

brownejacobson

Dated

2024

- (1) City of Lincoln Council
- (2) East Lindsey District Council
- (3) North Kesteven District Council
- (4) West Lindsey District Council

Collaboration Agreement

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Date:

Parties

- (1) **City of Lincoln Council** whose principal place of business is City Hall, Beaumont Fee, Lincoln LN1 1DD (“**CLC**”)
- (2) **East Lindsey District Council** whose principal place of business is Tedder Hall, Manby Park, Louth, Lincolnshire LN11 8UP (“**ELDC**”)
- (3) **North Kesteven District Council** whose principal place of business is District Council Offices, Kesteven Street, Sleaford, Lincs NG34 7EF (“**NKDC**”)
- (4) **West Lindsey District Council** whose principal place of business is Guildhall, Marshall’s Yard, Gainsborough, Lincolnshire DN21 2NA (“**WLDC**”)

(each a ‘Party and together the ‘Parties’’).

Introduction

- A The Parties have worked together to develop a bid to provide wellbeing services as tendered by Lincolnshire County Council (Contract Ref: CO792) (the ‘Contract’) with ELDC acting as the Lead Council.
- B The Parties have submitted their Final Tender to Lincolnshire County Council (‘LCC’) outlining how they will provide the wellbeing services (the ‘Services’) and were awarded the Contract to provide the Services on [insert date]
- C The Parties will now work together to provide the Services under the Contract in accordance with this collaboration agreement (the ‘Agreement’’).

Commented [PC1]: New Contract award date to be inserted

Agreed terms

1 Interpretation

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

Additional Volume Payments means the payment to be made by LCC in any Payment Period to which the Additional Volume Payment applies in accordance with paragraphs 4.4 to 4.7 of the Contract.

Commencement Date means the date of this Agreement.

Contract means the contract for the provision of wellbeing services (Contract Ref: CO792) entered in to between (1) LCC and (2) ELDC as Lead Council for the Delivery Partner Councils and dated [insert date new contract was signed]

Created IPR means all Intellectual Property Rights developed or created by a Party pursuant to this Agreement.

Commercially means information of a commercially sensitive nature

Sensitive Information relating to any Party, its Intellectual Property Rights or its business or which a Party has indicated that, if disclosed, would cause that Party significant commercial disadvantage or material financial loss.

Communications Lead means the person or persons appointed by the Parties to act as the communications lead and who will implement the communications plan in accordance with Clause 15.

Data Processor shall have the same meaning as set out in the Data Protection Act 1998 or the EU General Data Protection Regulation (Regulation EU 2016/679) when in force.

Data Protection Legislation . means all applicable Law relating to the processing of personal data and privacy, including UK GDPR, the Data Protection Act 2018 and the guidance and codes of practice issued by the Information Commissioner.

means East Lindsey District Council, North Kesteven District Council, West Lindsey District Council and City of Lincoln Council.

Delivery Partner Council

EIRs the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

First Stage Redundancy Costs the statutory and contractual redundancy pay payable to employees following the initial TUPE transfer and subsequent restructure.

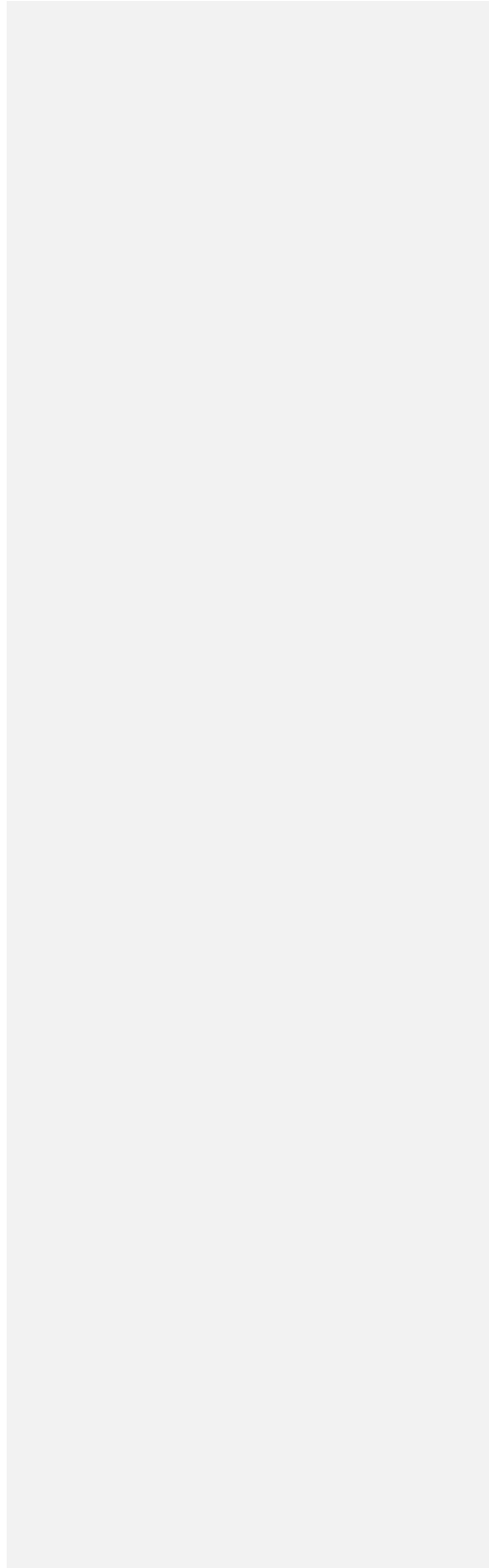
FOIA the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Gain Share the amount by which the Forecast Costs exceed the Actual Costs as at each Balance Sheet Date less the Profit Margin allowed by LCC

Implementation Group means the group as set out in section 6.1 of Part A and Part B of Schedule 5.

Information has the meaning given under section 84 of FOIA.

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Intellectual Property Rights	means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
KPI	means the key performance indicators as defined in the Contract.
Law	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Parties are bound to comply.
LCC	means Lincolnshire County Council.
Lead Council	means East Lindsey District Council or such other Party as agreed by the Parties.
Management Board	means the board as set out in Clause 11.2.
Material Breach	means a breach of Clause 3.3, 23.3 and as defined in Clause 30.3.
Partnership Financial Model	means the financial model set out in Schedule 3.
Payment	means a payment to the Delivery Partner Council from the Project Fund as set out in the Partnership Financial Model and/or under the terms of this Agreement.
Personal Data	shall have the same meaning as set out in the UKGDPR
Profit	means the Profit Margin within the Contract (3.5%).
Project Fund	means the money held by the Lead Council and ring-fenced for use in accordance with this Agreement.

Proportionately	means in relation to any cost, loss or liability to be paid or met by the Parties pursuant to this Agreement, in such proportions as the Parties shall agree or, in the absence of agreement between the Parties within 10 Working Days of the date on which the Parties become liable to pay or meet such cost, loss or liability, in proportion to the Payments due to be received by each Party in the relevant year.
Reference Group	means the reference group as set out in Clause 11.3.
Regulated Activity	means in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Regulated Activity Provider	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
Representative	means a Party or its employees, officers, representatives, advisers or Sub-Contractors.
Requests for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs;
Services	means the wellbeing services as set out in Schedule 4.
Service Charges	means the service charges payable by LCC to ELDC under the Contract as defined in part A1 of the Contract.
Service Credits	means the service credits as defined in part A1 of the Contract.
Sub-Contract	any contract between a Party and a third party pursuant to which the Party agrees to source the provision of any of the goods or services in relation to this Agreement from that third party.
Sub-Contractor	the contractors or suppliers that enter into a Sub-Contract.
Term	the term as set out in Clause 2.
UKGDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
Working Day	Monday to Friday, excluding any public holidays in England and Wales.

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

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

- 1.4 References to Clauses and Schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the Schedule.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to any Party shall include that Party's personal representatives, successors and permitted assigns.
- 1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.12 A reference to writing or written excludes fax but includes email subject to compliance with the provisions of Clause 35.
- 1.13 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.14 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.15 Where any statement is qualified by the expression so far as a Party is aware or to a Party's knowledge (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.16 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.17 Where there is a conflict between the terms and conditions of this Agreement, and the Contract, the Contract shall prevail to the extent of the inconsistency.

2 Commencement and Term

2.1 This Agreement shall commence on the Commencement Date and shall continue in force for the duration of the Contract for Services unless terminated earlier in accordance with the Law or the provisions of this Agreement.

3 Collaboration and compliance with the Contract

- 3.1 The Parties agree to work together in good faith and to use their reasonable endeavours to offer their support and assistance to each other to provide the Services in accordance with Schedule 1.
- 3.2 The Parties shall contribute time, effort and facilities/resources as required to support the provision of the Services in accordance with Schedule 1.
- 3.3 The Parties shall not take any action or fail to take any action, or (insofar as it is reasonably within their power) permit anything to occur which would cause the Lead Council to be in breach of its obligations under the Contract.
- 3.4 Failure to comply with Clause 3.3 constitutes a Material Breach of this Agreement.

4 Existing arrangements

- 4.1 Nothing in this Agreement shall restrict any Party's right to continue to conduct its business activities or arrangements that existed on the Commencement Date or that otherwise come into being outside the scope of this Agreement.

5 Roles

- 5.1 The Parties agree to undertake the following roles:
 - 5.1.1 The Lead Council shall:
 - (a) enter into the Contract with LCC and shall be accountable under the Contract to LCC for the delivery of the Services;
 - (b) undertake all contract management requirements under the Contract, with the assistance of the other Parties where required in accordance with this Agreement;
 - (c) manage and account for the Project Fund on an open book accounting basis, and provide financial updates to all Parties quarterly, or within 10 Working Days of following the provision of the same information to LCC in accordance with the Contract, and
 - (d) make the Payments to the Delivery Partner Councils in accordance with the Partnership Financial Model and the terms of this Agreement.
 - 5.1.2 The Delivery Partner Councils shall:
 - (a) Undertake their roles as set out in Schedule 1 in return for the Payment.

6 The Project Fund and Payments

- 6.1 The Lead Council shall receive the Service Charges under the Contract and will hold these in the Project Fund.
- 6.2 The Lead Council shall make the Payments to the Delivery Partner Councils in accordance with the Partnership Financial Model.
- 6.3 Service Charges received under the Contract which are not immediately required to make Payments, including but not limited to amounts representing Profit, Additional Volume Payment and Gain Share, shall be held in the Project Fund.
- 6.4 Any reinvestment of the Project Fund reserves shall be subject to the balance of the Project Fund being sufficient to make all future foreseeable payments.
- 6.5 Other than in accordance Clause 6.2 above or otherwise set out in this Agreement or the Partnership Financial Model, payments shall only be made out of the Project Fund where the payment is agreed by majority at the Management Board. Where there is an excess in the Project Fund payments shall be made to the Parties for reinvestment in to the Services. Any such payment shall be agreed in accordance with Clause 6.4.

7 Underspends

- 7.1 All underspends shall be handled in accordance with the Partnership Financial Model.

8 Service Credits

- 8.1 Subject to any alternative unanimous agreement between the Parties, where Service Credits are levied under the Contract they shall be dealt with as follows:
 - 8.1.1 if the KPI to which the Service Credit relates falls solely within the control of one of the Delivery Partner Council's roles it shall be deducted from the next Payment due to that Delivery Partner Council;
 - 8.1.2 if the KPI to which the Service Credit relates falls within the control of two or more Delivery Partner Councils' roles it shall be deducted proportionately in proportion to the relevant Delivery Partner Council's control of the KPI from the next Payment due to each relevant Delivery Partner Council.
- 8.2 If the Parties cannot agree who holds the control of the KPI then the payment shall be deducted Proportionately from the next Payment due to each Delivery Partner Council.

9 Invoicing

- 9.1 If the Partnership Financial Model provides that the Lead Council will pay a Delivery Partner Council any Payments, the Delivery Partner Council may issue invoices for such Payments at the end of each quarter for the same.
- 9.2 Unless otherwise provided in the Partnership Financial Model, the Payments specified in the Partnership Financial Model are exclusive of VAT which shall be included in invoices and payable, if applicable, in addition to the Payments.
- 9.3 A Party shall pay an invoice issued to it in accordance with this Agreement within 30 days of the date of receiving the invoice.
- 9.4 If a Party fails to make a payment due to the other Party under this Agreement by the due date, then, without limiting the other Party's remedies under Clause 21 or Clause 22, the defaulting Party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
- 9.5 Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.6 Any disputes relating to invoices shall be dealt with in accordance with Clause 28. In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from 30 days after the dispute is resolved until payment.

10 Set-off

All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11 Governance

11.1 The Parties agree to manage the provision of the Services in accordance with this Clause 11 and Schedule 5.

11.2 Management Board

The Management Board shall:

- 11.2.1 include Representatives from all Parties and shall be quorate when one Representative from each Party is present;
- 11.2.2 make decisions by simple majority with one Party receiving one vote, regardless of the number of Representatives that Party has at the meeting. All representatives of one Party shall vote collectively. If a decision is tied that decision may be referred to the Reference Group for determination;
- 11.2.3 focus on the day to day running of the Services and the operation of this Agreement and operate in accordance with the terms of reference contained in Part 1 of Schedule 5.

11.3 Reference Group

The Reference Group shall:

- 11.3.1 include Representatives from all Parties and shall be quorate when one Representative from each Party is present;
 - 11.3.2 make decisions unanimously with one Party receiving one vote, regardless of the number of Representatives that Party has at the meeting;
- 11.4 focus on the strategic delivery of the Services and any changes to service delivery, and operate in accordance with the terms of reference contained in Part 2 of Schedule 5.
- 11.5 Decisions reserved to the Parties:
- 11.5.1 Any decision that would or would be likely to increase the financial or other liability of a Party, or would substantially increase commercial or operational or other risk for one or more of the Parties must be referred to each Party's internal decision making process for approval before that decision is considered by the Management Board. Such a decision will only be approved if every Party adversely affected by the decision approves it in accordance with its internal decision making process.
 - 11.5.2 Any Party, acting reasonably, may request that a decision be referred to each affected Party's internal decision making structure for approval.
 - 11.5.3 In no circumstances shall a Party exercise, or seek to pursue, its rights under Clause 11.4 when a referral is or has become artificial. For these purposes, a referral is artificial where there is no reasonable reason for making such referral.
 - 11.5.4 The Parties agree to use all reasonable endeavours to refer the decision (with a view to achieving a decision) to their internal decision making structure as soon as is practicable.
- 11.6 Representatives
- 11.6.1 Representatives attending meetings in accordance with this Clause must have the necessary authority to make the decisions which may be put before the relevant board or group.
 - 11.6.2 Save where notified in writing before any act or instruction, each Party shall be entitled to treat any act or instruction of another Party's Representative as an act or instruction of that Party.

12 Confidentiality

- 12.1 Subject to Clause 12.2, the Parties shall keep confidential all matters relating to this Agreement and the Contract and shall use all reasonable

endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

12.2 Clause 12.1 shall not apply to any disclosure of information:

- 12.2.1 required by any applicable law, provided that Clause 13.2 shall apply to any disclosures required under the FOIA or the EIRs;
- 12.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this agreement;
- 12.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 12.1;
- 12.2.4 by any Party of any document to which the Parties to this Agreement have agreed contains no Commercially Sensitive Information;
- 12.2.5 to enable a determination to be made under Clause 24 (Dispute Resolution);
- 12.2.6 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 12.2.7 by a Party to any other department, office or agency of the Government; and
- 12.2.8 by a Party relating to this Agreement and in respect of which the other Parties have given their prior written consent to disclosure.

12.3 Subject to any legal or regulatory requirements to retain relevant information, on or before the termination of this Agreement, all Parties shall ensure that all documents and/or computer records in their possession, custody or control which relate to personal information of another Party's employees, rate-payers or service users, are delivered up to that Party or securely destroyed.

13 Freedom of information

13.1 The Parties acknowledge that they are each subject to the requirements of the FOIA and the EIRs. Each Party shall at its own cost:

- 13.1.1 provide all necessary assistance and cooperation as reasonably requested by another Party to enable that Party to comply with its obligations under the FOIA and EIRs;
- 13.1.2 transfer to the relevant Party (Disclosing Party) all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 13.1.3 provide the Disclosing Party with a copy of all Information belonging to that Party as requested in the Request For Information which is in its possession or control in the form that the Disclosing Party requires within 5 Working Days (or such other period as the

Disclosing Party may reasonably specify) of the Disclosing Party's request for such Information; and

13.1.4 not respond directly to a Request For Information except and unless they are the correct body to make the response.

13.2 The Parties acknowledges that other of the Parties may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from them. The Disclosing Party shall take reasonable steps to notify the other Parties of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so and shall afford the other affected Parties an opportunity to make any comments or representations in respect of the disclosure or information sought within 5 Business Days of receipt of such notification. The Disclosing Party shall take into account any such comments or representations and shall not respond to the request until the 5 Business Days has passed but (notwithstanding any other provision in this agreement) the Disclosing Party shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

14 Data protection

14.1 Each Party shall comply with Schedule 6 (Data Protection).

15 Publications and Announcements

15.1 Subject to Clause 15.2, no Party shall make, or permit any person to make, any public announcement, communication or circular (announcement) concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it including the Contract, or the relationship between the Parties, without the prior written consent of the Management Board.

15.2 The Management Board shall approve a communications plan including a list of pre-agreed messages and a set press release template. The communications plan will be implemented by the Communications Lead. The communications plan shall be reviewed and revised regularly by the Management Board and the Communications Lead in order to properly manage the communications in respect of this Agreement.

15.3 Where an announcement is required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction, the Party required to make the announcement shall promptly notify the other Parties. The Party concerned shall make all reasonable attempts to agree the contents of the announcement with the other Parties before making it.

16 Intellectual property

- 16.1 Subject to Clause 16.2, this Agreement does not transfer any interest in Intellectual Property Rights. Created IPR shall be owned by the Party creating them (Owning Party).
- 16.2 Where any Created IPR is prepared by any Party on behalf of LCC under the Contract, for use or intended use in relation to the performance by ELDC of its obligations under the Contract, then this shall be immediately assigned to ELDC for onward assignment to LCC in accordance with clause E6 of the Contract.
- 16.3 For Created IPR other than that described at Clause 16.2, each Party grants to the other Parties (Using Parties) a non-exclusive, personal, royalty-free licence during the Term to use its Created IPR in relation to this Agreement to the extent necessary for the other Party to carry out its obligations in relation to this Agreement.
- 16.4 At the end of the Term, all Using Parties under Clause 16.3 shall cease to use that Created IPR and shall return any physical embodiment of the Created IPR (including any copies) in its possession or control to the Owning Party.
- 16.5 Each Party shall immediately give written notice to the other Party of any actual, threatened or suspected infringement of any Party's Intellectual Property Rights (including Created IPR) used in connection with this Agreement of which it becomes aware.

17 Employees and associated costs

- 17.1 Except as set out in Clause 17.2, employment costs for the Parties' employees involved in the provision of the Services shall be met by the respective Party.
- 17.2 Any First Stage Redundancy Costs shall be paid for equally by ELDC and NKDC and ELDC and NKDC shall jointly and severally indemnify all other Parties against all direct liabilities, costs, expenses, damages and losses suffered or incurred by the other Parties arising out of or in connection with the First Stage Redundancy Costs.
- 17.3 Any redundancy costs (including statutory and contractual redundancy costs payable to the relevant employees) incurred as a result of the Parties providing the Services under the Contract, that are not First Stage Redundancy Costs shall be split Proportionately between the Parties.
- 17.4 Nothing in this clause shall restrict or limit a Party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under the indemnity in Clause 25.

18 Absence of Employees

- 18.1 If the provision of Services by any Delivery Partner Council is affected by the absence of any of their employees, that Delivery Partner Council agrees to use all reasonable endeavours to minimise the impact of such absence by, where possible, sharing the work required to provide such Services, throughout their existing staff.

- 18.2 Where the impact of such absence cannot be minimised in accordance with Clause 18.1 the Delivery Partner Council suffering such absence of employee shall request further resources to be provided by the Management Board by notice in writing to the Management Board, to enable the continued provision of Services.
- 18.3 Any costs of the additional resources shall be met from the Project Fund and recouped from the receiving Party in the first instance through efficiencies in providing the Services and where such efficiencies cannot be made, shall be met by way of the Project Fund.
- 18.4 The provisions of this Clause 18 are to provide assistance only and does not release any Party from performing their obligations under this Agreement in full.

19 Unforeseen Costs

- 19.1 If a Party incurs unforeseen costs in providing the Services it may request, by notice in writing to the Management Board, that the Management Board review the provision of Services by all Delivery Partner Councils to assess whether any efficiencies can be made and such unforeseen costs mitigated. If efficiencies can be made, the Management Board shall agree a plan for the amendment of the provision of Services, which shall be implemented upon all Parties agreeing to the plan. If the Management Board determines that efficiencies cannot be made, the Party incurring such unforeseen costs shall be entitled to claim a refund of such costs from the Management Board, who shall pay such sums as agreed by the Parties.
- 19.2 If the cost of providing the Services is higher than predicted and as such the profits derived are less than forecast, the Parties shall take all reasonable steps to mitigate any such reductions in income to achieve the forecast profits. If this is not possible, any shortfall incurred by the Parties will be met by the Project Fund, where possible.
- 19.3 Nothing in this Clause 19 shall restrict or limit a Party's general obligation at law to mitigate a loss or expense it may suffer or incur that may give rise to a claim from the Project Fund.

20 Gain Share

- 20.1 The provisions governing Gain Share shall apply where the actual cost of providing the Services is less than original estimated and set out in the Contract. Any amounts accrued as a result of Gain Share will be held in the Project Fund and dealt with in accordance with Clause 6. Any payments due to LCC under the Contract in connection with Gain Share shall be paid by the Lead Council from the Project Fund. Any Gain Share accrued shall be notified by each Delivery Partner Council to the Lead Council following a review of their quarterly financial reports.

21 Additional Volume Payments

- 21.1 If the volume of Services provided by the Delivery Partner Councils exceeds levels originally estimated under the Contract, an additional payment shall be made for the provision of such additional Services to the Project Fund in

accordance with the terms of the Contract and shall be dealt with in accordance with Clause 6.

- 21.2 If a Delivery Partner Council has incurred additional costs in providing the increased volume of Services, it shall provide evidence of such costs to the Management Board and, subject to the Management Board's consent, shall be refunded such costs from the Project Fund, limited to the amount of Additional Volume Payments received from LCC.
- 21.3 Any overspend incurred by the Delivery Partner Councils as a result of the amount of Additional Volume Payments received from LCC being less than the additional costs incurred by the Delivery Partner Councils in providing the increased volume of Services shall be met Proportionally by the Delivery Partner Councils.
- 21.4 If additional full time employees are required as a result of an increase in the volume of Services, the cost of employing such additional employees shall be paid by NKDC and the Lead Council directly and NKDC and the Lead Council shall jointly and severally indemnify all other Parties against all direct liabilities, costs, expenses, damages and losses suffered or incurred by the other Parties arising out of or in connection with the requirement for such additional full time employees.

22 Safeguarding children and vulnerable adults

- 22.1 The Parties acknowledge that the Services may include Regulated Activity and the Parties may constitute a Regulated Activity Provider. Where a Party is a Regulated Activity Provider with ultimate responsibility for the management and control of a Regulated Activity provided under the Contract for the purposes of the Safeguarding Vulnerable Groups Act 2006 then that Party shall:
 - 22.1.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for Regulated Activity undertaken through the Disclosure and Barring Service (DBS); and
 - 22.1.2 monitor the level and validity of the checks under this Clause 22 for each member of staff;
 - 22.1.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 22.2 The Party who is a Regulated Activity Provider shall immediately notify the other Parties of any information that they may reasonably request to enable them to be satisfied that the obligations of this Clause 22 have been met.
- 22.3 The Party shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users.

22.4 The Parties shall adopt suitable, agreed, policies and procedures to ensure each Party's compliance with the Safeguarding Vulnerable Groups Act 2006 and this Clause 22. Until such policies and procedures are agreed and adopted, the Parties shall have and shall maintain in place its own policies and procedures, to ensure compliance with the Safeguarding Vulnerable Groups Act 2006 and this Clause 22.4 and will enforce them where appropriate.

23 Prevention of Bribery

23.1 Each Party shall in relation to this Agreement:

23.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");

23.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

23.1.3 have and shall maintain in place throughout the Term its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and this Clause 23.1.2, and will enforce them where appropriate;

23.1.4 promptly report to all other Parties any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement;

23.1.5 immediately notify any of the other Parties (in writing) if a foreign public official becomes an officer or employee of it and warrants that it has no foreign public officials as officers or employees at the Commencement Date;

23.1.6 within 3 (three) months of the Commencement Date, and annually thereafter, each Party shall certify to all other Parties in writing signed by one of its officers, compliance with this Clause 20 by it and all persons associated with it under Clause 23.2. Each Party shall provide such supporting evidence of compliance as another Party may reasonably request.

23.2 Each Party shall ensure that any person associated with it who is performing obligations in connection with this Agreement or the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on that Party in this Clause 23.2 ("Relevant Terms"). Such Party shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other Parties for any breach by such persons of any of the Relevant Terms.

23.3 Breach of this Clause 17.1 shall be deemed a Material Breach.

23.4 For the purpose of this Clause 17.1, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 17.1, a person associated with a Party includes but is not limited to any subcontractor of that Party.

24 Warranties

24.1 Each Party warrants that:

- 24.1.1 it has full power and authority to carry out the actions contemplated under this Agreement;
- 24.1.2 its entry into and performance under the terms of this Agreement will not infringe the Intellectual Property Rights of any third party or cause it to be in breach of any obligations to a third party; and
- 24.1.3 so far as it is aware, all information, data and materials provided by it under this Agreement will be accurate and complete in all material respects, and it is entitled to provide the same to the other without recourse to any third party;

24.2 Except as expressly provided in this Agreement, there are no conditions, warranties or other terms binding on the Parties with respect to the actions contemplated by this Agreement. Any condition, warranty or other term in this regard that might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is, to the extent that it is lawful to do so, excluded by this Agreement.

25 Indemnity

25.1 Each Party (Indemnifying Party) shall indemnify all other Parties (Indemnified Party) against all direct liabilities, costs, expenses, damages and losses (including but not limited to any direct, , penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Indemnified Party arising out of or in connection with:

- 25.1.1 any claim made against the Indemnified Party for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Indemnified Party's use in accordance with this Agreement of Intellectual Property Rights licensed to it by the Indemnifying Party under Clause 16.2;
- 25.1.2 any claim (to the extent such claim had not resulted in a Service Credit pursuant to Clause 8 of this Agreement) made against the Lead Council for actual or alleged breach of the Contract arising out of the Indemnifying Party's role under this Agreement;
- 25.1.3 any claim made against the Indemnified Party as a result of the Indemnifying Party's failure to comply with Data Protection Legislation.

- 25.2 This indemnity shall not cover the Indemnified Party to the extent that a claim under it results from the Indemnified Party's negligence or wilful misconduct.
- 25.3 Liability under this indemnity is conditional on the Indemnified Party discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Indemnified Party which may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Indemnified Party shall:
- 25.3.1 as soon as reasonably practicable, give written notice of the Claim to the Indemnifying Party, specifying the nature of the Claim in reasonable detail;
 - 25.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Indemnifying Party, provided that the Indemnified Party may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Indemnifying Party, but without obtaining the Indemnifying Party's consent) if the Indemnified Party reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - 25.3.3 give the Indemnifying Party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Indemnified Party, so as to enable the Indemnifying Party and its professional advisers to examine them and to take copies (at the indemnifying Party's expense) for the purpose of assessing the Claim; and
 - 25.3.4 subject to the Indemnifying Party providing security to the Indemnified Party to the Indemnified Party's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Indemnifying Party may reasonably request to avoid, dispute, compromise or defend the Claim.
- 25.4 If a payment due from the Indemnifying Party under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Indemnified Party shall be entitled to receive from the Indemnifying Party such amounts as shall ensure that the net receipt, after tax, to the Indemnified Party in respect of the payment is the same as it would have been were the payment not subject to tax.
- 25.5 Nothing in this clause shall restrict or limit the Indemnified Party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

26 Insurance

During the term of this Agreement and for a period of six years thereafter, each Party shall maintain in force, with a reputable insurance company, professional indemnity insurance, employer's liability and public liability insurance in an amount not less than

£10,000,000 and shall, on the other Party's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

27 Limitation and exclusion of liability

- 27.1 Nothing in this Agreement shall limit or exclude a Party's liability:
 - 27.1.1 for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
 - 27.1.2 for fraud or fraudulent misrepresentation;
 - 27.1.3 for breach of any obligation as to title or quiet possession implied by statute;
 - 27.1.4 for any other act, omission, or liability which may not be limited or excluded by law; or
 - 27.1.5 the indemnity given in Clause 25.
- 27.2 Subject to Clause 27.1, none of the Parties shall have any liability to any of the other Parties, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Agreement.
- 27.3 Subject to Clause 27.1, a Party's total liability to any of the other Parties, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to 100% of the Payments received by that Party, or in the case of the Lead Party, 100% of the value of the Services provided by the Lead Party.
- 27.4 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 27 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted in accordance with Clause 36.

28 Dispute Resolution

- 28.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then the Parties shall follow the procedure set out in this clause:
 - 28.1.1 each Party shall give written notice of the Dispute to the Management Board, setting out the nature of the Dispute and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Parties shall attempt in good faith to resolve the Dispute;
 - 28.1.2 if the Parties are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Parties' Head of Paid Service (or alternative senior Representative) who shall attempt in good faith to resolve it; and
 - 28.1.3 if the Parties' Head of Paid Service are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the

Parties will attempt to settle it by mediation in accordance with Clause 29 (Mediation).

- 28.2 The commencement of mediation shall not prevent the Parties commencing or continuing court or arbitration proceedings in relation to the Dispute.

29 Mediation

- 29.1 If any dispute arises in connection with this Agreement that is not settled in accordance with Clause 28, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (ADR notice) to the other Parties to the dispute requesting mediation. A copy of the request should be sent to CEDR.
- 29.2 The mediation will start not later than 30 days after the date of the ADR notice. The commencement of mediation will not prevent the Parties commencing or continuing court proceedings or arbitration.

30 Termination of Agreement

- 30.1 Without affecting any other right or remedy available to it, ELDC may remove one Party (Breaching Party) from this Agreement by giving written notice to all Parties:
- 30.1.1 if the Breaching Party commits a Material Breach of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty days or other reasonable period after being notified in writing to do so;
 - 30.1.2 if the Breaching Party does or fails to do, anything which puts ELDC in breach of the Contract and would give LCC the right to terminate the Contract; or
 - 30.1.3 in accordance with Clause 32 (Force Majeure) where the Breaching Party suffers a Force Majeure Event.
- 30.2 Without affecting any other right or remedy available to it, the non-breaching Parties may together terminate this Agreement with immediate effect or remove a Breaching Party from this Agreement by giving written notice to all Parties if a Breaching Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement. The non-breaching Parties may only exercise this right if they have first followed the Dispute Resolution Process set out in Clause 24 and the Mediation process set out in Clause 25:
- 30.3 For the purposes of Clause 30.1.1, Material Breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:
- 30.3.1 a substantial portion of this Agreement; or

30.3.2 as described in Clause 3.3 and 19.3 or elsewhere in this Agreement.

30.4 This Agreement shall terminate automatically upon expiry of the Contract for the Services.

Commented [PC2]: As instructed

31 Consequences of termination

31.1 On termination of this Agreement, the following clauses shall continue in force:

- 31.1.1 Clause 1 (Interpretation);
- 31.1.2 Clause 9 (Invoicing);
- 31.1.3 Clause 10 (Set-off);
- 31.1.4 Clause 12 (Confidentiality) (subject to Clause 13 Freedom of Information);
- 31.1.5 Clause 14 (Data protection);
- 31.1.6 Clause 16 (Intellectual property);
- 31.1.7 Clause 24.1.2 and Clause 24.2 (Warranties);
- 31.1.8 Clause 25 (Indemnity);
- 31.1.9 Clause 26 (Insurance);
- 31.1.10 Clause 27 (Limitation and exclusion of liability);
- 31.1.11 Clause 29 (Mediation);
- 31.1.12 Clause 31 (Consequences of termination);
- 31.1.13 Clause 32 (Force majeure);
- 31.1.14 Clause 35 (Notices);
- 31.1.15 Clause 36 (Severance);
- 31.1.16 Clause 37 (No partnership or agency);
- 31.1.17 Clause 38 (Rights and remedies);
- 31.1.18 Clause 39 (Inadequacy of damages);
- 31.1.19 Clause 40 (Waiver);
- 31.1.20 Clause 41 (Third party rights);
- 31.1.21 Clause 44 (Entire Agreement);
- 31.1.22 Clause 45 (Governing law); and
- 31.1.23 Clause 46 (Jurisdiction).

31.2 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of

termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

- 31.3 On termination of this Agreement, each Party shall as soon as reasonably practicable and where reasonably required:
- 31.3.1 return or destroy all documents, handbooks, or other information or data provided to it by the another Party for the purposes of this Agreement; and
 - 31.3.2 return all equipment and materials belonging to another Party, failing which, the owning Party may enter the relevant premises and take possession of them.

32 Force majeure

- 32.1 No Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control (Force Majeure Event). In such circumstances the affected Party shall give notice to all other Parties immediately upon becoming aware of the Force Majeure Event and shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 32.2 Where a Force Majeure Event effects the provision of the Services for more than three (3) months and the Contract is terminated, this Collaboration Agreement may also be terminated by any Party serving written notice on all Parties.
- 32.3 Where a Force Majeure Event effects the provision of the Services by a Party for more than two (2) months so that the Party is unable to perform the majority of their obligations under this Agreement or where ELDC reasonably believe the continuance of the Force Majeure Event and the related failure of the Party to provide the Services will result in the Contract being terminated, ELDC may temporarily replace the Party suffering the Force Majeure Event with a supplier of its choice until the Party can again provide the Services in accordance with this Agreement. Where ELDC reasonably believes the Party will be unable to again provide the Services, ELDC may replace the Party with an alternative supplier and remove the Party suffering the Force Majeure Event from this Agreement by written notice to that Party.
- 32.4 Where a Party is suffering a Force Majeure Event and as such is temporarily replaced in accordance with Clause 32.3, the Lead Council shall indemnify that Party suffering the Force Majeure Event against all direct liabilities, costs, expenses, damaged and losses suffered or incurred by that Party arising out of or in connection with the provision of the relevant Services by the temporary supplier.

33 Assignment and other dealings

- 33.1 No Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and

obligations under this Agreement without the prior written consent of the other Parties.

34 Variation

34.1 No variation of this Agreement shall be effective unless it is in writing and signed by all of the Parties (or their authorised representatives).

34.2 For the avoidance of doubt, the Schedules in this Agreement shall be updated from time to time by the Management Board, such changes shall be effective once in writing and signed by all of the Parties (or their authorised representatives).

Commented [PC3]: As instructed

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35 Notices

35.1 A notice given to a Party under or in connection with this Agreement shall be in writing and sent to the Party at the postal address or DX number or to the email address given in this Agreement or as otherwise notified in writing to other Party.

35.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of delivery.	At the time recorded by the delivery service.
Email	At the time of transmission subject to the sender either (i) receiving a valid read receipt sent by the recipient of the notice or (ii) no notice is sent to the sender notifying them of any failure in the sending of the email.
Document exchange (DX).	9.00 am on the second Working Day after being put into the DX.

35.3 For the purpose of Clause 31.2 and calculating deemed receipt:

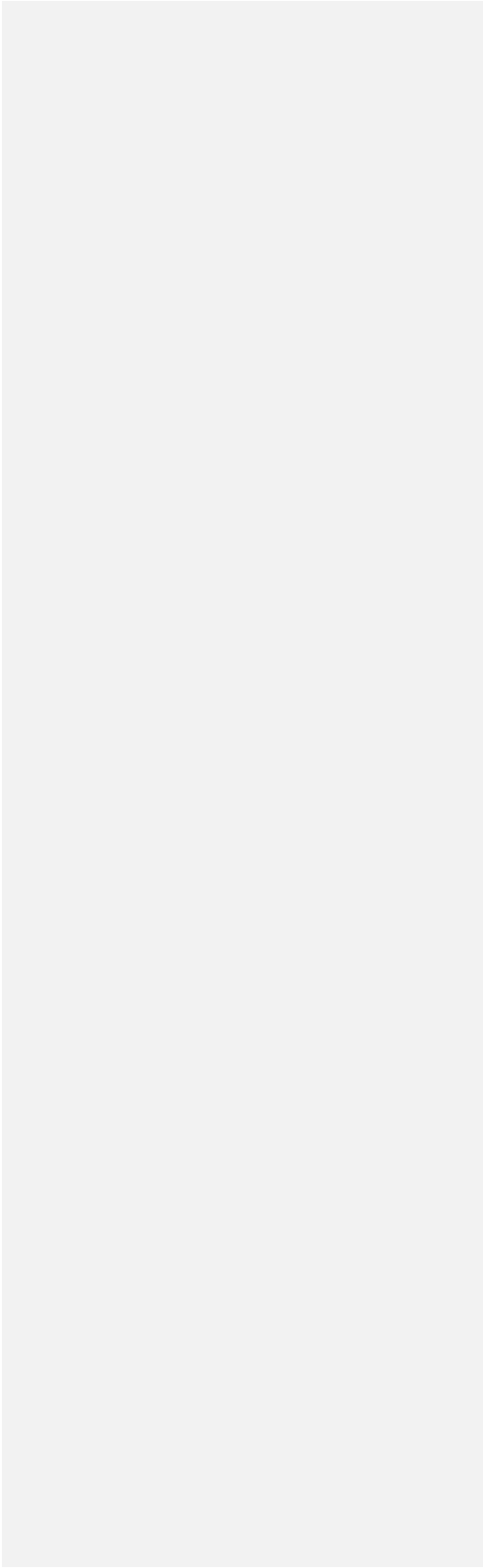
35.3.1 all references to time are to local time in the place of deemed receipt; and

35.3.2 if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

35.4 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

35.5 A notice given under this Agreement is not valid if sent by fax.

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36.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Agreement.

36.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

37 No partnership or agency

37.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between any of the Parties, constitute any Party the agent of another Party, or authorise any party to make or enter into any commitments for or on behalf of any other Party.

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

37.3 Each Party is responsible for its own tax and accounting obligations.

38 Rights and remedies

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

39 Inadequacy of damages

Without prejudice to any other rights or remedies that any Party may have, each Party acknowledges and agrees that damages alone may not be an adequate remedy for a breach of the terms of this Agreement. Accordingly, the non-defaulting Parties shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

40 Waiver

40.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

40.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

41 Third party rights

41.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

41.2 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

41.3 The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.

42 Further assurance

Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

43 Costs

Costs incurred in connection with the negotiation, preparation and execution of this Agreement shall be borne Proportionately by the Parties.

Each Party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of any other documents or advice taken in respect of this Agreement or throughout the duration of this Agreement.

44 Entire Agreement

44.1 This Agreement constitutes the entire Agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

44.2 Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No Party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

45 Governing law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

46 Jurisdiction

Each Party irrevocably agrees that, subject to Clause 42 (Mediation), the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Delivery Partner Roles

Commented [PC4]: To be substituted with your updated Schedule 1

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Schedule 2 Staffing Structure

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Commented [PC5]: To be substituted with your new Schedule 2

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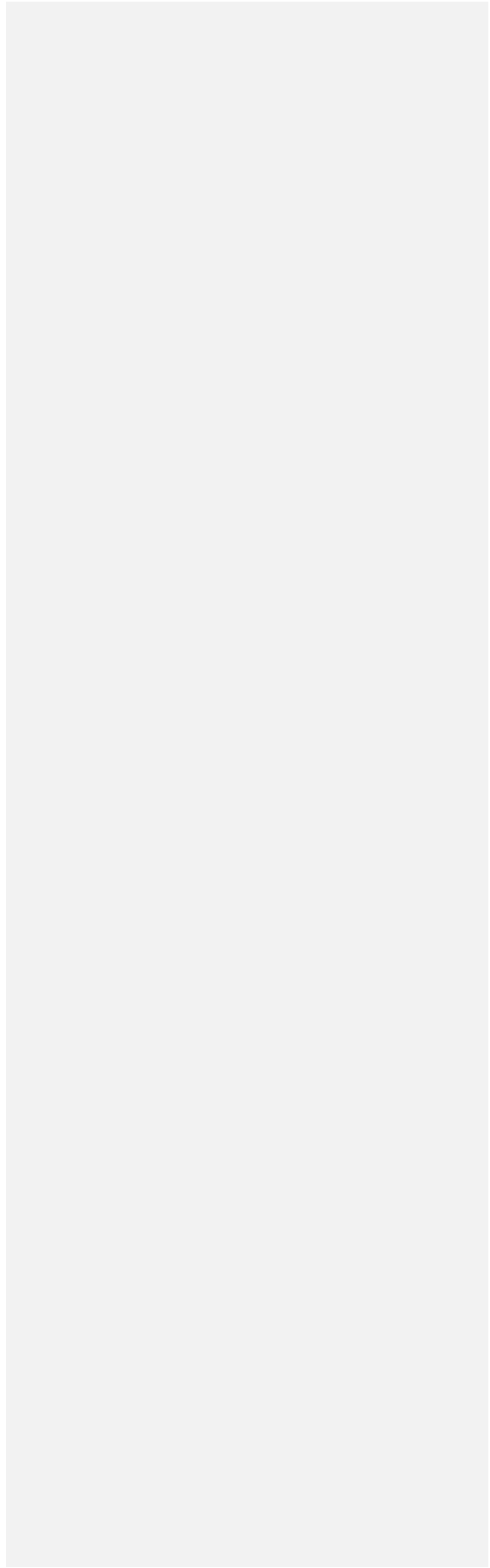
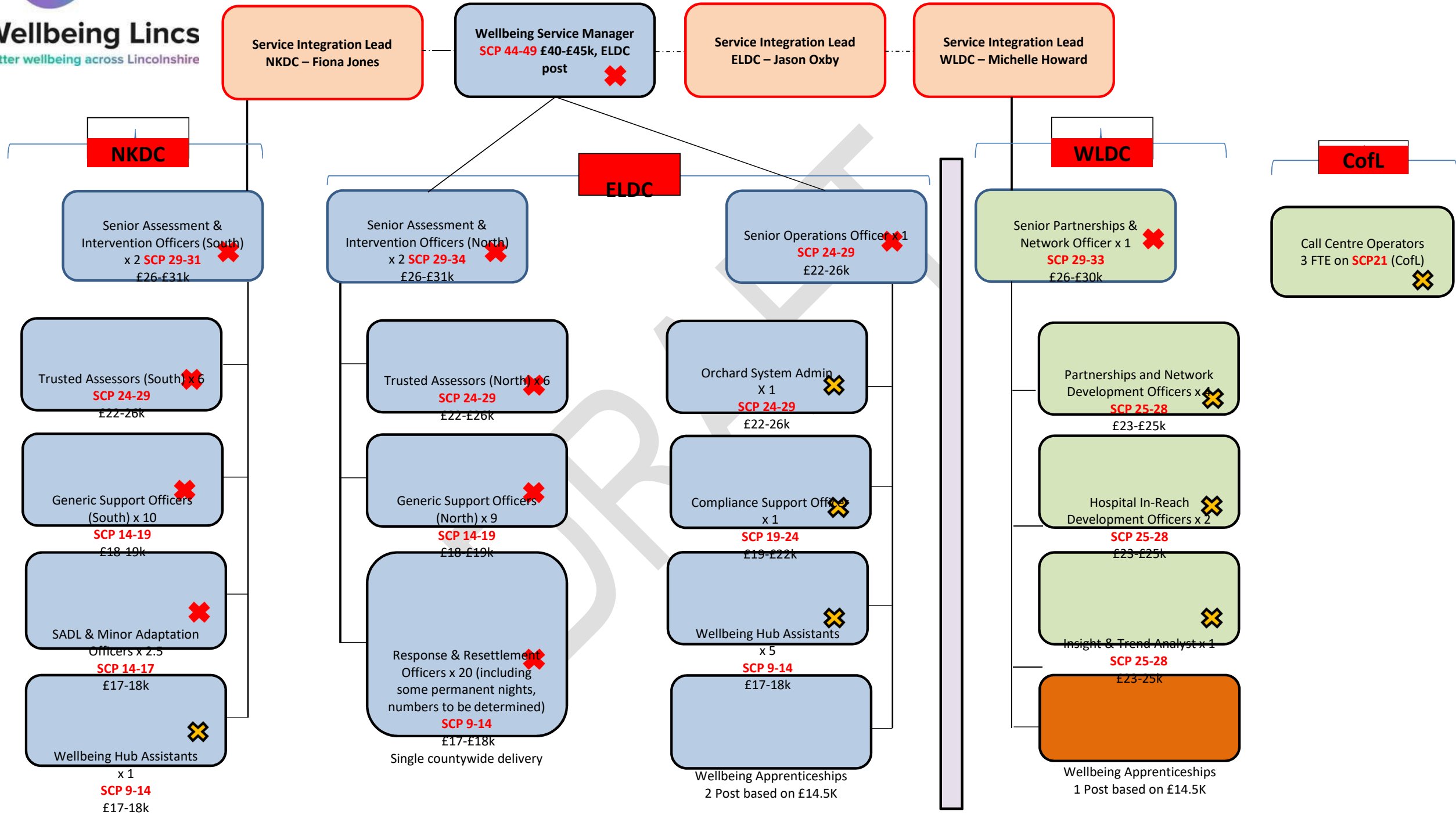


Wellbeing Lincs
Better wellbeing across Lincolnshire

Draft Staffing Structure

KEY

- SCP = Spinal Column Point
- ✖ = Enhanced DBS Required
- ✘ = Standard DBS Required (Scottish)



Schedule 3 Partnership Financial Model

Commented [PC6]: To be substituted with your new Schedule 3

Project fund

ELDC shall receive the Service Charges under the Contract and will hold these in the Project Fund.

Payments will be made from LCC to ELDC on a monthly basis, payment based on 1/12 of contract value for the year. These payments will be made in arrears (*see payment schedule for details*).

Payments to Delivery Partners to be made by ELDC on a quarterly basis in arrears. Payment to be made 13 working days post end of the quarter, this is based on actual information from delivery partners been with ELDC within 8 working days of quarter end (*see payment schedule for details of dates*).

All Payments to be made by bacs transfer. All payments are standard rated for VAT purposes (the amounts within the schedule are net of VAT).

Payments to Delivery Partners (on a quarterly basis) will be the lower of the contractual amount (as per the payments schedule) and actual costs. This will be done on an accumulative basis, for example, lower of net actual costs to end of quarter 2 and net contract value to end of quarter 2 (as per figures within schedule). This process is on an annual basis, no carry over to future years.

Where actuals are higher or lower than the contractually anticipated amounts (as per payment schedule) the delivery partners needs to provide an explanation. This is so we can establish if the over/under spend against the contractual value is due to **profiling, legitimate under spend** (which will form part of the Gain share) or **envisaged overspend**. This will also form part of the quarterly analysis provided to the Management Board.

In instances where there the difference is due to:

- Profiling:

There will be no further action required over and above explanation.

- Legitimate underspends:

Details will be required to ascertain where underspend has been generated from.

If the underspend relates to staff costs due to appointment of officers at lower salary scale points then envisaged then underspend will be retained within project fund and delivered 100% directly to LCC.

All other underspend will form part of the Gain share arrangements. Payment to LCC in relation to will be based on the contracted percentages (as set out within contract with LCC). Partnership Gain shares will be retained within the Project fund for reinvestment.

- Legitimate overspends:

Details will be required to ascertain where, how and why overspend has occurred.

If the overspend relates to 'unforeseen costs' then this will be reported to Management Board:

Management board will then review to establish if these additional costs can be mitigated by efficiencies elsewhere within contract.

If the additional costs cannot be mitigated the Management Board would have to agree to and make an allocation from the retained project fund (Profit + Gain Share) for the period of overspend (backdated and also provision made for future costs). *Please see scenarios where by this would not be possible within financial risks.*

Project fund retained

The project fund retained is the balance built up from:

- Profit element within contract - 3.5%
- Retained Gain Share
- Additional volume payments (where no additional costs are demonstrated)

These amounts are to be retained for investment purposes within the service. Any investments proposals are to be agreed at the Management Board.

No investments can be made until financial risks within the service are identified and a prudent provision has been made within the project fund to offset.

Investments cannot be to the detriment of the balance on the Project fund. In simple terms the levels of investment required must not exceed the balance retained at any point in time on the project (see payment schedule for anticipated balance).

If delivery partners wish to accelerate investment beyond profiled balances within the project fund (see payment schedule for estimated balances) the required funding gap must be forthcoming from delivery partners and will be repaid when the project fund balance is sufficient to pay. This would be a Management Board decision, followed by a Management Board request to delivery partners.

Any balances within the project fund retained at the end of the life of the contract will be:

- Reinvested into the borough, decision to be made by Management Board
- If no agreement for reinvestment can be found within 90 days of end of the contract the balance is to be shared amongst delivery partners based on the percentages split for the gross contract value. Please see Gross contractual Value addendum.

Gain Share

Gain share applies to any underspends against the contractual values that we are working to within the schedule of payments & LCC contract. The Gain shares will be held within project fund (delivery partners paid on actuals). Any payments to LCC in respect of Gain share will be paid to LCC by ELDC from the project fund.

Payments to LCC in relation to Gain share will be split using the percentages as prescribed within the contract with LCC. Gain Shares that relates to staff costs due to appointment of officers at lower salary scale points then envisaged the underspend will be retained within project fund and delivered 100% directly to LCC.

Delivery partners will identify gain share within their quarterly financial reports to ELDC.

Additional Volume Payments

If the delivery partnership exceed estimated volumes within the contract with LCC an additional payment will be made to the partnership based on the additional volumes rates applicable.

Where a delivery partner can demonstrate additional costs as a direct result of increased volumes above estimated they will have the right to make a claim for those additional actual costs they have suffered.

The claim will be made to the Management Board who will have to make the decision as to whether to make any additional payment to the delivery partner. The payment to the delivery partner will be limited to a maximum of the actual additional volumes payment made by LCC.

Any monies that is not required/agreed to be pass ported to delivery partners as a result of the additional volumes will be retained with the Project fund to be allocated to investments (post assessment of financial risks as with all elements of the retained project fund).

Risks identified and their agreed treatment

Below are the financial risks identified within the contract, these risks are to be quantified financially so that a prudent assessment can be made of each.

The financial assessment of risks will have to be mitigated (committed to) from the retained project fund before any monies can be released for investment purposes.

In the scenario whereby the retained project fund has been exhausted risks that have below been identified as having a call on the retained project fund will be shared between delivery partners based on the Gross contractual value percentage splits (see Gross contractual value addendum for splits)

Risks and how they will be dealt with are broken down below:

- Redundancy

Redundancy at contract commencement will be split and funded 50/50 by ELDC and NKDC from their surpluses on the current service they deliver. *No call on the retained project fund.*

Redundancy during and at contract cessation will be met from the retained project fund. Assessment to be carried out by delivery partners with a prudent financial commitment held against the retained project fund.

Redundancy calculations and payments will be based on the individual partner's policies.

- Additional Volumes payment not sufficient to meet additional cost

When additional volume costs as a direct result of increased volumes exceed the payment prompted within the contract from LCC these costs will have to be suffered at source by the delivery partner(s) responsible for this service. *No call on the retained project fund.*

- FTE creep

Any additional staffing costs due to increases in volume included in the core contract can be put forward as a claim to the Management Board who may agree to reimburse them from the Project Fund.

- VAT

VAT risk over the contract as a whole is to be assessed by HMRC at the start of the contract. The risk relating to contractual VAT should it occur is to be met from the retained project fund.

VAT risk on individual delivery partners as a result of impact on their own VAT partial exemption will be suffered by the individual authority. *No call on the retained project fund.*

- Inflation

Inflation within the contract is built in at 2% for Employee costs and 0% for all other costs. Where inflation rises above the rates included with the contract these costs are to be mitigated by efficiencies found elsewhere.

As a last resort a claim can be made to the Management Board to support these increased costs from the retained project fund.

- Pay Awards/Living wage

Inflation on pay has been included within the contract at 2% per annum. There is a provision within our contractual figures of £97,000 per annum for staff cost contingency to meet additional costs of Pay. Any underspend against the contingency will be pass ported 100% to LCC.

If the contingency is not sufficient to meet costs then a claim can be made to the Management Board to cover costs from the retained project fund.

- Income levels not achieved

First port of call would be to mitigate reductions in income with like for like reductions in expenditure. In the instance that income reductions cannot be met fully from reductions in related expenditure then a claim can be made to the Management Board to cover costs from the retained project fund.

- Service Credits

Charges against the contract from LCC in relation to service credits will be met initially from the retained project fund. Management Board and delivery partners responsible for identifying issues causing under performance against P.I and mitigating any future risks. Management board retain the right to charge to partners where deemed appropriate.

- Unforeseen costs

A claim will have to be made to Management board who will then review to establish if these additional costs can be mitigated by efficiencies elsewhere within contract.

If the additional costs cannot be mitigated the Management Board will seek to cover costs from the retained project fund.

- Sickness and Maternity

In instances whereby the service is impacted by long term sickness and/or maternity leave the first priority is to seek to minimise impact on the service through closer working, absorbing the work throughout existing staff.

In instances where this cannot be achieved a claim would have to be made to Management Board for additional resources.

If the additional costs cannot be mitigated from efficiencies within the Management Board will seek to cover costs from the retained project fund.

- Joint funded posts

In the event that external funding is withdrawn or lost for a joint funded post the unfunded element remains the liability of the individual partner, no impact on project fund.

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Schedule 4 The Services

Separate document

Commented [PC7]: To be substituted with your updated version

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Schedule 5 Governance

Separate document

Commented [PC8]: To be substituted with your updated version

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Wellbeing Lincs

Better wellbeing across Lincolnshire

Schedule 6 Data Protection

1. DEFINITIONS

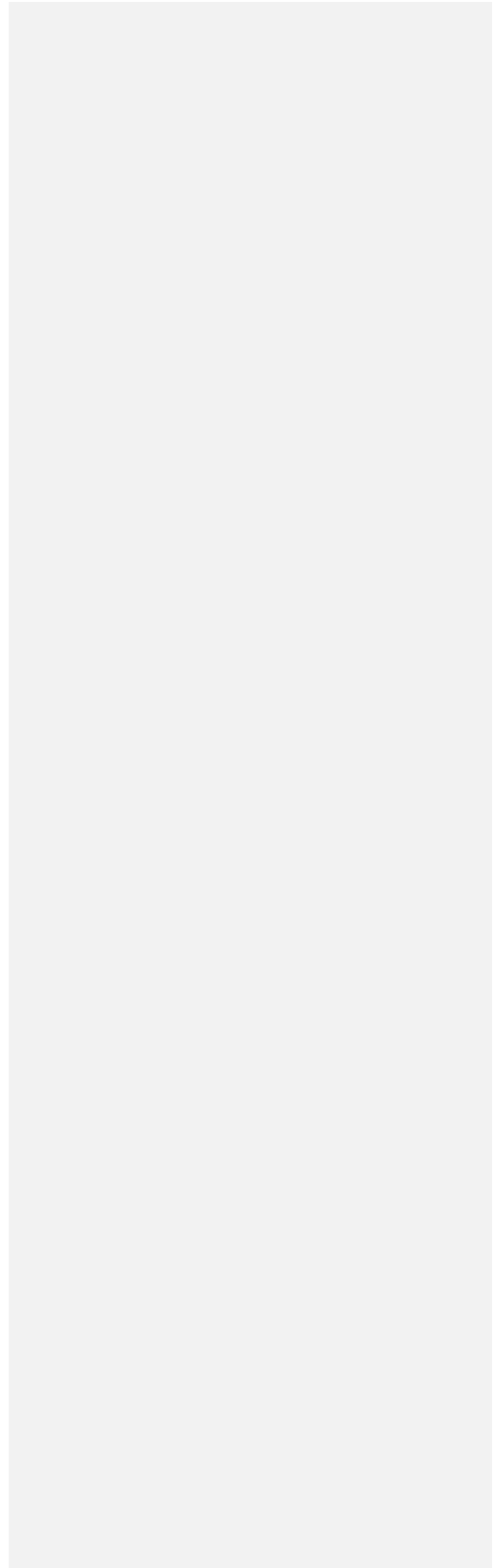
“Data Controller”	Has the meaning given to ‘Data Controller’, or ‘Controller’ as appropriate, in the Data Protection Laws;
“Data Breach”	Means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;
“Data Processor”	Has the meaning given to ‘Data Processor’, or ‘Processor’ as appropriate, in the Data Protection Laws;
“Data Protection Laws”	Means any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of personal data and privacy applicable to the performance of this Agreement, including where applicable the Data Protection Act 1998, the Data Protection Bill, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and the GDPR (Regulation (EU) 2016/679), as amended or superseded;
“GDPR”	Means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC as updated, superseded or repealed from the time to time;

Commented [PC9]: I have updated the core Agreement DP definitions but it looks from your e-mail you are updating this Schedule possibly with your own standard drafting? Please confirm.

“Personal Data”

Has the meaning given in the Data Protection Laws.

DRAFT



2. DATA PROCESSING

2.1. Where any Party ("Processing Party"), pursuant to this Agreement, processes Personal Data on behalf of another ("Owning Party"), the Processing Party acknowledges that Owning Party is the Data Controller and the owner of such Personal Data, and that the Processing Party is the Data Processor.

3. COMPLIANCE WITH DATA PROTECTION LAWS

3.1. The Data Processor warrants that it has complied, and shall continue to comply, with the requirements of the applicable Data Protection Laws and all other data protection legislation in any jurisdiction relevant to the exercise of its rights or the performance of its obligations under this Agreement.

4. DATA PROCESSING OBLIGATIONS

4.1. In respect of any Personal Data to be processed by the Data Processor pursuant to this Agreement for which the Owning Party is Data Controller, the Data Processor shall:

- 4.1.1. have in place and at all times maintain appropriate technical and organisational measures in such a manner as is designed to ensure the protection of the rights of the data subject and to ensure a level of security appropriate to the risk and shall implement any reasonable security measures as requested by the Owning Party from time to time;
- 4.1.2. not engage any sub-processor without the prior specific or general written authorisation of the Owning Party (and in the case of general written authorisation; the Data Processor shall inform the Owning Party of any intended changes concerning the addition or replacement of other processors and the Owning Party shall have the right to object to such changes);
- 4.1.3. ensure that each of the Data Processor's employees, agents, consultants, subcontractors and sub-processors are made aware of the Data Processor's obligations under this Schedule and enter into binding obligations with the Data Processor to maintain the levels of security and protection required under this Schedule. The Data Processor shall ensure that the terms of this Schedule are incorporated into each agreement with any sub-processor, subcontractor, agent or consultant to the effect that the sub-processor, subcontractor, agent or consultant shall be obligated to act at all times in accordance with duties and obligations of the Data Processor under this Schedule. The Data Processor shall at all times be and remain liable to the Owning Party for any failure of any employee, agent, consultant, subcontractor or sub-processor to act in accordance with the duties and obligations of the Data Processor under this Schedule;

- 4.1.4. process that Personal Data only on behalf of the Owing Party in accordance with the Owing Party's instructions and to perform its obligations under this Agreement or other documented instructions and for no other purpose save to the limited extent required by law;
- 4.1.5. (at no additional cost to the Owing Party) within 7 days following the end of the term of this Agreement, deliver to the Owing Party (in such format as the Owing Party may require) a full and complete copy of all Personal Data, and, following confirmation of receipt from the Owing Party, permanently remove the Personal Data (and copies) from the Data Processor's systems, and the Data Processor shall certify to the Owing Party that it has complied with these requirements, and such Personal Data shall remain confidential in perpetuity;
- 4.1.6. ensure that all persons authorised to access the Personal Data are subject to obligations of confidentiality and receive training to ensure compliance with this Agreement and the Data Protection Laws;
- 4.1.7. make available to the Owing Party all information necessary to demonstrate compliance with the obligations laid out in Article 28 of GDPR and this Schedule and allow for and contribute to audits, including inspections, conducted by the Owing Party or another auditor mandated by the Owing Party, of the Data Processor's data processing facilities, procedures and documentation (and the facilities, procedures and documentation of any sub-processors) in order to ascertain compliance with this Schedule, within 5 working days of request by the Owing Party, and, following any such audit, without prejudice to any other rights of the Owing Party, the Data Processor shall implement such measures which the Owing Party considers reasonably necessary to achieve compliance with the Data Processor's obligations under this Schedule; provided that, in respect of this provision the Data Processor shall immediately inform the Owing Party if, in its opinion, an instruction infringes Data Protection Laws;
- 4.1.8. taking into account the nature of the processing, provide assistance to the Owing Party, within such timescales as the Owing Party may require from time to time, in connection with the fulfilment of the Owing Party's obligation as Data Controller to respond to requests for the exercise of data subjects' rights pursuant to Chapter III of the GDPR to the extent applicable;
- 4.1.9. provide the Owing Party with assistance in ensuring compliance with articles 32 to 36 (inclusive) of the GDPR (concerning security of processing, data breach notification, communication of a personal data breach to the data subject, data protection impact assessments, and prior consultation with supervisory authorities) to the extent applicable to the Owing Party,

taking into account the nature of the processing and the information available to the Data Processor;

4.1.10. (at no additional cost to the Owing Party) deal promptly and properly with all enquiries or requests from the Owing Party relating to the Personal Data and the data processing activities, promptly provide to the Owing Party in such form as the Owing Party may request, a copy of any Personal Data requested by the Owing Party;

4.1.11. (at no additional cost to the Owing Party) assist the Owing Party (where requested by the Owing Party) in connection with any regulatory or law enforcement authority audit, investigation or enforcement action in respect of the Personal Data;

4.1.12. immediately notify the Owing Party in writing about :

- a) any Data Breach or any accidental loss, disclosure or unauthorised access of which the Data Processor becomes aware in respect of Personal Data that it processes on behalf of the Owing Party;
- b) any request for disclosure of the Personal Data by a law enforcement authority (unless otherwise prohibited);
- c) any access request or complaint received directly from a data subject (without responding other than to acknowledge receipt).

4.1.13. maintain a record of its processing activities in accordance with Article 30 of the GDPR;

4.1.14. indemnify the Owing Party against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Owing Party or for which it may become liable as a result of or in connection with any failure of the Data Processor, its employees, agents, consultants, subcontractors or sub-processors to comply with this Schedule.

5. INTERNATIONAL DATA TRANSFERS

5.1. In respect of any Personal Data to be processed by a party acting as Data Processor pursuant to this Agreement for which the other party is Data Controller, the Data Processor shall not transfer the Personal Data outside the EEA or to an international organisation without:

5.1.1. obtaining the written permission of the Data Controller;

5.1.2. ensuring appropriate levels of protection, including any appropriate safeguards if required, are in place for the Personal Data in accordance with the Data Protection Laws;

5.1.3. notifying the Data Controller of the protections and appropriate safeguards in paragraph 5.1.2 above;

5.1.4. documenting and evidencing the protections and appropriate safeguards in paragraph 5.1.2 above and allowing the Data Controller access to any relevant documents and evidence.

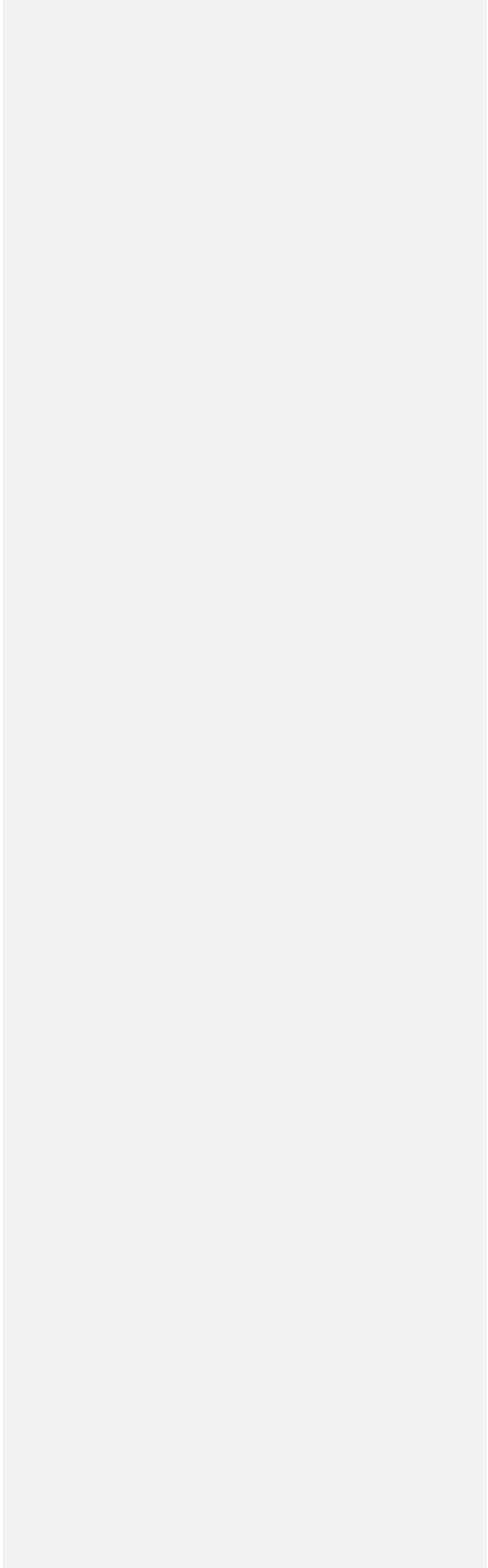
6. DETAILS OF PROCESSING ACTIVITIES

6.1. The following table sets out the details of processing as required by Article 28 of GDPR:

DN: Article 28 requires contracts with data processors set out “the subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects” We consider the information to be provided in the table below to be essential.

Purposes for which the Personal Data shall be processed Please specify the purposes for which the Data Processor intends to process the Personal Data.	To provide Wellbeing Services to Lincolnshire residents.
Description of the categories of the data subjects Please specify the categories of data subject whose Personal Data shall be processed under this Agreement.	Clients, Family Members, Landlords, Housing Provider.
Description of the categories of Personal Data Please specify the categories of Personal Data that shall be processed under this Agreement.	Name, Contact information, Date of Birth, NINO, Household Information, Family information, Housing Information, Medical information, Financial information, Nationality, GP detail, Disability information, Religion and Addictions.

<p>Description of transfers of Personal Data to a country outside of the EEA</p> <p>Please record transfers of Personal Data outside of the EEA, recording the country and/or international organisation and, where applicable, please document suitable safeguards.</p>	<p>Nil</p>
<p>The envisaged time limits for erasure of the different categories of Personal Data</p> <p>Please specify how long you think the Personal Data will be retained for, where possible.</p>	<p>10 Years</p>
<p>General description of technical and organisational security measures</p> <p>Where possible, please describe the measures put in place under Article 32(1) GDPR.</p>	<p>Staff passwords, Limited Staff access, Cyber security provided by OT provider, Duty & confidentiality, Staff data protection training and policies.</p>
<p>Authorised Sub-Processors</p> <p>List the sub-processors who will process Personal Data.</p>	<p>CPBS (East Coast) Ltd who manage our IT Sysytems.</p>



This Agreement has been entered into on the date stated at the beginning of it.

**EXECUTED as a Deed by affixing the
Common Seal of City of Lincoln Council in
the presence of :**

.....

Authorised Signatory:

**EXECUTED as a Deed by affixing the
Common Seal of East Lindsey District
Council in the presence of :**

.....

Authorised Signatory:

**EXECUTED as a Deed by affixing the
Common Seal of North Kesteven District
Council in the presence of :**

.....

Authorised Signatory:

**EXECUTED as a Deed by affixing the
Common Seal of West Lindsey District
Council in the presence of :**

.....

Authorised Signatory:

