish, develop and implement their relationship with the objectives of:
- 3.5.1 implementing the Service from the Commencement Date in accordance with the Service Specification set out in Schedule 5 and within the agreed budgets;
 - 3.5.2 utilising resources to best effect and delivering long term savings and benefits to the Councils;
 - 3.5.3 delivering the priorities for the Service set out in the Service Specification; and
 - 3.5.4 commitment to people including Staff and Service Users.

4 ESTABLISHMENT OF JOINT COMMITTEE

- 4.1 The Councils shall establish a Joint Committee under Sections 101(5) and 102 of the Local Government Act 1972; Sections 9EA and 9EB of the Local Government Act 2000; and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.
- 4.2 The functions of the Joint Committee shall be as set out in Schedule 1 to this Agreement or as varied by the Councils from time to time.
- 4.3 Each Council shall appoint two members as set out in Schedule 1 onto the Joint Committee to decide the policy and strategy of the Service and to oversee the provision of the Service throughout each Council's administrative area from the Commencement Date.
- 4.4 The Joint Committee shall be authorised to exercise the functions set out in Schedule 2 and shall have the powers of the Councils over the finances made available as set out in Schedule 4, except to the extent delegated to the West Berkshire Head of Culture and Environmental Protection and/or relevant Service Manager.
- 4.5 Each Council warrants that it shall not do or omit to do or permit to be done anything which prevents or inhibits or seeks to prevent or inhibit the Joint Committee from carrying out all or any of the Relevant Functions.

5 HOST AUTHORITY

- 5.1 West Berkshire will act as the Host Authority from the Commencement Date in respect of all aspects of the delivery of the Services unless stated otherwise in this Agreement.
- 5.2 Wokingham and Bracknell Forest shall delegate the operational management of the Service to West Berkshire and West Berkshire shall delegate the same to the West Berkshire Head of Culture and Environmental Protection and the relevant Service Manager to operate, pursuant to the policy direction set by the Joint Committee. The Service Managers shall deliver regular performance management and monitoring reports to the Joint Committee.

- 5.3 All legal rights and obligations of the Host Authority shall be held on behalf of the Councils and shall be exercised in accordance with the terms of this Agreement.
- 5.4 The Councils agree that the Host Authority (in accordance with its Constitution) shall be authorised to institute and defend legal proceedings in relation to the Relevant Functions and the PPP.

6 GOVERNANCE

- 6.1 The Councils confirm that the Service shall be delivered through the PPP under the terms of this Agreement. Strategic policy, performance monitoring and oversight will be delegated to the Joint Committee and day to day management and operation will be delegated to West Berkshire's Head of Culture and Environmental Protection and then sub-delegated to the Service Managers.
- 6.2 The Councils will establish a Joint Management Board with the overall purpose of advising the Joint Committee to enable it to carry out its governance role as effectively as possible.
- 6.3 The Joint Management Board will have the membership and terms of reference as set out at Schedule 1 of this Agreement provided always that the Joint Committee may agree at any time to amend the membership and/or terms of reference of the Joint Management Board.
- 6.4 The Councils will establish a Joint Management Team, which will have the membership and terms of reference as set out at Schedule 1 of this Agreement provided always that the Joint Committee may agree at any time to amend the membership and/or terms of reference of the Joint Management Team.
- 6.5 The Councils agree that they shall seek to operate this Agreement through consensus wherever possible and shall use the Joint Management Board as a forum for discussing and seeking to resolve any issues, concerns or complaints arising in relation to the operation of this Agreement.

7 BUDGET SETTING AND SUPPORT COSTS

- 7.1 The budget setting process for the PPP is as set out in Schedule 4.
- 7.2 All support costs or liabilities necessarily incurred by the Councils in connection with the operation of the PPP will be borne:
- 7.2.1 jointly by the Councils in the Agreed Percentages; or
 - 7.2.2 as expressly set out elsewhere within this Agreement; or
 - 7.2.3 as agreed between the Councils in such specific or unusual circumstances as may arise from time to time.
- 7.3 Any costs or payments made by West Berkshire as the Host Authority in cases of emergency shall be in accordance with the provisions set out in Schedule 4.

8 MONITORING OF THE SERVICES

- 8.1 The Service will be monitored in accordance with the procedures and service standards referred to in the Business Plan which will be agreed annually by the Joint Committee.

9 EQUIPMENT AND ASSETS

- 9.1 Bracknell Forest shall on the Commencement Date transfer [free from any encumbrance] to West Berkshire for the consideration of £1(one pound) all assets and equipment which immediately prior to the Commencement Date were used by Bracknell Forest to deliver

trading standards, licensing and environmental health services ("the Bracknell Forest Assets") Prior to the Commencement Date Bracknell Forest shall provide a list of Bracknell Forest Assets to West Berkshire;

- 9.2 Bracknell Forest shall to the extent that may be necessary execute any documents and do all such acts or things to give effect to the transfer of the Bracknell Forest Assets to West Berkshire.
- 9.3 Upon the Commencement Date the Bracknell Forest Assets shall form part of the Assets and shall remain the property of West Berkshire for the purposes of provision of the Service.
- 9.4 Any equipment or assets procured for the purposes of the Service after the Commencement Date shall be procured in accordance with Clause 13 (Procurement Process).
- 9.5 The Service Managers shall be responsible for arranging for the maintenance and repairing of all Assets, the cost of which shall be paid for from the Budget.
- 9.6 The Joint Management Board will be responsible for identifying security and insurance arrangements for all the Assets and items listed in the inventory, in particular assets and items held within the Premises; at other Council locations; or within the homes of individuals.
- 9.7 On termination of this Agreement and the Joint Committee, all Assets relating to the Service shall be shared between the Councils in accordance with the Agreed Percentages.

10 INTELLECTUAL PROPERTY

- 10.1 Each Council grants to the other Councils for the duration of this agreement an irrevocable, non-exclusive, royalty free licence to copy and use in connection with PPP any IT systems or materials ("Joint Committee Materials") in which it has Intellectual Property Rights but this licence is not to extend to:
 - 10.1.1 copying or using those IT systems other than in connection with the Joint Committee and the Service;
 - 10.1.2 granting any other person the right to copy or to use those IT systems;
 - 10.1.3 selling, transferring or otherwise disposing of or granting rights in those IT systems; or
 - 10.1.4 any IT systems in which it does not own the Intellectual Property Rights.
- 10.2 A Council which makes available IT systems to the PPP under Clause 10.1 shall indemnify and hold harmless the Council to whom those materials are supplied against any liability or damages (including costs) that may be awarded or agreed to be paid to any third party because of a claim or action that the normal operation, possession or use of the Joint Committee Materials by that Council under Clause 10.1 infringes the Intellectual Property Rights of that third party.
- 10.3 All Intellectual Property Rights in any Joint Committee Materials or any other materials which are produced or developed for or in connection with the Joint Committee and the Services are to belong to the Councils jointly.
- 10.4 Each Council agrees to co-operate with the others in the protection of the Intellectual Property Rights in the Joint Committee Materials and in connection with this to take all action reasonably required by the Council which has the Intellectual Property Rights (subject to being reimbursed for all costs reasonably incurred).

- 10.5 Each Council agrees promptly to notify each other in writing of any infringement or potential infringement of that Council's Intellectual Property Rights in connection with this Joint Committee and the Services of which it becomes aware.

11 STAFFING

- 11.1 The Councils acknowledge and agree that the provision of the Service through the PPP from the Commencement Date shall, with respect to each of the Bracknell Forest Employees constitute a relevant transfer to West Berkshire, acting as the Host Authority, for the purposes of TUPE. The Councils further agree that as a consequence of that transfer the contracts of employment made between Bracknell Forest and the Bracknell Forest Employees shall have effect from and after the Commencement Date as if originally made between West Berkshire and the Bracknell Forest Employees.

- 11.2 On or before twenty eight (28) days before the Commencement Date, Bracknell Forest shall in relation to all Bracknell Forest Employees provide (and where necessary update) such information as West Berkshire may reasonably request (subject to all applicable provisions of the Data Protection Act 1998), but including :

- 11.2.1 their ages, dates of commencement of employment or engagement and gender;
- 11.2.2 details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- 11.2.3 the identity of the employer or relevant contracting party;
- 11.2.4 their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- 11.2.5 their wages or salaries;
- 11.2.6 details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes and company car schedules applicable to them;
- 11.2.7 any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- 11.2.8 details of any sickness absences
- 11.2.9 details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- 11.2.10 details of any proposals or agreement to vary their terms and conditions of employment including any re-grading, pay increases or promotions;
- 11.2.11 copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- 11.2.12 details of any disciplinary action taken or grievances raised;
- 11.2.13 any other Employee Liability Information.

- 11.3 Bracknell Forest shall warrant that such information is complete and accurate as far as it is aware or should reasonably be aware as at the date it is disclosed and shall indemnify and keep indemnified West Berkshire against any Direct Losses caused to West Berkshire by any inaccuracy or incompleteness in such information.

- 11.4 Bracknell Forest shall indemnify West Berkshire against all Direct Losses incurred by West Berkshire in connection with or as a result of any claim or demand by or on behalf of any employee of Bracknell Forest (including the Bracknell Forest Employees) (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any "Employment Claim" in each case arising directly or indirectly from any act, fault or omission of Bracknell Forest in respect of any such employee in the period before the Commencement Date, provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of West Berkshire.
- 11.5 Bracknell Forest and West Berkshire will comply with their obligations under TUPE for each relevant transfer under TUPE pursuant to this Agreement (including without limitation the obligations under Regulation 13 of TUPE) and each Council shall indemnify the other against all Direct Losses incurred in connection with or as a result of any claim or demand (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation any Employment Claim, provided that such Direct Losses are not payable to the extent that they are as a result of any act or omission of the Council claiming under this Clause.
- 11.6 Bracknell Forest shall indemnify West Berkshire against all Direct Losses and/or Employment Claims incurred by West Berkshire in connection with or as a result of any claim or demand (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any Employment Claims made at any time by or on behalf of any employee of Bracknell Forest other than the Bracknell Forest Employees who claim to have become an employee of or have rights against West Berkshire by virtue of TUPE.
- 11.7 Bracknell Forest shall indemnify and keep indemnified West Berkshire against all Direct Losses and/or Employment Claims including without limitation claims under Regulations 4(9) and/or 4(11) of TUPE arising from or as a consequence of:
- 11.7.1 any changes to terms and conditions of employment or to working conditions proposed by West Berkshire in relation to the Service on or after the Commencement Date which are required in order to deliver the Service as required by Bracknell Forest;
 - 11.7.2 any of the Bracknell Forest Employees informing Bracknell Forest or West Berkshire they object to being employed by West Berkshire; and
 - 11.7.3 any change in identity of the Bracknell Forest Employees' employer as a result of the operation of TUPE.

save to the extent that any such Loss or Employment Claim arises from or is due to any unlawful act or omission on the part of West Berkshire or any of its agents.

- 11.8 West Berkshire, Wokingham and Bracknell Forest shall share in the Agreed Percentages all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by West Berkshire in connection with or as a result of any claim or demand by any Staff (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any Employment Claims in each case arising directly or indirectly from any act, fault or omission of any Council in respect of any such Staff on or after the Commencement Date.

Redundancy Costs

- 11.9 West Berkshire, Wokingham and Bracknell Forest acknowledge and agree that in relation to any redundancy or reorganisation process following the Commencement Date, the provisions of this Clause 11.9 shall apply:
- 11.9.1 West Berkshire shall no later than twenty-one (21) days prior to the potential termination of the employment of any Staff notify Wokingham and Bracknell Forest in writing of the reasons for such redundancy in connection with such redundancy or reorganisation process together with, on an open book basis,

confirmation of any Redundancy Payment it is obliged to pay to such Staff in the event that their employment is terminated by reason of redundancy;

11.9.2 West Berkshire and Wokingham and Bracknell Forest shall use reasonable endeavours to mitigate any costs incurred in relation to any potential redundancy and shall, as far as reasonably practical, seek to redeploy any potentially redundant Staff to other roles within West Berkshire, Wokingham and Bracknell Forest;

11.9.3 where West Berkshire, Wokingham and Bracknell Forest have complied with the requirements of Clauses 11.9.1 and 11.9.2 and they have been unable to redeploy such employees in order to avoid the redundancy, the costs in relation to the Redundancy Payment incurred in relation to any Staff following the Commencement Date which arise as a result of any redundancy or reorganisation process shall be borne in the Agreed Percentages.

Pensions on Transfer

11.10 The Parties agree that, following discussion and agreement with the Fund:

11.10.1 Bracknell Forest is to be treated as a scheme employer that ceased to be the employer of the Bracknell Forest Employees with effect from the Commencement Date;

11.10.2 Bracknell Forest will procure that the Fund instructed the Actuary to produce an Exit Valuation for Bracknell Forest and Bracknell Forest agrees upon receipt to disclose the same to West Berkshire;

11.10.3 West Berkshire will be the scheme employer in respect of the Bracknell Forest Employees within the Fund with effect from the Commencement Date; and

11.10.4 that any sum identified as being owed by Bracknell Forest to the Fund by the Exit Valuation ("Exit Deficit") shall be the responsibility of and paid to the Fund by Bracknell Forest, subject to Bracknell Forest and West Berkshire agreeing with the Fund within thirty (30) Working Days of confirmation of the Exit Deficit in the Exit Valuation, the payment terms and timescale for Bracknell Forest to pay the Exit Deficit to the Fund.

11.11 Bracknell Forest undertakes to indemnify and keep indemnified West Berkshire for any liability towards any Bracknell Forest Employees arising in respect of;

11.11.1 pension rights within the LGPS for periods of employment prior and up to the Commencement Date; and

11.11.2 any claim by, payment to, or loss incurred by West Berkshire in respect of the failure of Bracknell Forest to account to the Fund for any payments or any arrears of any sum payable by Bracknell Forest pursuant to clause 11.10.4.

Pensions after Transfer

11.12 In the event that an election, decision or action of the PPP in relation to any Staff leads to immediate payment being due to the West Berkshire Pension Fund in accordance with the Local Government Pension Scheme Regulations 2013 (or any such amending or replacing regulations) then these costs shall be borne in the Agreed Percentages provided always that wherever possible the Joint Committee and the Service Managers shall consult with the Councils and take into consideration their views as to the impact of such an election, decision or action prior to making it.

11.13 In the event of expiry or termination of this Agreement the Councils agree that the following principles shall apply in relation to any sum identified as being owed by West Berkshire to the Fund by the Future Exit Valuation ("Future Exit Deficit");

11.13.1 In the event of the Staff being the subject of a relevant transfer under TUPE to a third party service provider of Replacement Services appointed by the Councils following the termination or expiry of this Agreement then any Future Exit Deficit shall be apportioned between the Councils in line with the Agreed Percentages.

11.13.2 In the event that a Council or the Councils decide to take back any Replacement Services internally then;

(a) the Councils shall identify and agree the appropriate numbers of Staff that each Council requires in order to deliver the Replacement Services (the "Identified Staff"); and

(b) any Future Exit Deficit in respect of Identified Staff shall be the responsibility of the Council which has accepted the Identified Staff in order to deliver its Replacement Services.

11.13.3 Wokingham and Bracknell Forest shall indemnify West Berkshire in respect of any sums that they have agreed to incur in line with the principles set out in 11.13.1 and 11.13.2 above in respect of the Future Exit Deficit and for which West Berkshire must make payment to the Fund.

12 APPLICATION OF SECTION 113 LGA 1972

Wokingham and Bracknell Forest agree that where the employees of West Berkshire are engaged on work for Wokingham and Bracknell Forest the provisions of section 113 of the 1972 Act will apply and that those employees will be placed by West Berkshire at the disposal of Wokingham and Bracknell Forest for the purposes of their functions. West Berkshire confirms that it shall have duly consulted such employees prior to placing them at Wokingham and Bracknell Forest's disposal and that West Berkshire shall continue to treat such employees as its own employees.

13 PROCUREMENT PROCESS

13.1 West Berkshire shall act as Procurement Agent for any procurement of a contract in relation to the Services.

13.2 Any procurement by the Procurement Agent shall adhere to the constitution for the Council acting as Procurement Agent, including which officers are authorised to enter into contracts.

13.3 Where the Procurement Agent enters into any contract or communications with any prospective supplier in relation to the Services, it shall make it clear in any such contract or communication that it is doing so on behalf of the Councils.

14 ACCOMMODATION

14.1 The Councils agree that to retain local working the PPP is to be hosted in locations in the administrative areas of the Councils and the Councils accordingly undertake to make available all necessary accommodation, working space, internet access and associated facilities and services, including such associated facilities as shall be necessary to host the PPP each of the Councils unless otherwise agreed by the Councils.

14.2 The other Councils hereby licenses all appropriately authorised employees of West Berkshire engaged in the delivery of the Service to enter its premises for the purposes of the performance of the Service and to utilise free of charge such associated services and facilities as shall be provided by West Berkshire to the other Councils for the purposes of the Service from time to time.

- 14.3 The Councils shall use reasonable endeavours to avoid or minimise any disruption to the other Party's operations for the duration of the Agreement.

15 BRANDING

- 15.1 Joint branding will be deployed across all publications relating to the Joint Committee and the Services it provides, unless agreed otherwise in writing between the Councils.
- 15.2 Use of any Council's logo and other branding shall be governed by the provisions of Schedule 3.

16 DEFAULTS

- 16.1 If any of the Councils commit a Default then they shall as soon as reasonably practicable notify the other Councils in writing and take such steps as are necessary to rectify the Default.
- 16.2 If the Default has not been rectified within thirty (30) Working Days to the reasonable satisfaction of the other Councils then the matter shall be referred to the Joint Management Board unless the Councils agree a longer period.
- 16.3 The Councils shall use reasonable endeavours to resolve the Default through the Joint Management Board.
- 16.4 If the Councils cannot resolve the Default through the Joint Management Board within a reasonable time any of the Councils may escalate the matter for resolution, in accordance with Clause 22 (Disputes).

17 TERMINATION OF THIS AGREEMENT

- 17.1 Any Council may give at least twelve (12) months' notice to terminate ("Notice of Termination") to the other Councils after three years of operation of this Agreement, such Notice of Termination to expire on the next following 31st March, or twelve months' notice to expire at the end of the Initial Term, as the case may be. Once a Notice of Termination has been served the Councils shall within 6 months make all reasonable endeavours to sign off an agreed Exit Plan in accordance with the principles set out Clause 17.5.
- 17.2 Any Council may terminate this Agreement by serving notice immediately at any time upon another Council committing a Fundamental Breach of this Agreement. Such a notice can only be served when the process set out in Clause 16 has been exhausted.
- 17.3 This Agreement may be terminated upon the mutual consent of all of the Councils by giving Notice of Termination.
- 17.4 Where by reason of any change in law or other reason not attributable to the fault of the Councils prohibits or prevents one of the Councils from giving effect to their obligations under this Agreement, any of the Councils to this Agreement may terminate this Agreement so as to avoid the Councils from breaching legislative or otherwise binding obligations upon it by written notice effective upon receipt by the other Councils, specifying the date upon which the termination should take effect, provided that the terminating Council has first entered into discussion in good faith with the other Councils and used all reasonable endeavours to negotiate a solution with the other Councils, whereby the intent and purpose of this Agreement may be fulfilled by another mechanism.
- 17.5 West Berkshire as Host Authority may terminate this Agreement by serving notice immediately at any time upon either Bracknell Forest or Wokingham reducing the payments to be made pursuant to Clause 7.2 and Schedule 4 of this Agreement to a level which West Berkshire as Host Authority deems unacceptably low.

- 17.6 If a Notice of Termination is served the Joint Management Team shall cooperate in good faith to agree an **'Exit Plan'** setting out how the arrangements considered in this Agreement will be ended and which shall be in accordance with the agreed principles:
- 17.6.1 that continuation and quality of service delivery are paramount and options should be assessed in this light;
 - 17.6.2 exit arrangements shall seek to minimise the costs to the Councils of exiting or terminating this agreement;
 - 17.6.3 the Exit Plan for each Service shall identify critical timescales and issues as appropriate with proposals to address them;
 - 17.6.4 the option of transferring the entire workforce to a new host should be explored before deciding to split the Service;
 - 17.6.5 where the Councils decide to return to direct service provision then the Service Managers shall produce recommendations for the staffing structures to be considered by the Councils according to previous usage and future perceived need. Where any staff cannot be placed with any Council then all Councils shall consider redeployment;
 - 17.6.6 the Councils in consultation with the Fund shall instruct the Actuary to produce an Exit Valuation to enable the Joint Committee and the Councils to consider the pension implications of transferring staff in accordance with the principle that any deficit on the Fund arising from the break-up of PPP shall be attributable to each of the Councils in the Agreed Percentages (where the Services are outsourced) or attributable to the Councils based upon the transfer of staff back to them;
 - 17.6.7 liabilities relating to the Services shall be, in the absence of specific agreed alternatives or provision in this Agreement, shared and/or borne by the Councils in accordance with the Agreed Percentages.
 - 17.6.8 the Assets shall be dealt with in accordance with the provisions set out in 9.7.

18 CONSEQUENCES OF TERMINATION

- 18.1 All liabilities under Clause 20 shall survive the termination of this Agreement.
- 18.2 The Council which exercises its right to terminate under Clause 17.1 shall indemnify the other Councils against all Direct Losses (which the other parties shall take all reasonable steps to mitigate) arising out of such termination.
- 18.3 In the event of termination of this Agreement under Clause 17.2 any Direct Losses of the Councils arising out of such termination shall be borne by the Council that has committed the Fundamental Breach of this Agreement.
- 18.4 In the event of termination of this Agreement under Clause 17.2 any of the Councils shall also be at liberty to pursue all remedies available to them at law.
- 18.5 In the event of termination of this Agreement under Clause 17.3 each Council shall bear its own losses incurred by the other Council as a result of such termination.
- 18.6 In the event of termination of this Agreement under Clause 17.4 each Council shall bear its own losses, provided however that if the terminating Council has not entered into discussions in good faith with the other Councils and/or not use all reasonable endeavours to negotiate a solution with the other Councils, whereby the intent and purpose of this agreement may be fulfilled by another mechanism, the terminating Councils shall indemnify the other Councils

against all Direct Losses (which the other Councils shall take all reasonable steps to mitigate) incurred by the other Councils as a result of such termination.

- 18.7 In the event of termination of this Agreement under Clause 17.5 any Direct Losses of West Berkshire and the other Council which has not reduced its payments under this Agreement arising out of such termination shall be borne by the Council which reduced its payments under the Agreement resulting in its termination under Clause 17.5.

19 INSURANCE

- 19.1 West Berkshire shall take out and maintain or procure the taking out and maintenance of the following insurances and any other insurance as may be required by law to cover the activities of the PPP:

- 19.1.1 Public liability insurance;
- 19.1.2 Employers liability insurance; and
- 19.1.3 Professional indemnity insurance.

If there is an increased cost to this insurance because it relates to the PPP, the additional costs shall be borne by the PPP in the Agreed Percentages.

- 19.2 West Berkshire must also ensure that any of its Sub-Contractors that are providing any or all of the Services on its behalf take out and maintain equivalent insurance to levels of cover agreed by the Councils.
- 19.3 Each Council shall, at its own cost, take out and maintain or procure the taking out and maintenance of insurance to cover Premises it occupies.
- 19.4 All Assets shall be insured by West Berkshire.
- 19.5 No Council shall take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) allow anything to occur (including a failure to disclose any fact) which would entitle any insurer to refuse to pay any claim under an insurance policy in which that Council is assured, a co-insured or an additional person or which may make such a claim wholly or partly repayable.
- 19.6 Each Council shall provide to the others on request:
- 19.6.1 Copies of insurance policies required to be maintained under this Clause 19; and
 - 19.6.2 Evidence that the premiums under all insurances have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 19.

20 INDEMNITIES AND LIABILITIES

- 20.1 Each Council ("Indemnifying Council") shall be wholly liable for any loss suffered by another Council ("Benefiting Council") in relation to the operation of the Services in respect of the Indemnifying Council prior to the Commencement Date (except any accrued redundancy liabilities) and shall indemnify the Benefiting Council against any loss suffered by the Benefiting Council to the extent such loss relates to the operation of the Indemnifying Council's Service department(s) prior to the Commencement Date.
- 20.2 Notwithstanding the provisions of Clause 20.3 and subject to Clause 20.1 any loss or costs suffered by any Council arising from or relating to the operation of the Services and the terms of this Agreement shall be shared between the Councils in accordance with the Agreed

Percentages unless and to the extent that alternative arrangements are agreed in writing by the Councils or provided for in this Agreement. The Councils acknowledge that the governance arrangements provided for in this Agreement will be the primary means by which the Councils will monitor and manage the risk of liability arising from or relating to the operation of the PPP.

20.3 No Council limits its liability for:

- 20.3.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
- 20.3.2 fraud by it or its employees;
- 20.3.3 breach of any obligation as to title implied by statute; or
- 20.3.4 any other act or omission, liability for which may not be limited under applicable law.

21 MEMBER AND OFFICER LIABILITY

- 21.1 When working as a member of the Joint Committee, the members shall be deemed to be working on behalf of their own Council even where the particular matter under consideration relates to or also relates to another Council.
- 21.2 When working on the Service, employees shall be deemed to be working on behalf of their employing authority and, where relevant, made available and working on behalf of the other Councils under Section 113 of the Local Government Act 1972.
- 21.3 In consequence of Clauses 21.1 and 21.2 both members and officers shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875, as applied by Section 39 of the Local Government (Miscellaneous Provisions) Act 1976, in respect of their actions or omissions in connection with the Service, provided they act bona fide in good faith.

22 DISPUTES

- 22.1 The Councils shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:
 - 22.1.1 the Dispute shall be referred to the Lead Officers;
 - 22.1.2 if the Dispute cannot be resolved to the satisfaction of the Councils by the Lead Officers within fourteen (14) days after the Dispute has been referred in writing to the Lead Officers, the Dispute may be referred, by any Council, to the Joint Management Team for resolution;
 - 22.1.3 if the Dispute cannot be resolved to the satisfaction of the Councils by the Joint Management Team within fourteen (14) days after the Dispute has been referred in writing to the Joint Management Team, the Dispute may be referred, by any Council, to the Joint Management Board for resolution;
 - 22.1.4 if the Dispute cannot be resolved by the Joint Management Board within fourteen (14) days after the Dispute has been referred in writing, any Council may give notice to the other Council in writing ("Dispute Notice") that a Dispute has arisen; and
 - 22.1.5 within seven (7) days of the date of the Dispute Notice, each Council shall refer the Dispute to the chief executives of the Councils who shall consider the

Dispute Notice and forward it together with a recommendation on resolution to the Councils within fourteen (14) days of receiving the Dispute Notice.

- 22.2 If the Councils are unable, or fail, to resolve the Dispute within twenty-one (21) days of receipt of the Dispute Notice the Councils may attempt to resolve the Dispute by mediation in accordance with Clause 22.3.
- 22.3 If the Councils have failed to agree on a resolution, any Council may refer any Dispute for mediation pursuant to this Clause 22.3. No Council may commence any court proceedings / arbitration in relation to any Dispute until it has attempted to settle the Dispute by mediation and either the mediation has terminated or the relevant Council has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay. The following provisions shall apply to any such reference to mediation:
- 22.3.1 the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre for Effective Dispute Resolution (CEDR) for the time being in force;
 - 22.3.2 the Councils shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and provide all such information or documents as CEDR or the mediator may reasonably require to give effect to such mediation, including entering into an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and
 - 22.3.3 to the extent not provided for by such agreement of the MMP:
 - (a) the mediation shall commence by a Council serving on the others written notice setting out, in summary form, the issues in dispute and calling on the other Councils to agree the appointment of a mediator; and
 - (b) the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Councils or, in default of agreement, appointed by CEDR.
- 22.4 Should the mediation fail, in whole or in part, any of the Councils may, upon giving written notice, and within twenty eight (28) days thereof, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless the Councils have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators (2000 Edition), as amended, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales
- 22.5 Without prejudice to any rights to seek redress in court, the Councils shall continue to provide the Service and to perform their obligations under this Agreement notwithstanding any Dispute or the implementation of the procedures set out in this Clause 22.

23 CONDUCT OF CLAIMS

- 23.1 This Clause 3 shall apply to the conduct, by a Council, of claims made by a third person against any Council in connection with any liability described in Clause 20.
- 23.2 If a Council ("the Notifying Council") receives any notice, demand, letter or other document concerning any claim for which it appears that the Notifying Council is or may become entitled to, be indemnified under this Agreement, the Notifying Council shall notify the other Councils in writing as soon as reasonable practicable and in any event within twenty (20) Working Days of its receipt.

- 23.3 The Notifying Council shall be free at any time to give notice to the other Councils that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim made by a third party in connection with any matter described in Clause 20 or any incidental negotiations. On receipt of such a notice a Council shall promptly take all reasonable steps necessary to transfer the conduct of such claim to the Notifying Council, and the other Councils shall provide to the Notifying Council all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Notifying Council gives any notice pursuant to this clause, then the other Councils shall be released from any future liability under its indemnity in respect of such claim.
- 23.4 If another Council pays to the Notifying Council an amount in respect of an indemnity and the Notifying Council subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Notifying Council shall immediately repay the other Council the lesser of:
- 23.4.1 the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Notifying Council in recovering it; and
 - 23.4.2 the amount paid to the Notifying Council by the other Council in respect of the claim under the relevant authority.
- 23.5 The other Council is repaid in accordance with Clause 23.4 only to the extent that the amount of the recovery aggregated with the amount paid by that Council exceeds the Notifying Council's losses.
- 23.6 The Councils shall comply with the requirements of any insurer who may have an obligation to consider any claim made in respect of any liability arising under this Agreement.

24 CONFIDENTIALITY

- 24.1 Each Council undertakes to the other Councils that neither it nor any of its sub-contractors will at any time after the date of this Agreement (save as required by Law or by order of a Court of competent jurisdiction or any other relevant regulatory authority or as expressly permitted to be disclosed) use any Confidential Information (other than for the purposes of this Agreement) or disclose or divulge any Confidential Information to any person (other than to officers or employees of the Councils) and that it shall use its best endeavours to prevent such use or publication or disclosure of any Confidential Information by any other person.
- 24.2 Except to the extent set out in this Clause 24, or where disclosure is expressly permitted elsewhere in this Agreement, each Council shall:
- 24.2.1 treat the other Councils' Confidential Information as confidential; and
 - 24.2.2 not disclose the other Councils' Confidential Information to any other person without the owner's prior written consent.
- 24.3 Clause 24.1 shall not apply to the extent that:
- 24.3.1 such information was in the possession of the Council making the disclosure, without obligation of confidentiality, prior to its disclosure;
 - 24.3.2 such information was obtained from a third party without obligation of confidentiality;
 - 24.3.3 such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement; or

24.3.4 such information was independently developed without access to the other Councils' Confidential Information.

24.4 Each Council may only disclose Confidential Information to its employees who are directly involved in the provision of the Services and who need to know the information for the purposes of the Service. Each Council shall ensure that such employees are aware of, and comply with, these confidentiality obligations.

25 DATA PROTECTION

25.1 Each Council agrees that in relation to any personal data (as defined in the DPA) it holds in relation to this Agreement it will comply, as a data controller if necessary, with the DPA including:

25.1.1 the eight data protection principles listed in Part 1 of Schedule 1 to the DPA;

25.1.2 requests from data subjects for access to data held by it; and

25.1.3 the requirements relating to notification to the Information Commissioner by data controllers under Part 11 of the DPA.

25.2 Each Council agrees that if it acquires personal data from the other Councils in connection with this Agreement it will:

25.2.1 maintain a valid and up to date registration or notification under the DPA which covers all processing of such data which it undertakes;

25.2.2 only undertake processing of such personal data where it is reasonably required in connection with the performance of its obligations under this Agreement;

25.2.3 not disclose such personal data to any third party other than:

(i) a disclosure on terms substantially the same as and no less stringent than those required by this Clause, to its employees, agents and contractors to whom such disclosure is reasonably necessary in connection with the performance of its obligations under this Agreement; or

(ii) as required by court order;

25.2.4 bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of personal data and accidental loss or destruction of, or damage to, personal data including taking reasonable steps to ensure the reliability of staff having access to the personal data; and

25.2.5 obtain the consent of data subjects to the disclosure of any personal data disclosed under this Agreement.

25.3 Nothing in this Agreement requires any Council to disclose any information to another party if that Council considers that to do so would be in breach of the DPA.

26 FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004

26.1 Each Council acknowledges that the others are subject to the requirements of the FOI Legislation and shall where reasonable assist and co-operate to enable the other Councils to comply with these information disclosure obligations.

- 26.2 Where a Council receives a request for information under the FOI Legislation in relation to information which it is holding on behalf of the other Councils in relation to the Service, it shall (and shall procure that its sub-contractors shall) :
- 26.2.1 transfer the request for information to the other Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;
 - 26.2.2 provide the other Council with a copy of all information in its possession or power in the form that the authority requires within ten (10) Working Days (or such longer period as the authority may specify) of the Council requesting that information; and
 - 26.2.3 provide all necessary assistance as reasonably requested by the other Council to enable the Council to respond to a request for information within the time for compliance set out in the FOI Legislation.
- 26.3 Where a Council receives a request for information under the FOI Legislation which relates to the Agreement or the Service, it shall inform the other Council of the request for information as soon as practicable after receipt and in any event at least two (2) Working Days before disclosure and shall use all reasonable endeavours to consult with the other Councils prior to disclosure and shall consider all representations made by the other Councils in relation to the decision whether or not to disclose the information requested.
- 26.4 Each of the Councils shall be responsible for determining in their absolute discretion whether any information requested under the FOI Legislation:
- 26.4.1 is exempt from disclosure;
 - 26.4.2 is to be disclosed in response to a request for information.
- 26.5 Each of the Councils acknowledges that the other Councils may be obliged under the FOI Legislation to disclose information:
- 26.5.1 without consulting with the other Councils where it has not been practicable to achieve consultation; or
 - 26.5.2 following consultation with the other Councils and having taken their views into account.

27 WAIVER AND SEVERABILITY

- 27.1 A failure or delay in exercising any rights, powers or privileges under this Agreement will not operate as a waiver of them. The single or partial exercise of any right, power or privilege does not prevent any other exercise of it or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise). Any waiver of a breach of this Agreement is not to be effective unless given in writing signed by the Council waiving its entitlement. No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Agreement.
- 27.2 The receipt of money does not prevent the Councils receiving it questioning the correctness of the amount or any other statement in respect of the money.
- 27.3 If any term of this Agreement is illegal, void or unenforceable the remainder of this Agreement will continue in force as though that term had not been included in it.

28 CONFLICTS OF INTEREST

- 28.1 If any situation arises where there is an actual or potential conflict of interest or a perceived conflict of interest between the Councils or any of the Officers of the Councils then such conflict of interest shall be drawn to the attention of the Monitoring Officer of the relevant Council, in writing, specifying the details of the actual, potential or perceived conflict.
- 28.2 Upon receipt of written notice of such a conflict the Monitoring Officer shall advise the Monitoring Officer of the other Councils and the three Monitoring Officers shall:
- 28.2.1 consider the position in relation to their own Council;
 - 28.2.2 notify the Joint Management Board of the circumstances of the conflict;
 - 28.2.3 prepare recommendations for consideration by the Joint Management Board as to how such a conflict may be managed or avoided or other appropriate action with a view to ensuring that Officers or the Councils are not compromised in performing their functions;
- 28.3 The Monitoring Officer of the Host Council shall keep a record on behalf of the Joint Committee specifying the details of all actual, potential or perceived conflicts of interest and how each one was managed or resolved.

29 ENTIRE AGREEMENT

- 29.1 This Agreement sets out the whole agreement between the Councils in relation to the Services. It supersedes the existing arrangements and invalidates all other commitments, representations and warranties relating to its subject matter which any of the Councils has made orally or in writing.
- 29.2 Each of the Councils warrants that it has not entered into this Agreement on the basis of any representation made by the other except to the extent that such representation is expressly included in it (but nothing in this Clause 29 excludes any liability for fraudulent misrepresentation).

30 EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE

- 30.1 Nothing in this Agreement is to require any Council to act in anyway which is inconsistent with its obligations as a local authority.
- 30.2 Each Council subject to Clause 30.1 shall do all things and execute all further documents that the other may reasonably require to give effect to this Agreement.

31 NO PARTNERSHIP OR AGENCY

- 31.1 Nothing in this Agreement is to constitute or be deemed a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other legislation concerning partnerships or limited liability partnerships.
- 31.2 No Council shall hold itself out as the agent of the other or have any authority to bind the other except to the extent that this Agreement expressly provides otherwise.

32 THIRD PARTIES

- 32.1 This Agreement does not create, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not party to this Agreement.

33 VARIATIONS

- 33.1 Any variations to this Agreement shall only be effective where agreed in writing by all of the Councils.
- 33.2 No consents to any variation to this Agreement are required from any person who is not a Council.

34 ASSIGNMENT AND SUBCONTRACTING

- 34.1 No Council may transfer, assign or pledge its rights or obligations under this Agreement (without the consent of the other Councils).
- 34.2 Any Council may subcontract any of its obligations under this Agreement with the consent of the other Councils (such consent not to be unreasonably withheld or delayed) but the Council that subcontracts is to be liable for the performance of its subcontractors.

35 GOVERNING LAW AND ENFORCEMENT

- 35.1 The formation, construction, performance, validity and all aspects of this Agreement are to be governed by English law and subject to where provided otherwise under Clause 35 the Councils agree to submit to the exclusive jurisdiction of the courts of England and Wales.
- 35.2 The rights and remedies given by this Agreement are cumulative and do not exclude any other rights or remedies given by law or under this Agreement.

36 NOTICES

- 36.1 Notices or other communications under this Agreement will be duly served if given by and sent to the nominated representative of the Council to be served in accordance with the following table with the date of service and method of proof being as set out in it:

| Method of service | Date of service | Proof of service |
|---|--|--|
| Personal delivery to the nominated representative | Day of delivery | Proof of handing to the nominated representative |
| Personal delivery of a letter addressed to the nominated representative at the address for service. | Day of delivery if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter. | Proof of delivery. |
| First class letter addressed to the nominated representative at the address for service. | 48 hours after posting if that is a Working Day otherwise 10.00 on the next Working Day thereafter. | Proof of posting unless returned through the Post Office undelivered service within twenty one (21) days of posting. |
| Facsimile addressed to the nominated representative at the address for service. | Day of transmission if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter. | Transmission report showing a successful transmission to the correct number plus proof of posting of a hard copy. |

- 36.2 Each Council's address for service is the address set out at the start of this Agreement or such other address as it notifies to the other in writing.
- 36.3 The nominated representative for the receipt of notices under this Agreement is the Chief Executive of each Council or such other person as that Council nominates by written notice to the other.

IN WITNESS hereof the parties hereto have executed this Agreement as a Deed the day and year first written

The Common Seal of)
West Berkshire District Council)
was affixed to this Deed in the)
presence of and attested by:)

Authorised sealing officer

The Common Seal of)
Wokingham Borough Council)
was affixed to this Deed in the)
presence of and attested by:)

Authorised signatory

The Common Seal of)
Bracknell Forest Borough Council)
was affixed to this Deed in the)
presence of and attested by:)

Authorised signatory

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SCHEDULE 1 - GOVERNANCE

The Councils shall set up the following governance arrangements.

1 Joint Committee

- 1.1 The purpose of the Councils in establishing the Joint Committee is to facilitate an effective joint approach between the Councils in delivering the Services.
- 1.2 For the avoidance of doubt, the Joint Committee shall have decision making powers vested in it by the Councils and is a Joint Committee for the purposes of the Local Government Act 1972 and the Local Government Act 2000.

2 Interpretation

- 2.1 Unless expressly stated otherwise the expressions within this Schedule 1 will have the same meaning as in the main body of this Agreement.

3 The membership of the Joint Committee

- 3.1 The Joint Committee shall comprise six voting members. One member from each authority shall be an executive member. The second member is any other non-executive member who is appointed by the Council or Leader of each Council (depending upon who has the authority to make the appointment).
- 3.2 Each Council or Leader will nominate a substitute executive member who may act as substitute for both the executive and non- executive member of the Joint Committee. The substitute member is entitled to attend all meetings of the Joint Committee but will only be classed as a member of the Joint Committee and vote when acting as a substitute.
- 3.3 Each member of the Joint Committee shall act in the overall interests of the Joint Committee.
- 3.4 Each member of the Joint Committee shall comply with the Members' Code of Conduct and relevant training programmes of their Council when acting as a Member of the Joint Committee.
- 3.5 The Joint Committee shall appoint one of its Members to be Chairman of the Joint Committee who shall, unless he or she resigns his or her office or ceases to be a member of the Joint Committee, continue in office for a period of up to 16 months or until his/her successor becomes entitled to act.
- 3.6 The first Chairman of the Joint Committee shall be a person nominated by [Wokingham] and shall hold office for the period up to Annual Council in May 2018.
- 3.7 The Chairmanship of the Joint Committee following the initial appointment shall rotate between the three Councils on an annual cycle. The Vice Chairman shall ordinarily become the next Chairman.
- 3.8 The Joint Committee shall appoint one of its Members to be Vice Chairman of the Joint Committee who shall, unless he or she resigns his or her office or ceases to be a member of the Joint Committee, continue in office for a period of 16 months or until his/her successor becomes entitled to act.
- 3.9 The first Vice Chairman of the Joint Committee shall be a person nominated by [Bracknell Forest] and shall hold office for the period up to Annual Council in May 2018.
- 3.10 The Vice Chairmanship of the Joint Committee following the initial appointment shall rotate between the three Councils on an annual cycle.
- 3.11 The chairman shall have a casting vote.

- 3.12 The role of Treasurer to the Joint Committee will be provided by the Chief Finance Officer and the role of Secretary to the Joint Committee will be provided by the Host Council.

4 The terms of reference of the Joint Committee

- 4.1 The terms of reference of the Joint Committee are as set out in the Responsibilities in Appendix A

5 Meetings of the Joint Committee

- 5.1 The Joint Committee shall hold meetings twice yearly unless otherwise determined by the Joint Committee. The venue for the meetings will alternate between locations in Berkshire. The costs of the meeting shall be borne by the Council which is hosting the meeting of the Joint Committee.

- 5.2 The first meeting of the Joint Committee shall held on {insert date} February 2016.

- 5.3 The Joint Committee may in every year hold in addition other meetings as they may determine necessary.

6 Role of the Joint Management Board

- 6.1 The Joint Management Board shall be a senior level forum for advice, consultation, discussion, resolution of issues and recommendations back to the Joint Committee or the Councils on all aspects of the delivery of the Service.

- 6.2 The membership of the Joint Management Board shall be:

- 6.2.1 A senior officer from Bracknell Forest; A senior officer from West Berkshire; A Senior officer from Wokingham: The West Berkshire Head of Culture and Environmental Protection; and the joint Service Managers of the PPP.

- 6.3 The terms of reference for the Joint Management Board are as set out in the Responsibilities in Appendix 1 to this Schedule

- 6.4 The Joint Management Board will meet every three (3) months or more frequently as agreed.

7 Joint Management Team

- 7.1 A Joint Management Team, comprising the joint Service Managers of the PPP and such other professional and practitioner officers as determined by the Joint Management Team, meeting as required, to oversee the general operation of the Service, as set out in the Responsibilities in Appendix 1.

8 Changes to the Constitution

- 8.1 No change may be made to the governance arrangements of the Joint Committee in this Schedule 1 unless it has been agreed unanimously at a meeting of the Joint Committee.

- 8.2 Each of the Councils may request a change to the constitution of the Joint Committee by sending to the Joint Committee:

- 8.2.1 Details in writing of the proposed change to the governance arrangements;

- 8.2.2 A request in writing for the proposed change to be included in the agenda for the next meeting of the Joint Committee.

- 8.3 If the Joint Committee agrees to a change to the governance arrangements of the Joint Committee, the change shall take effect immediately after it has been agreed. The costs associated with the agreed change shall be shared between the Councils in accordance with the Agreed Percentages, unless agreed otherwise.

9 Additional councils

- 9.1 The PPP shall be able to provide the Services or ancillary services to any councils, shared services or authorities ("Additional Council") in addition to the Councils party to this agreement subject to the provisions of this paragraph 9 and provided that the engagement of an Additional Council shall not create any detriment to the cost and quality of the services provided to nor otherwise be injurious to the interests of the Council's party to this agreement. Such services may be provided contractually or may be undertaken by the Additional Council joining a shared service arrangement with the Councils.
- 9.2 It is agreed by the Councils that requests from Additional Councils to join the PPP will be actively considered by the Joint Committee. The Joint Committee will discuss any such requests taking into account:
- 9.2.1 Whether the enlargement of the PPP will improve the cost effectiveness and sustainability of the PPP;
 - 9.2.2 Ensuring no detriment to the level and quality of service provided to the Councils;
 - 9.2.3 The implications of Additional Councils joining the PPP on this Agreement;
 - 9.2.4 Ensuring the Councils incur no additional costs.
- 9.3 Discussions on this issue will be approached in the spirit of partnership and good faith and the Joint Committee will seek to agree an outcome which will be at no detriment to the cost or quality of the Service provided to the Councils.
- 9.4 If having considered the request by an Additional Council to join the PPP the Joint Committee determine that the criteria set out in 9.2 above are met they shall make a recommendation for consideration by the Councils.

10. STANDING ORDERS

- 9.1 The standing orders and procedure rules of the Host Council will apply to meetings of the Joint Committee and the transaction of business through PPP unless otherwise provided for in this Agreement.
- 9.2 The quorum for any meeting of the Joint Committee will be three members being at least one voting executive member or their substitute from each Council.
- 9.3 The Joint Committee shall be responsible for agreeing any virement within the total cost of the Service where that exceeds the level of officer delegation to approve virement within the Host Council's Standing Orders and is within the agreed Budget for the Service.
- 9.4 Virement outside of the agreed Budget and Policy framework will require approval by the Councils.

APPENDIX 1 - RESPONSIBILITIES

| Joint Committee | Joint Management Board | Joint Management Team |
|--|---|--|
| Purpose: To provide strategic direction and make key decisions that enable this | Purpose: Advisory | Purpose: Delivery & Operational Decisions |
| Meeting frequency: Twice each year, or more frequently if deemed necessary. | Meeting frequency: Quarterly | Meeting frequency: Monthly |
| Led by: Executive Members | Led by: Senior Officers | Led by: Two Joint Service Managers |
| Comprises: JC Members: Executive Member from each Council plus one further Non-Executive Member from each Council One Substitute Executive/Non-Executive Members from each Council The Chair to have a casting vote unless otherwise stated in the Agreement. | Comprises: Senior Client Officer identified by each of the Councils and the two Joint Service Managers | Comprises: Two Joint Service Managers and Operational Team Managers |
| Responsibilities assigned: | | |
| To provide strategic direction for the service and monitor delivery of the Service. | To act as an informal sounding board for the Joint Committee. The Board shall be a forum for consultation, discussion, resolution of issues and recommendation to the Joint Committee on all aspects of delivery of the service. | Day to day management of the Service, including providing statutory returns: monitoring day to day performance of the Service and teams: responding to information needs identified by the Joint Committee or Joint Management Board. |
| To ensure effective performance of the Service: Agreeing key performance indicators at a strategic level for the Service by the end of February in the preceding financial year: Formally by considering performance against agreed measures. | To review reports from the Joint Management Team to work collaboratively with the Service to improve overall performance, helping ensure links are made to other Council Services and helping to break down barriers that inhibit performance. (Capitalising on the Board's networks) | Production of reports to be considered by the Joint Committee or Joint Management Board including: An annual report on delivery of the Business Plan: Proposed charges: Performance against key measures (which may include statutory returns); HR issues and Resource issues where relevant. |
| To set the overall strategic direction of the service through developing and agreeing the business plan. | To be consulted on the draft Business Plan, including priorities and measures. | Production of a draft Business Plan for the coming financial year, including service priorities and anticipated performance measures. |
| To set key policy for the service taking into account relevant information. | To be consulted on proposed key policy changes – where relevant / necessary. | To develop reports on proposed key policy changes e.g. Enforcement Policy. |
| To consider and agree key policy documents | To be aware of the joint service policy in respect to prosecutions and other disposals. | |
| To maintain financial oversight of the Service to ensure sound financial management. To propose fee structure, annual budget to the Councils and agree any variations from the budget from the Inter Authority Agreement. | To quarterly review the budget monitoring information | Monitor the budget, approve spend in accordance with Standing Orders for financial processes. Provide budget monitoring reports to the JMB and JC. |
| To monitor delivery of the Business | To provide support and guidance | To provide annual reports to the |

| | | |
|---|--|--|
| Case including delivery of savings and additional income. | to the Joint Management Team to assist achievement of delivering the Business Case. | JMB/JC on delivery of the business case. |
| To decide how to spend any additional surplus income, additional savings or under spend – whether these should be reinvested in the Service or returned to each local authority in the usual proportions. | To suggest alternatives for the Joint Management Team to develop and to provide constructive challenge to ideas to enable the Joint Committee to make well informed decisions. | To provide comprehensive information on possible ways to spend any additional surplus income/savings or under spend including a consideration of the impact of any such spend. |
| To receive reports on the performance of the Inter Authority Agreement. | To identify defaults against the Inter Authority Agreement and resolve these to the satisfaction of both Councils. | |
| | To monitor operational delivery against strategic priorities | |

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SCHEDULE 2 - RELEVANT FUNCTIONS

1 Excluded Functions

1.1 For the avoidance of doubt each of the Council's Licensing Committees do not form part of the Relevant Functions.

2 Relevant Functions

2.1 The Relevant Functions shall be those environmental, licensing, gambling, trading standards and related functions set out in the following list of legislation ("the statutes") together with:

- (a) Any amendments, modifications or replacements to the statutes
- (b) Any new legislation relating to the trading standards or environmental health and licensing functions of local authorities or in other ways related to the statutes
- (c) Any subsidiary legislation or statutory guidance made under the statutes or under provisions in (a) and (b) above
- (d) Any other function or a local authority calculated to facilitate or conductive or incidental to the functions in the statutes or any provisions in (a), (b) and (c) above
- (e) The Primary Authority functions of a local authority as set out in the Regulatory, Enforcement and Sanctions Act 2008 and
- (f) The general power of competence in section 1 Localism Act 2011.

2.2 The Statutes are:

| |
|---|
| Administration of Justice Act 1970 |
| Agricultural Act 1970 |
| Animal Boarding Establishments Act 1963 |
| Animal Health Act 1981 |
| Animal Welfare Act 2006 |
| Animals Act 1971 |
| Anti Social Behaviour Act 2003 |
| Anti-social Behaviour Crime and Policing Act 2014 |
| Berkshire Act 1980 |
| Breeding of Dogs Act 1973, 1991 |
| Building Act 1984 |
| Cancer Act 1939 |
| Caravan Act 1968, 1985 |
| Caravan Sites and Control of Development Act 1960-1985 |
| Charities Act 1992 |
| Children and Young Persons (Protection from Tobacco) Act 1991 |
| Children and Young Persons Act 1933 |
| Chiropractors Act 1994 |
| Chronically Sick and Disabled Persons Act 1970 |
| Cinema Act 1968-1985 |
| Clean Air Acts 1956-1993 |

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|--|
| Clean Neighbourhoods and Environment Act 2005 |
| Companies Act 2006 |
| Consumer Credit Act 1974, 2006 |
| Consumer Protection Act 1987 |
| Consumer Rights Act 2015 |
| Control of Pollution Act 1974 |
| Copyright Designs and Patents Act 1988 |
| Courts and Legal Services Act 1990 |
| Crime and Disorder Act 1997 |
| Criminal Justice Act 1988 |
| Criminal Justice and Public Order Act 1994 |
| Customs & Excise (Management) Act 1979 |
| Dangerous Dogs Act 1991 |
| Dangerous Wild Animals Act 1976 |
| Disabled Persons Act 1981 |
| Dogs (Fouling of Land) Act 1996 |
| Education Reform Act 1988 |
| Enterprise Act 2002 |
| Environment Act 1995 |
| Environmental Protection Act 1990 |
| Estate Agents Act 1979 |
| European Communities Act 1972 |
| Explosives Act 1875, 1923 |
| Factories Act 1961 |
| Financial Services and Markets Act 2000 |
| Fireworks Act 2003 |
| Food and Environment Protection Act 1985 |
| Food Safety Act 1990 |
| Forgery and Counterfeiting Act 1981 |
| Fraud Act 2006 |
| Gambling Act 2005 |
| Guard Dogs Act 1975 |
| Hallmarking Act 1973 |
| Health Act 2006 |
| Health and Safety at Work etc. Act 1974 |
| Home Safety Act 1961 |
| Housing Acts 1957, 1985, 1996, 2004 |
| Housing Grants, Construction and Regeneration Act 1996 |
| Intoxicating Substances (Supply) Act 1985 |
| Knives Act 1997 |
| Land Compensation Act 1973 |
| Late Night Refreshment Houses Act 1969 |

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|--|
| Licensing Act 2003 |
| Local Government (Miscellaneous Provisions) Act 1976, 1982 |
| Local Government Acts 1953-1989 |
| Local Government Act 1972 |
| Local Government and Housing Act 1989 |
| Malicious Communications Act 1988 |
| National Assistance (Amendment) Act 1951 |
| National Assistance Act 1948 |
| National Lotteries etc Act 1993 |
| Noise Act 1996 |
| Noise and Statutory Nuisance Act 1993 |
| Offices, Shops and Railway Premises Act 1963 |
| Olympic Symbols etc. (Protection) Act 1995 |
| Osteopaths Act 1993 |
| Performing Animals (Regulation) Act 1925 |
| Pesticides Act 1996 |
| Pet Animals Act 1951 |
| Pollution, Prevention and Control Act 1999 |
| Prevention of Damage by Pests Act 1949 |
| Prices Acts 1974 |
| Private Hire Vehicles (Carriage of Guide Dogs etc.) Act 2002 |
| *Proceeds of Crime Act 2002* |
| Protection from Harassment Act 1997 |
| Psychoactive Substances Act 2016 |
| Public Health (Control of Disease) Act 1984 |
| Public Health Act 1936-1984 |
| Radioactive Substances Act 1993 |
| Rag Flock Act 1961 |
| Regulation of Investigatory Powers Act 2000 |
| Regulatory Enforcement and Sanctions Act 2008 |
| Riding Establishments Act 1964, 1970 |
| Road Traffic (Foreign Vehicles) Act 1972 |
| Road Traffic Act 1988, 1991 |
| Road Traffic Regulation Act 1984 |
| Safety of Sports Grounds Act 1975 |
| Scotch Whisky Act 1982 |
| Scrap Metal Dealers Act 1964, 2013 |
| Slaughter of Poultry Act 1967 |
| Slaughterhouses Act 1974 |
| Solicitors Act 1974 |
| Sunbeds (Regulation) Act 2010 |
| Sunday Trading Act 1994 |

| |
|---|
| Tattooing of Minors Act 1969 |
| Theatres Act 1968 |
| Theft Act 1968 |
| Tobacco Advertising and Promotion Act 2002 |
| Tobacco Products Duty Act 1979 |
| Town Police Clauses Acts 1847-1889 |
| Trade Descriptions Act 1968 |
| Trade Marks Act 1994 |
| Transport Act 1980 |
| Unsolicited Goods and Services Act 1971, 1975 |
| Vehicles (Crime) Act 2001 |
| Video Recordings Act 1984, 2010 |
| Violent Crime Reduction Act 2006 |
| Water Acts 1945-1989 |
| Water Industries Act 1991 |
| Weights and Measures Act 1985 |
| Zoo Licensing Act 1981 |

* Accredited financial investigators are authorised by the National Crime Agency

a) any Orders or Regulations made there-under or relating to any of the foregoing or having effect by virtue of the European Communities Act 1972; or any statute that may replace the European Communities Act 1972 resulting from any decision by the United Kingdom to leave the European Union or enter into alternative arrangements with the European Union and;

b) any offence under any legislation, or at common law, which is of a similar nature or related to the foregoing including offences of aiding, abetting, counselling and procuring, incitement, conspiracy, perverting the course of justice and criminal attempts; and

c) any modification or re-enactment to the foregoing.

SCHEDULE 3 - BRANDING

1. The service will be known as the Public Protection Partnership. The identifiers for the Service are set out below:

Public Protection Partnership | Bracknell Forest
West Berkshire
Wokingham

Trading Standards Service | Bracknell Forest
West Berkshire
Wokingham

Environmental Health & Licensing | Bracknell Forest
West Berkshire
Wokingham

2. Joint branding (the West Berkshire Crest and Wokingham Crest along with the Bracknell Deer) will also be deployed across all collateral including digital presence.
3. A statement of acknowledgement (e.g. 'A shared service provided by Bracknell Forest District Council, West Berkshire District Council and Wokingham Borough Council') will be deployed across all collateral (including digital presence)
4. These branding principles will be reviewed as part of the mainstream review process enshrined in this Agreement. This will include any instances not specified within this Schedule, such as new independent structures and subsidiaries, which will be subject to mutual agreement of specific guidance between the two Councils.
5. Each Council reserves the right to withdraw its branding at any time.

SCHEDULE 4 – AGREED PERCENTAGES AND BUDGET SETTING

Definitions:

Budget means the total monies allocated to the PPP for each Financial Year by the Councils from time to time and includes employee costs, supplies and services and income.

Initial Budget means the forecast Budget for the remainder of the Financial Year 16/17 and full Financial Year 17/18 including Start-up costs.

Major Adjustment means an increase or decrease in the contributions paid by the Councils which amounts to a change of 2.5% or more of the total Budget for that Financial Year.

Minor Adjustment means an increase or decrease in the contributions paid by the Councils which amounts to a change of less than 2.5% of the total Budget for that Financial Year.

Start-up Costs means the costs associated the integration of the individual Council services into the PPP, as identified in Appendix 1 to this Schedule and will be included in the initial payment for 16/17 Financial Year based on the Agreed Percentages.

Submission Date means 30 November or such other date agreed between the Councils from time to time.

Threshold Limit means the amount of £50,000 or such other sum as agreed between the Councils from time to time.

Unbudgeted Expenditure means an expense that is unaccounted for in the Budget for that Financial Year.

Year End Reconciliation means an annual reconciliation undertaken by West Berkshire of the actual expenditure of the PPP against the Budget and contributions made by the Councils during that Financial Year.

First Financial Years

The Initial Budget of the PPP to cover the period from commencement of the Agreement until 31st March 2017 shall be {insert} and the Agreed Percentages for the period 1st April 2017 to 31st March 2018 and the budget allocated to PPP shall be {insert} and the percentages shall be as below.

shall be:

Bracknell Forest – 27%

West Berkshire – 40%

Wokingham – 33%

Future Financial Years

The recommended Budget and Agreed Percentage figures for the PPP for each subsequent Financial Year shall be prepared by the Joint Committee and sent to the Councils for consideration by the Submission Date during the immediately preceding Financial Year.

In preparing its recommended Budget and Agreed Percentage figures, the Joint Committee shall specifically consider:

- The previous expenditure of the PPP and levels of service achieved;
- Any proposals for the development of the PPP or the services it offers;
- Any material changes in the activities provided by the PPP to either Council or any requests by either Council to make material changes in the following Financial Year; and
- Any other matters of relevance from time to time.

The Councils shall consider the recommendations as part of their internal budget setting processes and the Joint Committee shall provide such assistance and response as is necessary to meet financial challenges or alternative proposals that may be put forward by the Councils.

The final Budget for the forthcoming Financial Year shall be approved by each Council by no later than the 28 February in the immediately preceding Financial Year.

Payments

Bracknell Forest and Wokingham shall pay its Agreed Percentage of the Budget for any given Financial Year to West Berkshire in two equal instalments falling due on the 1st April and 1st October in any year. For the remainder of 2016/17 the payment shall fall due on the date of commencement

Any additional payments due by Bracknell Forest or Wokingham to West Berkshire in accordance with the following provisions of this Schedule shall be made within 30 days of notification.

Monitoring and Adjustments

The actual spend of the PPP against its Budget for each Financial Year shall be monitored by West Berkshire throughout the year and formally reviewed at the 6 month point by the Joint Committee. The Joint Committee shall then determine whether any action is necessary to ensure the forecast spend closely aligns with the Budget for that Financial Year or if an adjustment to the contributions allocated by the Councils is appropriate to meet the forecasted year end position:

- If a Minor Adjustment is necessary this shall be implemented from the 6 month period until the end of the Financial Year to which it applies;
- If a Major Adjustment is necessary this shall be referred back to the Councils respective Executives for consideration and to agree a resolution within 60 days.

Unbudgeted Costs

In the event that the PPP incurs Unbudgeted Expenditure this shall be reviewed by the Joint Committee for appropriate action:

- If the Unbudgeted Expenditure exceeds the Threshold Limit, the Joint Committee shall submit this sum to the Councils for payment as a one-off cost, split between them in the Agreed Percentages for that Financial Year. The Joint Committee shall also issue a report to the Councils detailing why the cost occurred and any actions that may be necessary to avoid a similar situation in the future;
- If the Unbudgeted Expenditure does not exceed the Threshold Limit, the Joint Committee shall authorise the payment out of the existing Budget for that Financial Year and deal with any shortfall by way of the Minor Adjustment or Year End Reconciliation processes;

- If the Unbudgeted Expenditure arises as a result of a request from one Council and relates wholly to that Council, then the cost shall be borne by that Council alone.

Emergency Payments

In the event that the PPP has to incur Unbudgeted Expenditure in the event of an emergency then the Councils hereby authorise such expenditure provided that the PPP shall promptly refer such payments to the Joint Committee for ratification of the expenditure already made and authorisation of any further expenditure to deal with the emergency situation. For the purposes of this paragraph an emergency shall be situations beyond the control of the Councils which are unforeseen and unavoidable and which result in a risk to the protection of the public.

Year End Reconciliation

The Chief Finance Officer of West Berkshire shall be responsible for ensuring that there is a Year End Reconciliation within reasonable time period at the end of the Financial Year. The result of this reconciliation shall be reported to the Joint Committee and in the event that:

- A surplus has been generated then West Berkshire shall make payments to the Councils in the Agreed Percentages for that Financial Year as are necessary to clear the surplus;
- A shortfall has been identified then the Councils shall make payments in the Agreed Percentages for that Financial Year as are necessary to clear the shortfall;
- The surplus or shortfall is de minimis then it shall be carried forward/written off without further payments being due. The de minimis figure shall be agreed between the Councils from time to time.

SCHEDULE 5 – SERVICE SPECIFICATION

Priorities: In addition to enforcing the legislation set out in Schedule 2 (the Relevant Functions) the PPP will support the corporate priorities of the Councils and align its work to those priorities.

At the time of the Agreement, the agreed priorities are:

1. Community Protection

- Contribute to the effective tackling of crime and disorder
- Tackling the issues that cause the greatest harm to individuals and communities
- Protection of the most vulnerable residents
- To act as champion for the local area
- Providing safeguards to the community through an effective licensing service

2. Protecting and Improving Health

- Protecting people from harmful products and services (including food)
- Allowing residents to make informed choices on matters that impact their health
- Developing and delivering initiatives designed to improve and enhance the health and wellbeing of individuals
- Supporting relevant priorities identified by local Strategic Joint Needs Assessments
- Tackling the causes of health inequalities

3. Protection of the Environment

- Protecting the environment from harm
- Tackling those that chose to harm the environment

4. Supporting Prosperity and Economic Growth

- Supporting compliant local businesses to thrive through the provision of advice and guidance
- Protecting businesses from illegal activities that damage their economic interests
- Supporting the rural economy

5. Effective and improving service delivery

- Implementation of the national intelligence model to identify and effectively tackle priority areas
- Building effective working relationship with key partners within the Councils to deliver the key objectives of the Service and the Councils
- Building effective relationships with key external partners including Thames Valley Police, Royal Berkshire Fire and Rescue Service, housing providers, other local authorities, national and regional delivery bodies and community based groups and organizations.
- Improvement and enhancement of the service through effective evaluation and quality management
- Communicating well with local people and businesses

Aims: The key Strategic Aims of that build the case for the Partnership are:

- The sharing of expertise and best practice
- The creation of greater resilience and robustness to cope with unforeseen challenges such as disease outbreaks, large scale investigations or loss of key personnel
- Sharing and developing resources to drive efficiency and effectiveness including systems and areas of specialist knowledge such as legal, finance and investigative skills
- Eliminating duplication by needing to do things only once across all locations and elements of the service for example procedures and standard documentation
- Building on the success and innovation of the partners to the Agreement and learning from each other and implementing that learning.

- The effective use of communication to protect communities and enhance the reputation of the Partnership and the Councils
- Reduce costs by operating jointly
- Making effective use of partnership funding, service specific grants and monies received from the Proceeds of Crime Incentivisation Scheme
- Development of the service in ways which drive further efficiencies and service improvements
- Playing our role and enhancing our reputation on a regional and national level

Enforcement Policy: The following Enforcement Policy will apply:

- (1) the Regulators Code will form the basis for the general approach to delivery of the Service; and
- (2) the Code for Crown Prosecutors (as amended from time to time) will be the policy basis for decisions on institution or otherwise of legal proceedings

Key Performance Indicators for 2017/18

- Decreasing the level of detriment suffered by residents
- Increasing levels of compliance in critical areas
- Effective budget management and use of resources
- Preventing residents from harm through expanding the use of social media and key communication channels
- Maintain high levels of customer and business satisfaction

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SCHEDULE 6- BRACKNELL FOREST EMPLOYEES

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