

# Heads of Terms

PUBLIC PROTECTION – COMMISSIONED FUNCTIONS AND SERVICES  
DRAFT VERSION 8

SUBJECT TO CONTRACT

**PARTIES:**

Client: Wokingham Borough Council  
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Wokingham  
RG40 1BN

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**SOLICITORS:**

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## TERMS:

Purpose of the Agreement: The Agreement is for the provision of certain regulatory functions and activities by one public body to another at cost with the aim of ensuring that public services are provided with achieving common compliance with their statutory duties and such co-operation is solely for the public interest.

Services: The Services and the Service Specification are contained within the Appendix to these Heads of Terms (the "Services").

Procurement: The Host and the Client warrant that operation of the Agreement shall comply with regulation 12(7) of the Procurement Contract Regulations 2015 at all times.

Term: Commencing 1<sup>st</sup> April 2022 and terminating 8<sup>th</sup> January 2027.

TUPE on Commencement: The Host and the Client agree that TUPE is not expected to apply and the Client shall procure that no Client personnel shall transfer to the employment of the Host on the commencement of the Term.

Break Clause: The Agreement may be terminated by either party in the following circumstances:

- (i) For convenience giving a minimum of 12 months' notice, to be given at any time. This can be provided for part or whole of the Services;
- (ii) 1 month's written notice if there is a breach of the Agreement and resolution has not been agreed after Escalation Performance Default stage has completed; or
- (iii) 6 months written notice if the Client requests a Variation and agrees to pay the resulting Charges and the Host does not agree to the Variation within 6 weeks of request.

### Charge:

The cost of the Charge will be a share of the following reasonable and proper costs directly incurred to perform the Services:

- i. Staff costs including on-costs and pension;
- ii. Buildings, IT and assets;
- iii. Insurance;
- iv. Support costs in IT, HR, Legal and Comms;
- v. Training, professional registrations
- vi. Management Charge;
- vii. any other reasonable and proper costs directly incurred to perform the Services

The share of the costs will be an apportioned share of the Client's usage of the costs as compared to the total costs.

The estimated total Annual Cost for provision of Services in year 1 is £439,000 which shall be the Charge payable by the Client to the Host. This is made up of:

- Trading Standards £340,000
- Intelligence £27,000
- Case Management £40,000
- Financial Investigations £15,000
- Air Quality £17,000

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- Management Charge £20,000 (based on 0.25FTE of Strategic Manager (West Berkshire Grade L, SCP 51).

The above charges includes all costs, charges and expenses including recharges, on-costs and pensions. The charge does not include disbursements or fees payable.

Income: Any third party income received by the Host solely in connection with the delivery of the Services to the Client under the terms of this Agreement will be returned to the Client on 6 monthly intervals or credited against the Charges (as nominated by the Client).

Fees & Disbursements: These will be payable by the Client. The Host will either (i) pay the fee on behalf of the Client or (ii) arrange direct payment only where the Client agrees to the fee and undertakes to pay this.

All charges shall be payable in advance in quarterly instalments. Any VAT matters will be raised with the Wokingham Client Officer as soon as reasonably practicable and supported by a valid VAT invoice.

Budget Setting: The Charge shall be reviewed annually as part of the budget setting process, meeting the Host cost recovery principles as set by the JPPC and required by Regulation 12(7) of PCR2015. The budget setting will include how activity will be measured and how the Charges will be apportioned between the councils (the Proportions) including any ARIS surpluses.

The Host will provide a draft budget and service specification by October including the total estimate cost for the year. The Client will notify the Host of the budget and service specification if any Variations are required. The Host will provide the Services within that budget and specification. Where the budget and specification changes the Host will notify the Client if it considers that a Variation has occurred.

Proportions: Where resources are shared with the Host and any other party, the budget setting shall include explanation of a fair, transparent and reasonable methodology of apportionment of costs between the parties based upon predicted utilisation. The methodology shall be the most accurate method of measuring utilisation and may be different for each budget line or services. Example methodologies include number of hours, number of cases held, number of inspections to be performed, number of responses to public etc

In Year Budget Variance: Monitoring of forecast spend against actual within the Host budget will be provided to the Client as part of the performance monitoring on a bi-monthly basis. Where actual spend is +/- 5-10% of the profiled budget, then the JMB will meet to determine if a Variation is required.

End of Year Budget Variance: The Host will provide end of year accounts for the Services by 31<sup>st</sup> May after the relevant financial year. The accounts include all Costs actually incurred and the apportionment of costs payable by the Client calculated in the same methodology when determining the Proportions. Where the Client has underspent then the balance shall be returned. Where the budget is overspent the Client shall pay the balance to the Host.

Variation: Variation to the scope of the Services may occur at any time but also includes by external factors such as by reason of changes in the law and where such changes occur, the implications will be discussed between the parties. Variation to the scope of the Services may also be proposed by either party and may only be made in writing. Where, subject to operational deliverability the Host agrees such Variation proposed by the Client, the Client agrees to pay any additional Costs to be

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incurred by the Host as a consequence of the Variation (calculated on the same cost recovery basis as the Budget). Any Variation leading to a reduction in Services shall lead to a Capital Liability.

TUPE on Termination or Expiry: On expiry or earlier termination, the Client and the Host agree that TUPE may apply in respect of the provision thereafter of any service equivalent to the Services but the position shall be determined in accordance with the law at the expiry date or the termination date as the case may be.

Capital Liability: This is staff costs (pension strain, redundancy etc) and project costs (costs of transacting or the activity associated with the action). In relation to Capital Liability the costs will be apportioned in the same methodology to calculate the Proportion other than the Proportion shall be an average of previous years Proportions from the date of the agreement to the date of the change.

Expiry & Termination (Variation): On expiry of the Term and Termination (Variation) then the staff costs and project costs shall be borne by the parties in the Proportions.

Variation: A Variation required by either party that reduces the scope or volume of Services will result in any subsequent staff costs and/or project costs being borne by the party requesting the variation

Variation (change in law): A variation required by a change in law shall require the Client to pay the staff costs. Project costs shall be paid by the parties in the Proportions unless the change only impacts on the Services provided by the Host to the Client.

Termination (breach): The staff costs and project costs shall be payable by the party in breach of the Agreement.

Termination (convenience): The project costs will be paid by the party triggering the termination. The staff costs shall be payable in accordance with the Proportions. The costs shall be shared using an alternative methodology where either:

- i. As a result of the termination of the IAA dated 6<sup>th</sup> January 2017 the parties (acting by respective Directors) formally sign a memorandum agreeing an alternative method of apportionment for the IAA and this Agreement; or
- ii. As a result of the operation of clause 22 ['Disputes'] the parties accept the decision of a mediator or arbitrator; or
- iii. In absence of i. and ii, where a party issues proceedings where the Court determines the apportionment of liability between the parties.

and in the case of ii or iii, that the Disputes mechanism is commenced by 1<sup>st</sup> April 2023.

Hourly Rate: Any work agreed as a Variation beyond those detailed in the Services will be charged at an hourly rate (£59 per hour in respect to the first year), reviewable annually in line with the budget setting process approved through the JMB.

Joint Management Board (JMB): All governance arrangements will be managed through the JMB. This is made up of the Host Officer, the Client Officer and Officer from Bracknell Forest Borough Council. All three authorities shall have an equal status in agreeing the business plan for the delivery of the Services. It is the role of the JMB to provide a recommendation in reports being submitted to the JPPC (or other decision making committee/group required by the Parties), any differences in approach can be reflected through this mechanism with any resource implications and mitigation plans included.

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Business Plan: Strategic level description of how the Services will be delivered on a year to year basis will be presented to the JMB in October of each year. This will include the following:

- Approach to cost recovery, fee setting and income generation;
- Approach to risk management, business continuity and emergency incidents;
- Approach to setting operational priorities;
- Investigation oversight and liaison with legal services;
- Service complaints, data protection and FOI's procedures;
- KPIs;
- Statutory reporting requirements (e.g. Food and Feed Enforcement Plan); and
- Organisational change and workforce planning.

Reviewable annually by JMB.

Incident Management and Emergency Response: Under exceptional circumstances, for example when one of the parties declares a major incident, convenes an Emergency Operations Centre or is called upon for mutual aid as part of local resilience forum requirements, the JMB will determine what Services will continue to be delivered and the impact on Charges. This will be conducted in line with the business continuity arrangements included in the Service Plan.

Performance Monitoring: All reporting to be conducted through the JMB with dedicated agenda item for Host Services;

There will be bi-monthly reporting against Key Performance Indicators and budgets. The KPI will be agreed with the approval of the Business Plan.

In addition, there will be:

- 2 operational meetings per month with Client Officer (Head of Enforcement and Safety or Assistant Director: Place); and
- Annual report on all KPI's and Budgets provided in June following the relevant financial year.

Reserved Matters: the officers will have the authority under s113 LGA1972 to act as the Client officers whilst performing the Services. The Agreement will include those matters where authorisation is required from the Client before performing an activity associated with the Services. These reserved matters shall be updated and amended by the Client from time to time. The reserve matters include decisions to:

- i. to issue certain agreed enforcement action;
- ii. to issue prosecutions or any action in a court or tribunal;
- iii. any decision with a likely material impact on the budget;
- iv. any decision with a significant impact on the residents of the Client or a group of residents (unless authorised in the business plan); and
- v. any decision with a negative reputational risk to the Client

The reserved matters may be authorised in general terms by the relevant Client officer or in the Business Plan.

Client Officer Operational Meetings: The Host will monitor all of the following activities in the delivery of Wokingham Commissioned Functions and Services:

Annual Report: The Joint Management Board will approve a report before May 31<sup>st</sup> each year which summarises the key themes of the operational meetings and KPI assessment.

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Performance Default: In the first instance it would be expected that the Joint Management Board seek to resolve any performance default. At any time the Client Officer can escalate any matter deemed by them to be a default to the Executive Director of West Berkshire.

Escalated Performance Default: In the event that a Performance Default is not resolved by the Executive Director of West Berkshire to the reasonable satisfaction of the Wokingham Client Officer within 14 days, a meeting of the Chief Executives of all parties shall be convened within a further 14 days with a view to settle the matter. The Chief Executives shall have a further 14 days to settle the dispute.

Court: Either party may refer a dispute to a the matter to the Court provided always that before doing so attempts are made to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time..

Staff Delegated Authority: The Agreement will provide for any delegation to a Host officer together with any conditions necessary to exercise the delegation. Where not delegated the Agreement shall provide for the authorisation required from the Client. Any staff identified by the Host as requiring to operate in the Wokingham area will be duly authorised to do so under the Agreement. All staff will be operating under s113 of the 1972 Act.

Transparency and Audit: Information shall be collated by the Host to deliver the Services and will be made available to the Client on request as appropriate.

Data Protection: All information held by the Host to deliver the Services will be held in compliance with the relevant obligations of the UK GDPR and Data Protection Act 2018.

Insurance: All staff employed by the Host to provide Services will be insured as appropriate by the Host.

Agreement Costs: Each party to bear own costs to conclude this agreement (not linked to wider costs which are dealt with separately).

Commissioning Agreement: The agreement for Services will be conditional on the Agreement being signed and the relevant authorisations required within the Client and the Host.

## Appendix

### The Services

The Services will be provided within the following local authority functions or duties (broadly categorised as Trading Standards, Intelligence, Case Management and Air Quality):

- Trading Standards:
    - Food standards including quality, labelling and food fraud;
    - Animal Health and Welfare – on farm and establishments including contingency planning;
    - Fair Trading including: travel, estate agency, lettings;
    - Fraud, theft and money laundering including doorstep crime;
    - Intellectual property crime;
    - Metrology (weights and measures);
    - Product safety;
    - Age restricted products;
    - Road traffic – weight restrictions, overloads;
    - Support with confidence; and
    - Tobacco and alcohol harm reduction programme.
  - Intelligence:
    - Assessment of Client data to provide day to day operational support in effective investigation and resource planning; and
    - Contribution towards Client strategic and tactical assessment.
  - Case Management:
    - Case management and legal advice from beginning to end of case for all public protection cases in-house or contracted;
    - Court file preparation;
    - Court Attendance and representation;
    - Trial work (if not instructed to external Counsel);
    - First Tier (Housing) and Employment Tribunal (Health and Safety);
    - Advice and checking of procedural applications;
    - Financial Investigator;
    - Checking notices and expert instructions; and
    - Senior Appropriate Officer provision for Proceeds of Crime.
  - Air Quality:
    - Changing & maintenance of air quality monitoring stations & diffusion tubes;
    - Keeping under review action areas;
    - Appropriate liaison Client internal services to enable effective co-ordination of air quality data for Client decision making;
    - Analysis of data and drafting and submission of annual status reports; and
    - Management of the DEFRA funded particulate project on behalf of the Client.
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- a commitment to enable integration of Microsoft PowerBi for real-time data analysis

### Service Levels & Specifications

The specifications and service levels will be confirmed in the Agreement.

### Key Performance Indicators

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The KPI's will be agreed as part of the Agreement and subsequent Business Plans. In relation to the financial year 2022/23 the KPI's will be agreed by the parties by August 2022. The following will be operational measures and where appropriate identification as a KPI (but not limited to the following):

### In-house & PPP

- ALL - cases: new [number of]
- ALL - cases: closed [number of]
- ALL - cases: open [number of]
- ALL - cases: age of oldest case [calendar days]
- ALL - cases: average end-to-end time (of cases closed this period) [calendar days]
- ALL - cases: service request completed within 12-month period subject to subsequent similar SR (of cases closed this period) [number of]
- ALL - MEs - closed outside SLA (of cases due this period) [number of]
- ALL - FOIs & SARs - closed outside SLA (of cases due this period) [number of]
- ALL - complaints - closed outside SLA (of cases due this period) [number of]
- ALL - complaints - escalated to stage 2 [number of]
- ALL - sickness - days absent [number of]
- ALL - staff: vacancies [FTEs]
- ALL - staff: agency [FTEs]
- ALL - Management of budget to within 1% of baseline
- ALL - Management of income to within 5% of budget

### In-house

- ASB - reports subject to on-site assessment within one working day[%]
- ASB - community trigger cases without case review [number of]
- ASB - licence consultation representations submitted within deadline [%]
- ASB - planning consultations submitted within deadline [%]
- ASB - Temporary Event Notices submitted within deadline [%]
- ASB - joint ASB field work operations with external partners [number of]
- ASB - community blights resolved by Partnership Tasking Group joint work [number of]
- ASB - % stray dogs collected within 4 hours : [%]
- PHS - dwellings brought up to standard [number of]
- PRIVATE HOUSING - mandatory HMOs currently licensed [number of]
- PRIVATE HOUSING - mandatory HMOs licensed [% estimated]
- PRIVATE HOUSING - long term empty homes brought back into use [number of]
- PRIVATE HOUSING - private high-rise dwellings with unsafe cladding [number of] **only include if we have any high-rises**
- PRIVATE HOUSING - private high-rise dwellings with unknown cladding [number of] **only include if we have any high-rises**
- PRIVATE HOUSING - caravan sites unlicensed or with MAJOR breach [number of]
- H&S - 'A category' businesses or high-risk activities overdue for inspection [number of]
- FOOD HYGIENE - overdue statutory food hygiene inspections [number of]

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- FOOD HYGIENE - establishments in broad compliance [% - excluding unrated]
- FOOD HYGIENE - establishments not in broad compliance [number of - excluding unrated]
- FOOD HYGIENE - establishments unrated more than 30 days after registration [number of]

## PPP

- FOOD STANDARDS - overdue statutory food standards inspections [number of]
- FOOD STANDARDS - establishments unrated more than 30 days after registration [number of]
- TRADING STANDARDS - failure rate for age-related test purchases [%]
- TRADING STANDARDS - overdue high-risk inspections [number of]
- TRADING STANDARDS - businesses receiving three or more complaints within rolling 12-month period [number of]
- TRADING STANDARDS - businesses with MAJOR breach that was identified at a previous visit
- TRADING STANDARDS - Net proceeds of crime funds received : [total value]
- ANIMAL WELFARE - TBD
- AIR QUALITY - annual status report submitted to DEFRA on time
- CASE MANAGEMENT – Levels of detriment avoided